

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-WHITEWATER, 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. They 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 Alderman, 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

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 _____, and the CDA adopted _____, 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, City Manager Date

By: _____
Michele R. Smith, City Clerk Date

COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WHITEWATER

By: _____
James Miller, President Date

By: _____
Mary Nimm, CDA Coordinator Date

UNIVERSITY OF WISCONSIN-WHITEWATER

By: _____
_____, Chancellor Date

By: _____
_____ Date