

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made by and among the CITY OF WHITEWATER, WISCONSIN, a municipal corporation and political subdivision, 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 UNIVERSITY OF WISCONSIN-WHITTEWATER, hereinafter at times referred to as "University".

ARTICLE I WITNESSETH

WHEREAS, the parties hereto have identified and found a need for a University Technology Park to (i) foster collaborations between the University of Wisconsin-Whitewater and the business community in the City of Whitewater, and (ii) to further build the local supply of sustainable jobs in the City of Whitewater; and

WHEREAS, the parties have jointly undertaken a study to determine the feasibility of developing a University Technology Park; and

WHEREAS, as a result of general public support and the recommendations of the study, the parties hereto intend to develop a University Technology Park, whereby the City and/or CDA will purchase, develop and own a University Technology Park, and the University of Wisconsin-Whitewater will provide technical expertise to assist in the development and governing of the University Technology Park; and

WHEREAS, the parties find that the development of a University Technology Park pursuant to this Memorandum of Understanding is in the best interests of the City and the University, and their respective residents and students, and in accordance with the public purposes and conditions governing each.

Now, therefore, IT IS HEREBY AGREED AS FOLLOWS:

The parties agree that this Memorandum of Understanding shall set forth the understanding of all parties as they move forward cooperatively to implement a collaborative project to foster business and economic development in the City of Whitewater. The parties recognize the need to set forth in writing the understandings of the parties in order to avoid misunderstanding as the parties move forward with this collaborative project. The parties understand that this Memorandum of Understanding is not a contract and is not binding on either party; however, each party shall in good faith continue to move forward with efforts to establish a Whitewater University Technology Park.

ARTICLE II

Definitions; Appendices

2.01. DEFINITIONS

As used in this Memorandum of Understanding, the following terms having an initial capital letter shall have the following meanings:

“Whitewater University Technology Park” means a business park which will provide a range of companies and organizations the opportunity to locate and establish a business facility in the City of Whitewater. The park will offer companies and organizations the potential to collaborate with the University of Wisconsin-Whitewater staff, facilities, and students.

“Memorandum of Understanding” means this Memorandum of Understanding by and among the City, the CDA, and the University as amended and supplemented from time to time.

“Technology Park” means the Site and the Project.

“Feasibility Study” means the Feasibility Study and strategic implementation and recommendations of Northstar Economics, Inc. and MSA Professional Services, Inc., dated July 8, 2008.

“Operating Entity” means a to-be-created, not-for-profit entity created and organized under the laws of the State of Wisconsin which will operate and maintain the Whitewater University Technology Park in accordance with this Memorandum of Understanding.

“Site” means the site selected for the construction and development of the Whitewater University Technology Park.

2.02. APPENDICES.

The following appendices are hereby attached to and incorporated into this Memorandum of Understanding:

Appendix A: Feasibility Study dated July 8, 2008.

ARTICLE III

City Goals

The establishment of the Whitewater University Technology Park, whereby the City of Whitewater and/or the City of Whitewater Community Development Authority will purchase, develop and own the Whitewater University Technology Park, and the University of Wisconsin-Whitewater will provide technical expertise to assist in the development and governance of the park. The establishment of the Park shall be generally in accordance with the Feasibility Study and Strategic Implementation Recommendations dated July 8, 2008.

ARTICLE IV
University of Wisconsin-Whitewater Goals

The University of Wisconsin-Whitewater shall provide technical expertise to assist in the development and governance of the Whitewater University Technology Park. This assistance shall be generally in accordance with the Feasibility Study and Strategic Implementation Recommendations dated July 8, 2008.

ARTICLE V
Operating Entity Role

6.01. Operating Entity Obligations. The Whitewater University Technology Park shall be owned by the City of Whitewater and/or the City of Whitewater Community Development Authority, but shall be governed jointly by a Whitewater University Technology Park Board. The park board shall include representation from the City (4 members) and the University (3 members) to insure a shared commitment to the success of the park. The representatives shall be as follows:

City of Whitewater:

City Manager
Common Council member
CDA member
City of Whitewater citizen appointed
by the Common Council

UW-Whitewater:

Chancellor (or his designee)
Appointee of Chancellor
Appointee of Chancellor

The appointees shall include persons who understand the role the Technology Park will have in fostering business and economic development in the City of Whitewater, and how it will contribute to the mission of the University of Wisconsin-Whitewater.

The Technology Board shall provide guidance in the establishment of the park and incubator. Thereafter the Board will review development proposals for consistency with the covenants and restrictions (design issues) and make recommendations on approval to the Whitewater Plan Commission. The Board will monitor and enforce the desired business mix and, assuming successful creation of a Whitewater University Technology Incubator, they will oversee the management of that facility through an Incubator Director.

6.02. Annual Budget and Reports. The Operating Entity shall be required to prepare an annual budget for the operation of the Project which shall be submitted to the City, the CDA and the University no later than September 1st of each year. In addition, the Operating Entity shall be required to submit quarterly reports within 30 days after the end of each calendar quarter, and annual reports regarding the prior year's project operation to the City, the CDA and the University no later than May 1st of each year. Also, if requested by the City or the CDA, the Operating Entity shall provide an annual audit of its operations.

6.03. Operating Entity Failure to Perform. In the event that the Operating entity fails to substantially perform its obligations, its rights and obligations shall be assigned by the City of Whitewater.

ARTICLE VI

Non-discrimination

In the construction and operation of the Project under this Memorandum of Understanding, the City, CDA, and University agree that the construction contractor shall be required to agree not to discriminate against any employee or applicant for employment within the Project, nor shall the Project or any portion thereof be used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry and that the construction and operation of the Project shall be in compliance with all laws, ordinances and regulations related to discrimination on any of the foregoing grounds.

ARTICLE VII

No Personal Liability

Under no circumstances shall any Council member, officer, official, commissioner, director, member, partner or employee of the City, the CDA, or the University have any personal liability arising out of this Memorandum of Understanding and no parties shall seek or claim any such personal liability.

ARTICLE VIII

Special Provisions

9.01. Wisconsin Law. This Memorandum of Understanding shall be deemed to have been made in the State of Wisconsin and its validity, construction, performance, breach and operation shall be governed by the laws of the State of Wisconsin. No provision of this Memorandum of Understanding shall be construed to require any party to take any action in violation of law.

9.02. Approval. Whenever under this Memorandum of Understanding approvals, authorizations, determinations, satisfactions or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing by the officers of the City, CDA, and University authorized by law to give such approval and delivered to the party to whom it is directed at the address specified hereto under.

9.03. Notices and Demands. A notice, demand or other communication under this Memorandum of Understanding by any party to any other party (parties) shall be sufficiently given or delivered, if dispatched by registered or certified mail, postage prepaid, return receipt requested or delivered personally to the party at their addresses as follows:

City Manager
CITY OF WHITEWATER
312 West Whitewater Street
Whitewater, WI 53190

With copies to: City Attorney

Chairman of the Authority
COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WHITEWATER
312 West Whitewater Street
Whitewater, WI 53190

Chancellor
UNIVERSITY OF WISCONSIN-WHITEWATER
800 West Main Street, Hyer Hall #421
Whitewater, WI 53190

Or such other addresses as the parties may designate to each other in writing from time to time.

9.04. Counterparts. This Memorandum of Understanding may be executed in any number of Counterparts, each of which shall constitute an original.

9.05. Amendments and Supplements. This Memorandum of Understanding may be supplemented or amended only by written instrument executed by all parties.

9.06. City, CDA, and University Authorization. Execution of this Agreement by the City, CDA, and University is authorized by Resolution of the Common Council adopted November 18, 2008, and the CDA adopted November 17, 2008 and the University.

IN WITNESS WHEREOF, the parties have duly executed this Memorandum of Understanding or caused it to be duly executed as of the date show below.

CITY OF WHITEWATER

By: Kevin Brunner
Kevin Brunner, City Manager

11/18/08
Date

By: Michele R. Smith
Michele R. Smith, City Clerk

11-18-08
Date

COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WHITEWATER

By: Thomas L. Miller 11/17/08
Thomas Miller, President Date

By: Mary S. Nimm
Mary Nimm, CDA Coordinator Date

UNIVERSITY OF WISCONSIN-WHITTEWATER

By: Richard Telfer 11/13/08
Richard Telfer, Chancellor Date

By: Sandy Macnocha 11/13/08
Date

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

ARTICLE I. NAME/ADMINISTRATION/ADDRESS

Section 1.01. Name. The name of the Corporation is Whitewater University Technical 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 the benefit of the City of Whitewater and the University of Wisconsin-Whitewater and exclusively for City of Whitewater municipal, scientific, or educational purposes.

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

ARTICLE II. MEMBERS

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

ARTICLE III. BOARD MEMBERS

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

Section 3.02. Number of Board Members. The Whitewater University Technology Park Board membership shall include four representatives from the City of Whitewater and three representatives from UW-Whitewater as follows:

- (1) City of Whitewater board members:
 - (a) City Manager
 - (b) Common Council Member
 - (c) CDA member
 - (d) A City of Whitewater community member appointed by the City Council;
- (2) UW-Whitewater board members:
 - (a) Chancellor or his designee
 - (b) Appointee of the Chancellor
 - (c) Appointee of the Chancellor

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 CDA 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 appointee of the City Council shall serve until replaced by the Common Council of the City of Whitewater.

(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.

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

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.

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 a president, on or more vice presidents, a treasurer, one or more assistant treasurers, a secretary, one or more assistant secretaries, and such other offices 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 ice presidents 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 presidents 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 treasurer delineated in Section 4.05 into a single office of secretary-treasurer and may establish one or more corresponding offices of assistant 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 Committee
- (3) Real Estate Administration Committee

(4) Audit Committee

The Executive Committee shall consist of the president, vice presidents, secretary and treasurer of the Corporation, and the immediate past president if serving as a board member. Other standing committees shall consist of staff members appointed by the president 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 Committee. All members of the board shall constitute alternate members of the Investment 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 Investment 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. 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. Real Estate Administration Committee. The Real Estate Administration 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 for the benefit of the University of Wisconsin-Whitewater. The Real Estate Administration Committee shall function and operate pursuant to such policies, procedures and guidelines as are established from time to time by the board.

Section 5.05. 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 procures 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 5.06. Additional Standing Committees. The president may at any time create special committees with such powers, duties and membership as the president may determine.

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.

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, DIRECTORS AND OFFICERS

Section 7.01. Definition of Terms.

(1) “Board member, director, officer or employee” shall include any person who may have served at the request of the Corporation as a director, 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 of 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, director, officer, or employee may be involved as a party or otherwise, by reason of such person having served as such board member, director, officer or employee or by reason of anything done or omitted by such person as such board member, director, 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, director, 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, director, 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, director, 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, director, officer or employee of the Corporation, or is or was serving at the request of the corporation as a director 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, director, 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 board member, director, 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 obtaining, 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, director, 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, director, officer, or employee against all or any part of the expense, liabilities or settlement payments arising from actions against such board member,

director, officer, or employee, whether or not the Corporation would have the power to indemnify such board member, director, officer, or employee against such expenses or liability under Section 7.02 of this Article. Such insurance may, or need not, be for the benefit of all board members, directors, officers, or employees.

Section 7.05. Liability for Determinations. The Corporation and its board member, directors, 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, director, officer or employee may have.

Section 7.07. Advance Payment of Expenses. Expenses incurred by a member, director, 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 a majority 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.