



Office of the City Manager
312 W. Whitewater Street, P.O. Box 178
Whitewater, Wisconsin 53190

MEMORANDUM

www.whitewater-wi.gov
Telephone: (262) 473-0104
Fax: (262) 222-5901

To: Common Council
From: John Weidl, City Manager
Date: 10/30/2023
Re: Proposal for Extension of MoUs Deadline to June 30, 2024, for Whitewater Innovation Center & Tech Park Board Operations

Dear Members of the Council,

I am reaching out to discuss the Memoranda of Understanding (MoUs) that delineate the operational framework for the Whitewater Innovation Center and Technology Park, as managed by the Whitewater University Technology Park, Inc. (WUTP).

Historical Context & Current Agreements: The City, in partnership with the WUTP and the University of Wisconsin-Whitewater, has fostered the development of the Whitewater Innovation Center and Technology Park. This partnership was formalized through two crucial MoUs:

1. **City and WUTP Board MoU:** The ownership of the Innovation Center is vested in the CDA, with the WUTP Board taking on delegated management responsibilities. This MoU, signed by the City Manager and a WUTP executive, was set to expire on February 28, 2023. This was recently extended through December 31, 2023 by the Common Council.

2. **WUTP and University of Wisconsin MoU:** The University was granted exclusive use of designated spaces within the Innovation Center and took on the management of the incubation program. This MoU provided for automatic yearly renewals post the initial five-year term.

Request for Extension: As the current agreements near their end, the WUTP Board of Directors has approved a proposal to extend the term of these MoUs until June 30, 2024 as opposed to the initial extension of December 31, 2023. This extension is sought to ensure that the City, CDA, WUTP, and UWW have sufficient time to revise and align both governing MOUs.

Proposal for Council Action: I hereby request that the Common Council ratify the extension approved by the WUTP board, allowing us the necessary time to evaluate the success of the existing arrangements and to plan any modifications that may be required for the continued prosperity of the Innovation Center and Technology Park.

John S. Weidl, City Manager

**MEMORANDUM OF UNDERSTANDING BETWEEN THE WHITEWATER
UNIVERSITY TECHNOLOGY PARK AND THE UNIVERSITY OF WISCONSIN-
WHITEWATER CONCERNING USE AND OPERATIONS OF THE WHITEWATER
INNOVATION CENTER AND TECHNOLOGY PARK**

This Memorandum of Understanding (hereinafter “Agreement”) is made by and between the Whitewater-University Technology Park, Inc., hereinafter at times referred to as the “Board”, and the University of Wisconsin-Whitewater, hereinafter at times referred to as the “University”.

WHEREAS, the parties seek to cooperate in the operation and use of the City of Whitewater Innovation Center and Technology Park.

NOW, THEREFORE, it is hereby agreed to as follows:

**ARTICLE I
TERM OF AGREEMENT**

1.01 Initial Term. The term of this Agreement shall be for five years beginning March 1, 2018 or date of final signature by both parties, and ending on February 28, 2023, or five years from date of final signature, unless sooner terminated in accordance with this Agreement or in furtherance of the parties’ rights and remedies in the event of a material breach or default.

1.02 Extension of Term. The Agreement shall automatically be renewed on a yearly basis unless either party notifies the other in writing within thirty (30) calendar days of their intent not to extend the Agreement.

**ARTICLE II
COMMITMENTS**

2.01 Board Commitments.

(a) The Board hereby grants to the University the exclusive use of four (4) Innovation Center Suites that equals approximately 2,400 sq. ft., which consists of one lab suite and three office suites (“designated space”). The University shall have the exclusive right to use this designated space and/or authorize other individuals to use this space as long as such use is consistent with the overall use and operation of the Innovation Center. The University will have the sole right to receive any and all revenue or income generated from this designated space either through its own use or the use of another authorized party. If revenue is generated then revenue shall be used for Innovation Center operational expenses.

(b) The Board shall designate an office space to be used by the manager of the Innovation Center at no cost to the University (see 2.02(a) below).

2.02 University Commitments.

(a) The University hereby agrees to assign a University employee to serve as the manager of the Innovation Center on a part-time basis (50% of FTE). The University shall pay the employee’s salary and benefits. (See attached position description, Appendix A). The

University will provide office equipment and furnishings, as needed, for the manager's space at the Innovation Center.

(b) The University shall provide the Whitewater University Innovation Center with technological support, as deemed necessary and reasonable. (See ICIT Scope of Services, Appendix B).

(c) The University will manage the business incubation program and provide services as described in the Inventory of Business Incubation Services, (Appendix C). These services are considered an educational outreach program of the University, in accordance with Wis. Stat. § 36.01, and is contingent upon the availability or appropriation of funds. If funds become unavailable, the University will provide the Board with written notice of any reduction or termination of these services.

ARTICLE III TERMINATION

3.01. Termination. This Agreement may be terminated by either party upon sending written notice of such termination no less than one hundred twenty days (120) from the date of termination. Upon receipt of notice, the parties will work together to develop a process under which the separation of services and commitments will occur in a professional and efficient manner.

ARTICLE IV EQUAL OPPORTUNITIES

4.01. Discrimination. All parties, and their officials, employees and representatives, hereby agree to abide by all applicable federal, state and local laws, codes and ordinances relating to equal opportunities and non-discrimination. Without limiting the generality of the foregoing, all parties covenant that they will not discriminate against any individual either in an employment or educational capacity at the Innovation Center or the Technology Park on the basis of any federal or state protected status or class.

ARTICLE V ECONOMIC DEVELOPMENT AUTHORITY OF THE UNITED STATES GRANT REQUIREMENTS

5.01. Grant Requirements. Both parties agree that the operation and use of the Innovation Center and Technology Park is subject to certain grant requirements established by the Economic Development Authority of the United States. Both parties agree to abide by said grant requirements.

ARTICLE VI MISCELLANEOUS

6.01. Governing Law. The laws of the State of Wisconsin (and, where applicable, Federal law due to the EDA grant funding) shall govern the interpretation and enforcement of this Agreement.

ARTICLE VII SUCCESSORS AND ASSIGNS

7.01. Successors and Assigns. Except as expressly granted herein, no party shall assign its rights or obligations under this Agreement to any other party without a mutually written addendum executed by all parties to this Agreement.

ARTICLE VIII AMENDMENT

8.01. Amendment. This Agreement shall not be amended, changed, modified or altered without the written consent of all parties hereto and no modification, alteration or amendment to this Agreement shall be binding until such modification, alteration, or amendment is reduced to writing and executed by all parties to this Agreement. Any proposed amendment to this Agreement shall be provided in writing, along with a memorandum in support of the amendment, to all parties to this agreement fifteen (15) days prior to final action on the amendment by any party.

ARTICLE IX COUNTERPARTS

9.01. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were on the same instrument.

ARTICLE X SEVERABILITY

10.01. Severability. If any specific term or provision herein is adjudicated to be unenforceable against either party, such decision shall not automatically render this entire Agreement null or void. Rather, the unenforceability of one or more terms, clauses or paragraphs in this Agreement shall not affect the enforceability of the remaining terms herein.

ARTICLE XI THIRD PARTY BENEFICIARIES

11.01. Third Party Beneficiaries. This Agreement is entered into for the sole and exclusive benefit of the parties hereto. No third party shall have, obtain, or derive from this Agreement any rights or other benefits or interests under any laws or otherwise, except as specifically stated herein.

ARTICLE XII

EXCULPATORY PROVISION

12.01. Exculpatory Provision. The parties to this Agreement expressly acknowledge and agree that, anything herein to the contrary notwithstanding, no officer, director, employee, agent, or officials (elected or appointed) of any party hereto shall have any personal liability or obligation arising out of this Agreement, and no party hereto shall make any claims to the contrary.

ARTICLE XIII RULES OF CONSTRUCTION/CONDUCT


13.01. Rules of Construction/Conduct. The parties to this Agreement acknowledge and agree that the terms herein were negotiated in good faith and represent the intent of the parties. In the course of negotiations, each party has been represented by a practicing attorney, and that accordingly rules of interpretation that signify that an agreement shall be construed against the drafter shall not apply. In addition, the parties acknowledge and agree that they shall endeavor to resolve any and all issues that may arise under this Agreement in the spirit of cooperation consistent with the intent of this Agreement with the aim of benefiting the entire Whitewater area community and the University of Wisconsin-Whitewater.

By signing below, the signatories hereby represent that they have full authority to execute this Agreement and thereby bind their respective entities to the terms of this Agreement. Upon execution, this Agreement shall be in force and effect as stated herein.

WHITEWATER UNIVERSITY TECHNOLOGY PARK, INCORPORATED

By:  DocuSigned by:
509AF8FD95B143A... 6/5/2020
Cameron Clapper, Vice President Date

UNIVERSITY OF WISCONSIN-WHITEWATER

By:  DocuSigned by:
79AF935FA5014D8... 5/8/2020
Dwight C. Watson, Chancellor Date

MEMORANDUM OF UNDERSTANDING
FOR THE MANAGEMENT AND OPERATION OF THE
WHITEWATER INNOVATION CENTER AND WHITEWATER UNIVERSITY
TECHNOLOGY PARK

This Memorandum of Understanding is made by and among the CITY OF WHITEWATER, WISCONSIN, a municipal corporation, hereinafter at times referred to as “City”, and the CITY OF WHITEWATER COMMUNITY DEVELOPMENT AUTHORITY, a Wisconsin municipal authority and political subdivision, hereinafter at times referred to as “CDA”, and the WHITEWATER-UNIVERSITY TECHNOLOGY PARK, INCORPORATED, hereinafter at times referred to as “Board”.

WITNESSETH

WHEREAS, the parties hereto have, in cooperation with the University of Wisconsin-Whitewater, developed the Whitewater University Technology Park and built the Whitewater Innovation Center in said park; and

WHEREAS, the City, the CDA, and the Board believe it is in all parties’ best interests to delegate the management of the Whitewater Innovation Center to the Board; and

WHEREAS, this Memorandum of Understanding is necessary for the purpose of setting forth an outline of the responsibilities that the City and the CDA are delegating to the Board concerning the management and operation of the Whitewater Innovation Center; and

WHEREAS, the Board is willing to accept the duties associated with the management of the Whitewater Innovation Center and Whitewater University Technology Park; and

WHEREAS, the parties recognize that this development is a unique endeavor for the City and therefore this Memorandum of Understanding is an attempt to provide a framework for the management and operation of the Whitewater Innovation Center and Whitewater University Technology Park, but all parties recognize that adjustments to this Memorandum of Understanding likely will need to be made after the initial implementation of this Memorandum of Understanding.

Therefore, **IT IS HEREBY AGREED AS FOLLOWS:**

ARTICLE I

TERM OF AGREEMENT

- 1.0. Ownership of Facility.** The parties acknowledge that the Innovation Center Building located at 1221 Innovation Drive Whitewater, WI and the lands contained within the Whitewater University Technology Park are currently owned by the Community Development Authority of the City of Whitewater, Wisconsin. The

parties further agree that the excess lands within the park will be marketed and sold for economic development purposes per the underlying Zoning Ordinance.

1.02. Term. The term of this Memorandum of Understanding shall begin on the date of final signature and end on February 28, 2023 unless sooner terminated in accordance with this Agreement or in furtherance of the parties' rights and remedies in the event of a default. This Memorandum of Understanding will supersede and replace any prior Memorandum of Understanding between the parties regarding this subject.

1.03. Extension of Term. The parties may by agreement extend or shorten the term of this Memorandum of Understanding at any time.

ARTICLE II

OPERATION OF WHITEWATER INNOVATION CENTER

2.01. Responsibility for Operation. During the term of this Memorandum of Understanding, the Board shall have primary responsibility for the management and operation of the Whitewater Innovation Center. In that regard, subject to the general restrictions set forth in this Memorandum of Understanding, the Board shall have the sole and exclusive control over the right to lease space within the Whitewater Innovation Center and determine rental lease charges and lease rates.

2.02. Marketing of Innovation Center. The Board shall market the Whitewater Innovation Center leasable space as well as the availability of the Whitewater Innovation Center Main Conference Room to business and community groups.

2.03. Facility Usage. The Board shall establish facility usage policies.

2.04. Tenant Relations. The Board shall conduct tenant relations.

2.05. Business Development. The Board shall work with tenants in regard to technology and business development matters.

2.06. Hiring of Innovation Manager. The Board shall have the right to participate in the hiring of the Whitewater Innovation Center manager.

2.07. Management of Premises. The Board shall manage all aspects associated with the Innovation Center, including, but not limited to, making necessary repairs, both interior and exterior, structural and nonstructural, HVAC maintenance, building cleaning, snow and ice removal, fire alarm and life and safety matters, Knox box matters, telecommunications equipment, landscaping and lawn care.

2.08. Information Technology Services. The Board will provide information technology services to the Whitewater Innovation Center. Also, it shall be responsible for

providing information technology services to tenants to the extent and allowed by State Statute. The Board will determine the level of tenant services to be provided.

2.09. Fiber Optic Services. The Board shall be responsible for the management of fiber optic access and use at the Whitewater Innovation Center and throughout the Whitewater University Technology Park.

2.10. Operating Expenses. Except as otherwise provided in this Memorandum of Understanding, the Board shall be solely responsible for paying when due any and all costs of every kind and nature including, without limitation, those required to operate, maintain or repair the leased premises, such as cleaning, lighting, maintaining, repairing and replacing equipment thereon, the hiring of contractors and subcontractors in connection with maintaining and repairing the premises, or replacing equipment at the premises, supplies, water and sewer charges, electricity, gas and all other utility charges, license and permit fees, pilot payments, debt service payments, and any and all other expenses whatsoever of maintaining, operating, repairing and replacing the leased premises, except as otherwise provided herein or by separate agreement. If there is a shortfall in the funds necessary to make the payments required hereunder, the City shall be responsible to pay to the Board sufficient funds for the purposes stated herein.

2.11. Build America Bonds Debt Service Payments. The City shall pay as they come due all debt service payments for the Build America Bonds issued for the building of the Innovation Center-

2.12. Payment in Lieu of Taxes (PILOT). Annually, the Board will budget and authorize payment of a PILOT made payable to the City of Whitewater, TIF #4 account. The payment will be from the general operating funds of the Innovation Center. The PILOT payment representing the budget year, will be paid to the City by December 15 of that budget year.

The PILOT amount will be \$92,500 for each budget year payable during the allowable payment period of TIF #4.

The PILOT payment will be deposited into the City General Fund 920 for its use.

The property will not be subject to any Special Assessments for public improvements levied by the City of Whitewater.

2.13. Income. The Board shall receive all income from leases as well as from any other payments for use of Whitewater Innovation Center space.

ARTICLE III

OPERATION OF WHITEWATER UNIVERSITY TECHNOLOGY PARK

3.01. Responsibility for Operation. During the term of this Memorandum of Understanding, the Board shall have primary responsibility for the management and operation of the Whitewater University Technology Park. In that regard, subject to the general restrictions set

forth in this Memorandum of Understanding, the Board shall have the sole and exclusive control over the right to market and sell real estate within the limits of the Whitewater University Technology Park and determine, in consultation with the City and CDA, applicable real estate sale charges and rates.

3.02. Marketing of Whitewater University Technology Park. The Board shall market the Whitewater University Technology Park lots.

3.04. Tenant Relations. The Board shall conduct necessary relations with Whitewater University Technology Park tenants.

3.05. Business Development. The Board shall work with Whitewater University Technology Park tenants in regard to technology and business development matters.

3.06. Land Sale Proceeds. The net proceeds from any Whitewater University Technology Park lot sales shall be paid to the CDA and shall be used for Whitewater University Technology Park purposes, including but not limited to, the improvement or expansion of the Whitewater University Technology Park. The Board shall be paid the greater of ten percent (10%) of net sale proceeds or \$1,000 per acre for any Whitewater University Technology Park land sale to offset marketing costs. Net Proceeds shall be defined as the sale price of the property less any expenses incurred in conjunction with the land sale. Examples include but are not limited to: Third Party professional service costs, Recording Fees, Transfer Fees and Real Estate Commissions paid to Licensed Real Estate Professionals.

ARTICLE IV

FINANCIAL RESPONSIBILITIES

4.01. Annual Budget. No later than sixty 60 days prior to the Public Hearing for the adoption of the City of Whitewater General Fund budget the Board shall deliver to the City and the CDA an annual budget for the upcoming calendar year. The annual budget will show all anticipated funding and revenues of the Whitewater Innovation Center and the Whitewater University Technology Park for the upcoming year, together with a schedule of the projected income and expenditures for the upcoming year, with such reserves for capital expenditures and improvements as the Board deems appropriate. Within thirty (30) days after their receipt of the annual budget, the City and the CDA shall provide the Board with any suggestions or comments they may have to the annual budget and the Board shall give reasonable consideration to those suggestions and comments in arriving at its final annual budget for the upcoming calendar year.

4.02. Financial Reports. Not later than thirty (30) days after the end of each calendar quarter during the term of this Memorandum of Understanding, the Board shall submit to the City and the CDA quarterly financial reports for the just ended calendar quarter. Not later than

May 1st of each calendar year during the term of this Memorandum of Understanding the Board shall submit to the City and the CDA annual financial reports regarding the operation of the Whitewater Innovation Center and the Whitewater University Technology Park during the most recent calendar year. All such financial reports shall be subject to review and/or audit by an independent certified public accountant hired by the City to the extent such is necessary in connection with the obligations of the parties. In addition, the Board shall make its financial books and records available to representatives of the City and the CDA during normal business hours upon request.

4.03. Insurance. During the term of this Memorandum of Understanding the City shall, at its sole expense, obtain and maintain sufficient comprehensive insurance, including any necessary property, casualty and liability insurance after having consulted with appropriate insurance professionals. The City shall pay for said insurance. Said payment shall be a credit against the City's annual contribution as defined in Section 5.01.

Under the terms of the policies obtained, the City shall indemnify and shall defend and hold harmless the University Technology Park Board and its employees operating in accordance with the policies of the Board against any and all claims and legal actions made against the Innovation Center or the Whitewater University Technology Park Board.

The City will not provide any employment related personal insurance (including but not limited to: health, life, dental, disability), Worker's Compensation or Unemployment Insurance directly associated with University hired personnel working on behalf of or within the Innovation Center or Whitewater University Technology Park.

The City shall be solely responsible for payment of any insurance deductible, Self Insurance Retention (SIR) or third party fees associated with claims or legal actions against the Innovation Center and/or the Whitewater University Technology Park.

4.04. Sinking Fund. A sinking fund shall be established to be used for major repairs and maintenance, and improvements and expenses related to the Whitewater Innovation Center and the Whitewater University Technology Park. Expenditures authorized utilizing the Sinking Fund will be under the authority of the University Technology Park Board. The funding will be limited to repair and maintenance of the facility. It may not be utilized for annual operating expenses.

4.05. Exceptions. All exceptions to the above financial responsibilities shall be subject to mutual agreement between the parties.

ARTICLE V CITY FUNDING

5.01. Annual Contribution. Each year during the term of this Memorandum of Understanding, the City shall pay a \$29,500 contribution to the cost of maintaining and operating the Whitewater Innovation Center. This annual contribution shall be subject to an annual increase equal to the greater of three percent (3%) or the U.S. Bureau of Labor Statistics

Consumer Price Index (CPI)-All Urban Consumers-Midwest Region. The City shall be credited on this contribution for any insurance payments it makes as well as any in kind services by the City such as but not limited to snow and ice removal, property maintenance, financial, accounting and legal services for the Whitewater Innovation Center and Whitewater University Technology Park.

ARTICLE VI TERMINATION

6.01. Termination. Any party to this Memorandum of Understanding may terminate it by giving all other parties to the Memorandum of Understanding six (6) months written notice. After notice is given, the parties shall meet within thirty (30) days to agree on the process that will be used to transfer the management and operation of the Whitewater Innovation Center and Whitewater University Technology Park to the successor manager. Both parties shall share all information necessary to facilitate the transition. All parties will cooperate so that the transfer of the management and control of the Whitewater Innovation Center and Whitewater University Technology Park will be completed in an efficient and professional manner. The financial responsibilities set forth herein shall be retained by the Board during the 6 months time period after termination.

ARTICLE VII EQUAL OPPORTUNITIES

7.01. Discrimination. All parties agree that in the operation, management and use of the leased premises they will abide by all applicable federal, state and local laws, codes and ordinances relating to equal opportunities and non-discrimination. Without limiting the generality of the foregoing, all parties covenant that they will not discriminate against any employee or applicants for employment at the Whitewater Innovation Center or the Whitewater University Technology Park in any manner or commit discrimination on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry.

ARTICLE VIII ECONOMIC DEVELOPMENT AUTHORITY OF THE UNITED STATES GRANT REQUIREMENTS

8.01. Grant Requirements. All parties agree that the operation and use of the Whitewater Innovation Center and Whitewater University Technology Park is subject to certain grant requirements established by the Economic Development Administration (EDA) of the United States. All parties agree to abide by said grant requirements. This Memorandum of Understanding shall be null and void if it is at any time found to be in violation of the grant terms.

ARTICLE IX

MISCELLANEOUS

9.01. Governing Law. Laws of the State of Wisconsin (and, where applicable, Federal law due to the EDA grants funding) shall govern the interpretation and enforcement of this Memorandum of Understanding.

ARTICLE X

SUCCESSORS AND ASSIGNS

10.01. Successors and Assigns. Except as limited or conditioned by the express provisions hereof, no party shall assign its rights or obligations under this Memorandum of Understanding to any other party without written agreement by all parties to this Memorandum of Understanding.

ARTICLE XI

AMENDMENT

11.01. Amendment. This Memorandum of Understanding shall not be amended, changed, modified or altered without the written consent of all parties hereto and no modification, alteration or amendment to this Memorandum of Understanding shall be binding until such modification, alteration, or amendment is reduced to writing and executed by all parties to this Memorandum of Understanding. Any proposed amendment to this Memorandum of Understanding shall be provided in writing, along with a memorandum in support of the amendment, to all parties to this agreement fifteen (15) days prior to final action on the amendment by any party.

ARTICLE XII

COUNTERPARTS

12.01. Counterparts. This Memorandum of Understanding may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were on the same instrument.

ARTICLE XIII

SEVERABILITY

13.01. Severability. If any provision of this Memorandum of Understanding shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy or for any reason such circumstance shall not have the affect of rendering the provision in question inoperative or unenforceable in any other case or circumstances or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever, the invalidity of any one or more phrases,

sentences, clauses or paragraphs in this Memorandum of Understanding shall not affect the remaining portions of this document or any part thereof.

ARTICLE XIV THIRD PARTY BENEFICIARIES

14.01. Third Party Beneficiaries. This Memorandum of Understanding is entered into for the sole and exclusive benefit of the parties hereto. No third party shall have, obtain, or derive from this document any rights or other benefits or interests under any laws or otherwise.

ARTICLE XV EXCULPATORY PROVISION

15.01. Exculpatory Provision. The parties to this Memorandum of Understanding expressly acknowledge and agree that, anything herein to the contrary notwithstanding, no officer, director, employee, agent, or officials (elected or appointed) of any party hereto shall have any personal liability or obligation arising out of this Memorandum of Understanding, and no party hereto shall make any claims to the contrary.

ARTICLE XVI RULES OF CONSTRUCTION/CONDUCT

16.01. Rules of Construction/Conduct. The parties to this Memorandum of Understanding acknowledge and agree that this Memorandum of Understanding is a good faith attempt to memorialize the intent of the parties. That in the course of its preparation, each party has been adequately and fully represented, and that accordingly rules of interpretation that signify that an agreement shall be construed against the drafter shall not apply. In addition, the parties acknowledge and agree that they shall endeavor to resolve any and all issues that may arise under this Memorandum of Understanding in the spirit of cooperation consistent with the intent of this Memorandum of Understanding with the aim of benefiting the entire Whitewater area community and the University of Wisconsin-Whitewater.

ARTICLE XVII NOTICES

17.01. Notices. Any notice or other communication permitted or required shall be addressed to the following:

As to the University Technology Park Board

University Technology Park Board
Office of the Chancellor
HY 421
Whitewater, WI 53190

As to the City of Whitewater

City Manager
City of Whitewater
312 W. Whitewater St.
Whitewater, WI 53190

As to the Community Development Authority

Executive Director
Whitewater Community Development Authority
312 W. Whitewater, St.
Whitewater, WI 53190

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

SIGNATURE PAGE

Signed and sealed as of the day, month and year below written.

CITY OF WHITEWATER

DocuSigned by:
 By: Cameron Clapper 6/15/2020
 509AF8ED95B143A...
Cameron Clapper, City Manager **Date**
 DocuSigned by:
 By: Michele Smith 6/17/2020
 87C2A0E53B5044C...
Michele R. Smith, City Clerk **Date**

**COMMUNITY DEVELOPMENT AUTHORITY OF
THE CITY OF WHITEWATER**

DocuSigned by:
 By: Patrick Singer 6/16/2020
 7C94665A7B1A441...
Patrick Singer, Chairman **Date**
 DocuSigned by:
 By: Cameron Clapper 6/15/2020
 509AF8ED95B143A...
Cameron Clapper, Interim Director **Date**

**WHITEWATER – UNIVERSITY TECHNOLOGY
PARK, INCORPORATED**

DocuSigned by:
 By: Dwight C. Watson 6/15/2020
 6B4F936FA5111D8...
Dr. Dwight C. Watson, President **Date**
 DocuSigned by:
 By: Cameron Clapper 6/15/2020
 509AF8ED95B143A...
Cameron Clapper, Vice President **Date**

ARTICLES OF INCORPORATION
OF
WHITEWATER-UNIVERSITY TECHNOLOGY PARK, INCORPORATED

These Articles of Incorporation are executed for the purpose of forming a Wisconsin corporation under Chapter 181 of the Wisconsin Statutes without stock and not for profit.

ARTICLE 1. Name. The name of the Corporation is Whitewater-University Technology Park, Incorporated.

ARTICLE 2. Period of Existence. The period of existence of this Corporation shall be perpetual.

ARTICLE 3. Purposes and Powers. The purposes for which the Corporation is formed are as follows:

A. Subject to the limitations herein, the Corporation is organized and shall be operated exclusively for charitable, scientific, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code as amended for the benefit of the citizens of the City of Whitewater, Wisconsin, and the faculty and students of the University of Wisconsin-Whitewater.

B. The Corporation is organized and shall be operated exclusively for charitable, scientific, or educational purposes, and in furtherance of such purposes shall have the power:

(1) To acquire by gift, bequest, devise, or otherwise real property or personal property or both, and/or all things of value for the benefit of the citizens of the City of Whitewater; and to hold, administer, use, or

distribute the same for the benefit of the citizens of the City of Whitewater.

(2) To promote, encourage, and aid scientific investigation, research, technological advancement, and educational employment opportunities for the benefit of the citizens of the City of Whitewater and the faculty and students of the University of Wisconsin-Whitewater, to promote employment opportunities for the faculty and students of the University of Wisconsin-Whitewater and the residents of the City of Whitewater and State of Wisconsin.

(3) To promote, encourage, and aid in the mutual transfer and/or application of scientific investigation, research, technological advancement, and educational opportunities produced at the University of Wisconsin-Whitewater and scientific investigation, research, technological advancement, and educational opportunities produced by industry, business, and government.

(4) To pay out and distribute the Corporation's funds to promote employment opportunities for citizens of the City of Whitewater and faculty and students of the University of Wisconsin-Whitewater and to encourage scientific investigation, research, technological advancement, and educational opportunities at the University of Wisconsin-Whitewater, at such times and in such amounts as shall be in the sole discretion of the Board of Trustees.

(5) To create subsidiary corporations to aid or assist the Corporation in the furtherance of its activities incidental to the foregoing purposes except as limited herein or by law; and

(6) To engage in any and all lawful activities incidental to the foregoing purposes except as limited herein or by law.

C. The Corporation shall at all times be operated in connection with the University of Wisconsin-Whitewater and the City of Whitewater.

D. It is intended that the Corporation shall have and continue to have the status of a corporation, which is exempt from federal and state income taxation.

E. The Corporation shall be without capital stock and no dividends or pecuniary profits shall be declared, paid to, or inure to the benefit of the Trustees in their private capacity.

F. The Corporation is organized as a nonprofit Corporation exclusively for charitable, religious, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, as amended. No part of the net earnings or the assets of the Corporation shall inure to the benefit of, nor be distributable to, its Directors, officers, or other private persons or political cause, except that the Corporation may pay reasonable compensation for services rendered and may make payments and distributions in furtherance of the purposes set forth in the Articles of Incorporation and Bylaws.

ARTICLE 4. Principal Office. The principal office of the Corporation is located in Walworth County, Wisconsin, and the address of such principal office is 312 West Whitewater Street, Whitewater, Wisconsin 53190.

ARTICLE 5. Registered Agent. The name of the initial registered agent is Kevin M. Brunner.

ARTICLE 6. Address of Registered Agent. The address of the initial registered agent is 312 West Whitewater Street, Whitewater, Wisconsin 53190.

ARTICLE 7. Trustees. The number of Trustees of the Corporation shall be not less than three (3). Trustees shall be elected as provided in the By-Laws.

The name and address of the initial Trustees are:

Kevin M. Brunner, 312 West Whitewater Street, Whitewater, WI 53190

Richard Telfer, University of Wisconsin-Whitewater, Hyer Hall 42, 800 West Main Street, Whitewater, WI 53190

Jeffrey Knight, 405 Panther Court, Whitewater, WI 53190

ARTICLE 8. Members. The Corporation shall have no members.

ARTICLE 9. Dissolution. In case of the dissolution of the Corporation, the Trustees, after paying or making provision for payment of all of the liabilities of the Corporation, shall distribute all assets of the Corporation exclusively for the aforesaid purposes of the Corporation, as the Trustees shall determine, to the Community Development Authority of the City of Whitewater, or to such organization or organizations, including trusts, organized and operated exclusively for charitable, educational, or scientific purposes, that shall at the time qualify as an organization or organizations described in Section 501(c) (3) of the Internal Revenue Code of 1954 that would ultimately result in expenditures in accordance with the scientific investigation, research, technological advancement, and educational opportunity purposes set forth in Article 3 hereof.

ARTICLE 10. Incorporator. The incorporator of the Corporation is Kevin M. Brunner, 312 West Whitewater Street, Whitewater, WI 53190.

ARTICLE 11. Amendments. These Articles of Incorporation may be amended upon a two-thirds (2/3) vote of the Trustees, but no such amendment shall substantially change the purpose of the Corporation or the provisions of Article 9 hereof.

Executed in duplicate on this 25th day of SEPTEMBER, 2009.

Kevin M. Brunner

Kevin M. Brunner
Name of Incorporator

STATE OF WISCONSIN)
) ss.
COUNTY OF WALWORTH)

Personally came before me this 25th day of September, 2009, the aforementioned incorporator, Kevin M. Brunner, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Deborah M. Helgen

Notary Public, State of Wisconsin

My Commission: 1/20/13

This document drafted by:
Wallace K. McDonell

Amended May 11, 2012 (Reviewed June 17, 2015)

**BY-LAWS OF
WHITEWATER UNIVERSITY TECHNOLOGY PARK BOARD**

ARTICLE I. NAME/ADMINISTRATION/ADDRESS

Section 1.01. Name. The name of the Corporation is Whitewater University Technology Park, Incorporated (hereinafter the "Corporation").

Section 1.02. Administration. The Corporation is incorporated as a Wisconsin Corporation under Chapter 181 Wisconsin Statutes, without stock and not for profit. The Corporation is organized and shall be operated exclusively for charitable, scientific, and educational purposes for the benefit of the citizens of the City of Whitewater, Wisconsin, and the faculty and students of the University of Wisconsin-Whitewater. The Corporation is organized as a nonprofit Corporation exclusively for charitable, religious, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, as amended. No part of the net earnings or the assets of the Corporation shall inure to the benefit of, nor be distributable to, its Directors, officers, or other private persons or political causes, except that the Corporation may pay reasonable compensation for services rendered and may make payments and distributions in furtherance of the purposes set forth in the Articles of Incorporation and Bylaws.

Section 1.03. Address. The address of the Corporation and its principal office is 312 West Whitewater Street, Whitewater, WI 53190.

ARTICLE II. MEMBERS

Section 2.01. Members. The corporation shall have no members.

ARTICLE III. BOARD OF TRUSTEES

Section 3.01. Board Members. The management and control of the Corporation shall reside in the Whitewater University Technology Park Board of Trustees.

Section 3.02. Number on Board of Trustees. The Whitewater University Technology Park Board of Trustees membership shall include six representatives from the City of Whitewater and five representatives from UW-Whitewater as follows:

(1) City of Whitewater board members:

- (a) City Manager or his/her designee
- (b) Common Council Member
- (c) A member of the Community Development Authority of the City of Whitewater
- (d) Three City of Whitewater community members appointed by the City Council

(2) UW-Whitewater board members:

- (a) Chancellor or his/her designee
- (b) Appointee of the Chancellor
- (c) Appointee of the Chancellor
- (d) Appointee of the Chancellor
- (e) Appointee of the Chancellor

(3) The Executive Director of the Whitewater University Technology Park Board of Directors will serve as an ex-officio (non-voting) member of the Board.

Section 3.03. Term. Except as hereinafter stated the term of office of the board members shall be as follows:

- (1) The board member who is the City Manager of the City of Whitewater shall be a board member for so long as such person remains the City Manager of the City of Whitewater.
- (2) The Common Council member of the City of Whitewater shall serve until replaced by the Common Council of the City of Whitewater. If the board member no longer is a member of the Common Council of the City of Whitewater, said term shall expire immediately.
- (3) The Community Development Authority member of the City of Whitewater shall serve until replaced by the Common Council of the City of Whitewater. If the board member no longer is a member of the CDA of the City of Whitewater, said term shall expire immediately.
- (4) The appointees of the Common Council shall serve two-year terms up to a maximum of four consecutive terms.
- (5) The Chancellor of the UW-Whitewater shall be a board member for so long as such person remains the Chancellor of the UW-Whitewater.
- (6) The appointees of the Chancellor of the UW-Whitewater shall serve until replaced by the Chancellor of the UW-Whitewater.

Section 3.04. Vacancies. Vacancies on the Whitewater University Technology Park Board caused by any reason shall be filled as set forth in Section 3.03.

Section 3.05. Removal of Board Members. Board members may be removed for cause at any time by the body or person who has appointment power over the board member.

Section 3.06. Meetings. The meetings of the board shall be held upon the call of the president upon at least 24 hours notice to board members. Notice shall be in writing or by e-mail. Trustees may participate by phone if arranged in advance of the meeting. Meetings

shall be subject to the Wisconsin Open Meetings Law. A special meeting may be called upon the request of at least three Trustees.

Section 3.07. Quorum. A quorum at a meeting of the board shall consist of the majority of the board.

Section 3.08. Meeting Place. The board may hold their meetings, whether annual, regular or special, within or outside the State of Wisconsin, except as otherwise provided by law. The board shall hold an annual meeting on the first Monday in April unless otherwise set by the board.

Section 3.09. Compensation. The board shall not receive any compensation for their services, but may be reimbursed for their expenses in connection with attendance at meetings, provided that the compensation is approved by the board.

ARTICLE IV. OFFICERS

Section 4.01. Officers. The board shall at its annual meeting elect to one-year terms a president, a vice president, a treasurer, a secretary, and such other officers as the board may from time to time determine.

Section 4.02. President. The principal duties of the president shall be to preside over all meetings of the board and to have general supervision of the affairs of the Corporation.

Section 4.03. Vice President. The principal duties of the vice president shall, in accordance with terms hereof, be to discharge the duties of the president in the event of absence or disability for any cause whatever of the president. In the absence of the president or in the event of the president's inability or refusal to act, the vice president in the order designated by the resolution of the board, or in the absence of any designation, then in the order of their appointment shall perform the duties of the president, and when so acting shall have all the powers of and be subject to all the restrictions upon the president.

Section 4.04. Secretary. The principal duties of the secretary shall be to countersign all conveyances, assignments, and contracts executed by the Corporation, affixing the seal of the Corporation thereto and to such other papers as may be required or directed to be sealed, and to keep a record of the proceedings of the meetings of the board, and to safely and systematically keep all books, papers, records, and documents belonging to the Corporation or pertaining to the business thereof.

Section 4.05. Treasurer. The principal duties of the treasurer shall be to keep an account of all monies, credits, and property of any and every nature of the Corporation, which shall come into the hands of the treasurer and to keep an accurate account of monies received and disbursed and proper vouchers for monies disbursed, and to render such accounts, statements, and inventory of monies received and disbursed and of money and property on hand, and generally of all matters pertaining to this office as shall be required by the board.

Section 4.06. Secretary-Treasurer. The board, by majority vote, may combine the duties of the secretary delineated in Section 4.04 and the duties of the treasurer delineated in Section 4.05 into a single office of secretary-treasurer.

ARTICLE V. COMMITTEES

Section 5.01. Standing Committees. There may be appointed annually by the president, subject to ratification by the board, the following standing committees of the board:

- (1) Executive Committee
- (2) Investment and Real Estate Committee
- (3) Audit Committee
- (4) Architectural Review Committee

The Executive Committee shall consist of the president, vice president, secretary and treasurer of the Corporation, and the immediate past president if serving as a board member. Other standing committees shall consist of board members and each committee shall be comprised of whatever number of persons the president, in the president's discretion and subject to ratification by the board, shall determine. Each standing committee in any event shall include not less than three (3) members. The president shall designate the chairman of each standing committee. The chairman of each such committee shall preside at all meetings of the committee and shall report to the board on behalf of the committee.

Section 5.02. Executive Committee. The Executive Committee shall be entitled to exercise all the powers of the board when not in session, but subject to the direction thereof.

Section 5.03. Investment and Real Estate Committee. All members of the board shall constitute alternate members of the Investment and Real Estate Committee and may be called upon by the chairman of such committee to serve in the absence of any of the regular members of such committee. The Committee shall have general supervision of the investments made by the Corporation and shall establish all policies relating to investments, subject to approval of such policies by the board. In addition, the committee shall be responsible for the acquisition, administration, use, and/or distribution of real estate consistent with the purposes of the Corporation as set forth in the Articles of Incorporation. The Committee shall function and operate pursuant to such policies, procedures and guidelines as are established from time to time by the board. The committee shall report on its activities at an annual meeting of the board and at each regular meeting thereof and at such other times as requested.

Section 5.04. Audit Committee. The Audit Committee shall review the accounting procedures and practices followed by the Corporation's staff in order to make certain that the staff is following sound accounting principles and procedures in the administration of the internal affairs of the Corporation. The Audit Committee within its discretion may make direct contact at any time with independent outside auditors employed by the Corporation and review all audits of the Corporation's books and affairs prepared by such independent auditors. The

Audit Committee shall report periodically on its activities to the board and shall also report such activities to the board at any time when requested by the board.

Section 5.05. Architectural Review Committee. An Architectural Review Committee shall be appointed as set forth in Whitewater Municipal Code Section 19.38.020 and it shall review all proposed developments within the boundaries of the Whitewater University Technology Park as well as establish and enforce architectural and landscaping requirements for such developments as set forth in Whitewater Municipal Code Chapter 19.38.

Section 5.06. Additional Standing Committees. The president may at any time create special committees with such powers, duties and membership as the president may determine, but subject to Board approval.

Section 5.07. Special Committees. The president may at any time create special committees with such powers, duties and membership as the president may determine, but subject to Board approval.

ARTICLE VI. FISCAL YEAR

Section 6.01. Fiscal Year. The fiscal year of the Corporation shall be from January 1 through December 31.

ARTICLE VII. INDEMNIFICATION OF BOARD MEMBERS, TRUSTEES AND OFFICERS

Section 7.01. Definition of Terms.

(1) “Board member, trustee, officer or employee” shall include any person who may have served at the request of the Corporation as a trustee, officer, or employee of another corporation in which the Corporation owned stock or was a creditor at any time during the period of said service, and all past, present and future members, board members, officers, and employees of the corporation whether or not so serving at the time of incurring the expenses or liabilities referred to herein, and their personal representatives.

(2) “Action” means any civil, criminal or administrative action, suit, proceeding or claim, or threat thereof, in which a board member, trustee, officer, or employee may be involved as a party or otherwise, by reason of such person having served as such board member, trustee, officer or employee or by reason of anything done or omitted by such person as such board member, trustee, officer, or employee, or alleged to have been so done or omitted.

(3) “Determination by the board” means a determination made by resolution by a majority vote of a quorum consisting of board members who were not parties to an action in which a board member, trustee, officer, or employee may be involved.

(4) “Determination by Independent Legal Counsel” means a determination in the form of a written opinion addressed to the board members by legal counsel appointed as

provided in Section 7.03 hereof, that indemnification of a board member, trustee, officer, or employee is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 7.02 hereof.

Section 7.02. Mandatory Indemnification. The Corporation shall indemnify each board member, trustee, officer, or employee who was or is a party or is threatened to be made a party to any threatened pending or completed action by reason of the fact that such person is or was a board member, trustee, officer or employee of the Corporation, or is or was serving at the request of the corporation as a trustee officer or employee of another corporation. Such persons shall be indemnified against those expenses specified herein and pursuant to the provisions and under the conditions of subsections (1), (2), and (3) herein.

(1) Successful Defense of Action: To the extent that a board member, trustee, officer, or employee of the Corporation has been successful on the merits or otherwise in the defense of any action or in the defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by such person in connection therewith.

(2) Actions by or in the Right of the Corporation: To the extent not covered by Section (1) of this Section, if a determination is made by the board, or, in the event that a quorum of the board is not obtainable, or even if obtainable, a quorum of disinterested board members so directs, by independent legal counsel in a written opinion that the board member, trustee, officer, or employee acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, such person shall be indemnified against expenses, including attorney's fees actually and reasonably incurred by such person in connection with the defense or settlement of any action by or in the right of the Corporation to procure a judgment in its favor; provided that (unless directed otherwise by the Court in which such action was brought), no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of such person's duty to the Corporation unless and only to the extent that the Court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court shall deem proper.

(3) Other Civil Actions and Criminal Actions: If a determination is made by the board by a majority vote of a quorum consisting of board members who are not parties to any action, suit, or proceeding not covered by Subsection (1) or Subsection (2) hereof, or, if such a quorum is not obtainable, or even if obtainable, a quorum of disinterested board members so directs, by independent legal counsel in a written opinion, that with respect to such action, a board member, trustee, officer, or employee of the Corporation acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action that such person had no reasonable cause to believe such person's conduct was illegal, such person shall be indemnified against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement and reasonably incurred by such person in connection therewith. The termination of any action, suit, or

proceeding by judgment, order settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself create a presumption that such person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interest of the Corporation and, with respect to any criminal action, had reasonable cause to believe such person's conduct was unlawful.

Section 7.03. Appointment of Independent Legal Counsel. In the event a situation arises which may give rise to indemnification under Section 7.02 of this Article, the board, by a majority vote of those members not parties to the actions described in Section 7.02, whether or not a quorum, may appoint independent legal counsel to make the written determination provided for in Sections 7.02(2) and 7.02(3) of this Article.

Section 7.04. Discretionary Insurance. The Corporation may upon affirmative vote of a majority of the board members, purchase commercial insurance for the benefit of a board member, trustee, officer, or employee against all or any part of the expense, liabilities or settlement payments arising from actions against such board member, trustee, officer, or employee, whether or not the Corporation would have the power to indemnify such board member, trustee, officer, or employee against such expenses or liability under Section 7.02 of this Article. Such insurance need not be for the benefit of all board members, trustees, officers, or employees.

Section 7.05. Liability for Determinations. The Corporation and its board members, trustees, officers, or employees shall not be liable to anyone for making or refusing to make any payment under Sections 7.02(2) and 7.02(3) of this Article in reliance on the determination by the board and on the written opinion of independent legal counsel as provided in those sections.

Section 7.06. Other Rights. The foregoing indemnification provisions shall be in addition, and may be claimed without prejudice to, any other rights which any member, trustee, officer or employee may have.

Section 7.07. Advance Payment of Expenses. Expenses incurred by a member, trustee, officer, or employee in defending an action may be paid by the Corporation in advance of the final disposition of such action if (a) there has been a determination by the members as herein provided or by independent legal counsel appointed pursuant to Section 7.03 that such person has met the applicable standard of conduct set forth in Section 7.02 hereof; and (b) such person gives a written undertaking to repay the amount advanced unless it shall ultimately be determined that such person is entitled to be indemnified by the Corporation.

ARTICLE IX. AMENDMENTS

Section 9.1. Amendments. These By-Laws may be amended, altered, or repealed at any annual, regular, or special meeting of the board upon the affirmative vote of two-thirds of the members, providing that notice of the proposed amendment be given in writing to all of the members at least five (5) days before such meeting.



President



Vice President



Secretary



Treasurer

Amended this 11th day of May, 2012.
Reviewed and approved June 17, 2015