

(02-04-11-Final Draft)

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

1.01. Initial Term. The initial term of this Memorandum of Understanding shall run for one (1) year commencing on January 1, 2011, and ending on December 31, 2011, unless sooner terminated in accordance with this Agreement or in furtherance of the parties' rights and remedies in the event of a default.

1.02. **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 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 directed by the CDA and the City.

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 Board shall pay as they come due all debt service payments for the Build America Bonds issued for the building of the Innovation Center. If there is a shortfall in the funds necessary to make said payments, the City shall pay the Board sufficient funds to cover said shortfall.

2.12. Income. The Board shall receive all income from leases 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.

3.03. Facility Usage. The Board shall establish Whitewater University Technology Park development requirements and restrictive covenants.

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. Income. 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.

ARTICLE IV

FINANCIAL RESPONSIBILITIES

4.01. Annual Budget. Not later than September 1st of each calendar year during the term of this Memorandum of Understanding, 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 the review and/or audit by an independent certified public accountant 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 commitment to pay a \$20,000.00 contribution to the operation of the Whitewater Innovation Center.

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.

4.05. Excess Funds. All excess funds from the Whitewater Innovation Center shall be paid to the CDA. The CDA shall deposit reasonable sums from the excess revenues into the sinking fund and if sufficient excess funds are available may make reimbursement payments to itself for its \$750,000.00 contribution to the Whitewater Innovation Center/Whitewater University Technology Park project.

ARTICLE IV

CITY FUNDING

4.01. Annual Contribution. Each year during the term of this Memorandum of Understanding, the City shall pay a \$20,000.00 contribution to the cost of maintaining and operating the Whitewater Innovation Center. The City shall be credited on this payment 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 V

TERMINATION

5.01. 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 VI

EQUAL OPPORTUNITIES

6.01. 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 VII

ECONOMIC DEVELOPMENT AUTHORITY OF THE UNITED STATES GRANT REQUIREMENTS

7.01. 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 VIII

MISCELLANEOUS

8.01. Governing Law. 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 Memorandum of Understanding.

ARTICLE IX

SUCCESSORS AND ASSIGNS

9.01. 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 X

AMENDMENT

10.01. 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 XI

COUNTERPARTS

11.01. 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 XII

SEVERABILITY

12.01. 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 XIII

THIRD PARTY BENEFICIARIES

13.01. 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 XIV

EXCULPATORY PROVISION

14.01. 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 XV

RULES OF CONSTRUCTION/CONDUCT

15.01. 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.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

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

CITY OF WHITEWATER

By: Kevin Brunner 2-8-11
Kevin Brunner, City Manager Date

By: Michele R. Smith 2-8-11
Michele R. Smith, City Clerk Date

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

By: Thomas L. Miller 2/8/11
Thomas Miller, President Date

By: Mary S. Nimm 2/8/2011
Mary Nimm, CDA Coordinator Date

**WHITEWATER - UNIVERSITY TECHNOLOGY
PARK, INCORPORATED**

By: Richard Telfer 2/11/11
Dr. Richard Telfer, President Date

By: James Stewart 2/11/2011
James Stewart, Vice President Date