

THIS AGREEMENT made in duplicate this 23rd day of November, 2009

BETWEEN:

UNIVERSITY OF WATERLOO

(the "University")

-and-

THE CORPORATION OF THE CITY OF STRATFORD

(the "City")

WHEREAS the University wishes to establish a satellite in the City of Stratford (the "Stratford Campus"), which will house the Stratford Institute, a forward-looking research and commercial convergence centre that will create, examine and commercialize opportunities in the digital media field;

AND WHEREAS the City, by Resolution 2007-664, pledged up to ten million dollars (\$10,000,000.00) and land by way of grant as the City's contribution to the University to assist with its capital and operating requirements in establishing the Stratford Campus;

AND WHEREAS the Province of Ontario has provided ten million dollars (\$10,000,000.00) towards the Stratford Campus;

THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties covenant and agree as follows:

1. Stratford Campus Project

- a. The Stratford Campus Project shall consist of two phases as follows:
 - i. Phase 1, which shall consist of 45,000 square foot building housing a professional master's program for 100 students approved by the University Senate, a year round conference facility and a research institute; and
 - ii. Phase 2, which shall consist of the incremental addition of an undergraduate program and any expansion of the building as may be required is subject to approval by the University Senate and the securement of funding in addition to the Project Budget (as defined in subsection 2(a) herein).
- b. The parties acknowledge and agree that, in addition to the foregoing, the Stratford Campus Project may include a student residence, presently contemplated to be subject to an agreement between the University and an appropriate private developer. The parties further acknowledge and agree that the City's Capital Contribution, as defined in subsection 3(a) herein, shall not be used for the construction of any such student residence or its expansion, but such shall be permitted to occur upon the lands contributed to the University by the City.

- c. Programming for the Stratford Campus shall primarily be devoted to, or revolve around, digital media and global business.
- d. The University shall use the Provincial, City and additional funding described herein for the sole purpose of building and continuously operating the Stratford Campus.
- e. The University is solely responsible for the project management and construction of the Stratford Campus, including the obtaining of all necessary approvals therefor.

2. Project Budget

- a. The budget for Phase 1 of the Stratford Campus, excluding the student residence, is twenty five million dollars (\$25,000,000.00), consisting of approximately sixteen million dollars (\$16,000,000.00) for construction (including architectural and design fees) of a 45,000 square foot building (the "Building"), and approximately nine million dollars (\$9,000,000.00) for a building maintenance and operating endowment (collectively the "Project Budget"). The parties acknowledge and agree that as of the date of execution of this Agreement, five million dollars (\$5,000,000.00) of the Project Budget remains to be funded.
- b. This Agreement is conditional upon the receipt of at least one compliant construction tender that does not exceed the construction component of the Project Budget and upon the availability of funding for the full amount of the Project Budget prior to the award of the construction tender. If either of these conditions is not met, the Stratford Campus project will be subject to review by the University and the University may determine to suspend or cancel the project. The University shall consult with the City during the course of its review, but any decision of the University to suspend or cancel the project shall be solely within its discretion.

3. Funding

- a. The City will provide the University with a ten million dollar (\$10,000,000.00) cash capital contribution towards the Stratford Campus (the "Capital Contribution"). The Capital Contribution will be provided to the University in stages on a quarterly basis, at the end of each quarter commencing with the appointment of the architect, and shall be used to directly reimburse the expenses incurred by the University in the preceding quarter until eighty percent of the Capital Contribution (being \$8,000,000.00) is reached. The University shall provide sufficient evidence of payment at least thirty (30) business days following the end of each quarter for review and reimbursement by the City to the University.
- b. The City shall make the payment of the remaining twenty percent of the Capital Contribution (being \$2,000,000.00) upon certification by a qualified architect that construction of the Building is substantially complete.
- c. The City will identify the sources of, and make every reasonable effort to secure, an additional five million dollars (\$5,000,000.00) of capital funding for the Stratford Campus from senior levels of government, the private sector and individual donors, with the University's support and cooperation.

4. Condition of Campus Lands

- a. The City will provide the University with land suitable for the establishment of the Stratford Campus in the City of Stratford (the "Campus Lands") in consideration of the sum of one dollar (\$1.00).
- b. To be suitable for University use, the Campus Lands must satisfy the following conditions:
 - i. initially be a single site of at least eight (8) acres that can accommodate the initial Building and associated parking;
 - ii. be zoned to permit the uses set out in this Agreement and have access to full municipal services;
 - iii. meet the environmental standards for residential property use in effect at the time of entering into the agreement of purchase and sale for the Campus Lands; and
 - iv. be located in the Downtown Core.
- c. The City will use all reasonable efforts to secure, at the earliest opportunity, additional abutting lands to provide to the University for future University buildings, including student residences, building expansions and new buildings, and additional parking.
- d. At its sole discretion, the City may provide the lands initially required for University parking, as referred to in clause 4(b)(i) herein, through a long-term lease agreement for nominal consideration rather than by conveyance of the fee simple in such abutting lands. Notwithstanding clause 4(b)(iii) herein, lands to be used for parking and which become the subject of such long term lease agreement may, at the sole discretion of the City, not be remediated to meet the environmental standards for residential property but may be remediated to any applicable lesser standard in effect at the time of entering into such long term lease agreement.
- e. Any costs incurred to meet the conditions outlined in clause 4(b)(ii) and 4(b)(iii) will be borne exclusively by the City. Such costs are not included in the Project Budget and the City shall not deduct any such costs from its Capital Contribution commitment as set out in this Agreement.
- f. The University may conduct, at its own cost, an independent assessment of the Campus Lands to ensure that they are suitable for University uses and meet residential environmental standards.
- g. In the event that the City cannot provide a site in the Downtown Core in accordance with the provisions of this section 4, the City and the University shall work together to identify another site that is agreeable to both the City and the University.

5. Transfer of Campus Lands

- a. Conveyance of the Campus Lands to the University shall comply with the City's Sale and

Other Disposition of Land Policy.

- b. Immediately after the award of the construction tender for the Building and prior to the commencement of construction of same, the City will convey to the University:
 - i. good title to the Campus Lands, whether wholly in fee simple or subject to a lease agreement for any portion of the parking area that the City determines it will not remediate to meet the environmental standards for residential property, but to the applicable lesser standard in effect at the time of entering into such long term lease agreement;
 - ii. a record of site condition, prepared and filed in accordance with the Environmental Protection Act and regulations made thereunder, and acknowledged by the Ministry of Environment, that supports development for residential uses for all portions of the Campus Lands to be conveyed in fee simple to the University; and
 - iii. an up-to-date survey or surveys of the Campus Lands.

6. Return of Campus Lands or Capital Contribution

- a. If the University does not commence construction of the Building within six (6) months of the award of the construction tender therefor, and unless the parties otherwise agree in writing to extend this six month period, the University shall:
 - i. immediately after the expiration of the six (6) month period reconvey the Campus Lands to the City, for nominal consideration, with good and marketable title and free of all encumbrances, and any lease between the City and the University pertaining to the Campus Lands shall terminate immediately; and
 - ii. immediately after the expiration of the 6 month period repay to the City all of any portion of the Capital Contribution paid by the City to the University to that date.
- b. If at any time after the conveyance of the Campus Lands to the University and prior to the commencement of any construction on the Campus Lands the University determines that it shall not proceed with the construction of the Stratford Campus, the University shall advise the City immediately of any such determination and shall:
 - i. immediately reconvey the Campus Lands to the City, for nominal consideration, with good and marketable title and free of all encumbrances, and any lease between the City and the University pertaining to the Campus Lands shall terminate immediately; and
 - ii. immediately repay to the City all of any portion of the Capital Contribution paid by the City to the University to that date.
- c. If the University commences construction of the Building within the time period stipulated under subsection 6(a) or any extensions thereof agreed to in writing by both

parties, but does not substantially complete construction of the Building within thirty (30) months of the award of the construction tender therefor, and unless the parties otherwise agree in writing to extend this 30 month period, the University:

- i. shall immediately upon the expiration of the thirty (30) month period, reconvey the Campus Lands, save and except for the area upon which the Building has been constructed or partially constructed plus sufficient area to meet reasonable parking requirements, plus appropriate setbacks, if any, as determined by the City in its sole discretion, to the City for nominal consideration, with good and marketable title and free of all encumbrances and any lease between the City and the University pertaining to the Campus Lands shall terminate immediately;
 - ii. hereby provides to the City the right of first refusal to purchase that portion of the Campus Lands upon which the Building has been constructed or partially constructed (the “collectively the Land Portion and Building”) at nominal consideration for the land value and at fair market value minus the total Capital Contribution paid by the City to the University to that date for the value of the Building as constructed or partially constructed thereon; and
 - iii. in the event that the City determines that it shall not purchase the Land Portion and Building as aforesaid in clause 6(c)(ii), immediately refund to the City all of any portion of the Capital Contribution made to the University to that date and the University shall thereafter be free to dispose of the Land Portion and Building in its sole discretion.
- d. If at any time after the commencement of construction of the Building, the University determines that it shall not continue or complete the construction of the Building, or it completes construction of the Building but does not commence the operation of the Stratford Campus as contemplated by this Agreement, the University shall advise the City immediately of any such determination and:
- i. shall immediately reconvey the Campus Lands, save and except for the area upon which the Building has been constructed or partially constructed plus sufficient area to meet reasonable parking requirements, plus appropriate setbacks, if any, as determined by the City in its sole discretion, (the “Land Portion and Building”), to the City for nominal consideration, with good and marketable title and free of all encumbrances and any lease between the City and the University pertaining to the Campus Lands shall terminate immediately;
 - ii. hereby provides to the City the right of first refusal to purchase the Land Portion and Building, at nominal consideration for the land value and at fair market value minus the total Capital Contribution paid by the City to the University to that date, for the value of the Building as constructed or partially constructed thereon; and
 - iii. in the event that the City determines that it shall not purchase the Land Portion and Building as aforesaid in clause 6(d)(ii), shall immediately refund to the City all of any portion of the Capital Contribution made to the University to that date.

- e. If the University determines at any time within twenty (20) years of the commencement of operation to cease the operation of the Stratford Campus as contemplated by this Agreement and to not otherwise fully utilize the Stratford Campus for University programming or administration, the University shall advise the City immediately of any such determination and:
- i. shall immediately convey the Campus Lands, save and except for the area upon which the Building and any additional buildings or structures have been constructed plus sufficient area to meet reasonable parking requirements, plus appropriate setbacks, if any, as determined by the City in its sole discretion, (the "Land Portion and Building"), to the City for nominal consideration, with good and marketable title and free of all encumbrances and any lease between the City and the University pertaining to the Campus Lands shall terminate immediately;
 - ii. hereby provides to the City the right of first refusal to purchase the Land Portion and Buildings, at nominal consideration for the land value and at fair market value minus the total Capital Contribution made by the City, for the Building and/or buildings thereon.
 - iii. in the event the City determines that it shall not purchase the Land Portion and Buildings as aforesaid, the University shall be free to dispose of same in its sole discretion.

7. Force Majeure

- a. If a party fails to perform all or part of its obligations under this Agreement due to an event of Force Majeure, the performance of such obligations shall be suspended during the period in which such performance is affected by the event of Force Majeure, including the University's obligations to return the Campus Lands and/or Capital Contribution under section 6 herein.
- b. Force Majeure shall mean an event beyond the reasonable control of the affected party that is unforeseeable, or unavoidable and beyond remedy if foreseen, which happens after the execution of this Agreement, and renders the full or partial performance of this Agreement impossible or impracticable. Events of Force Majeure shall include, but are not limited to: floods, fires, draughts, typhoons, earthquakes and other acts of God, strikes, insurrections, turmoil and war, and any action or inaction of any governmental authority.
- c. The party claiming to be affected by an event of Force Majeure shall:
 - i. notify the other party in writing of the occurrence of such event as soon as possible,
 - ii. provide the other party with appropriate evidence in support of the occurrence of the event, and
 - iii. make all reasonable efforts to eliminate or minimize the effects of such event of

Force Majeure.

- d. If an event of Force Majeure occurs, both Parties shall immediately consult with each other regarding the performance of this Agreement, and shall immediately resume their respective obligations under this Agreement upon the termination or elimination of the event of Force Majeure.

8. Indemnification

After the Campus Lands have been identified and accepted as suitable by the University, and before title is transferred to the University, the City will provide the University with an indemnification agreement, agreeing to indemnify and save the University harmless if the University is called upon to pay damages for any loss suffered by any third party as a result of environmental contamination that is proven to have originated on the Campus Lands before they were transferred to the University.

9. Entire Agreement

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes any and all previous agreements. There are no warranties, representations or other agreements between the parties in connection with the subject matter except as specifically set forth or referred to in this Agreement.

10. Approval

This Agreement is conditional upon approval by the University's Board of Governors and enactment by City Council of a by-law authorizing execution thereof.

11. General

- a. Nothing in this Agreement derogates from, or interferes with or fetters the exercise by the City of all of its rights and responsibilities as a municipality, or imposes any obligations on the City, in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including (whether discretionary or mandatory) rights and responsibilities. Nothing contained in this Agreement derogates from or interferes with or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights and responsibilities, or imposes any obligations on the City's officers.
- b. Nothing contained in this Agreement shall derogate from the obligations of the University and the rights of the City as a planning authority pursuant to the *Planning Act*, including obligations of the University to enter into agreements with the City pursuant to Section 41 of the *Planning Act* or any other applicable provisions of the *Planning Act*, and complying with all other City policies and by-laws in effect from time to time with respect to any matter whatsoever.
- c. The parties expressly disclaim any intention to create a partnership or joint venture or to constitute the other party as its agent. Nothing in this Agreement shall constitute the

parties partners or joint venturers, nor constitute one party the agent of the other party.

- d. No waiver of any provision of this Agreement is binding unless it is in writing and signed by both parties to this Agreement, except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by the party which has rights under, or holds the benefit of, the provision being waived if that party promptly sends a copy of the executed waiver to the other party. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.
- e. Each party will promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the matters contemplated by this Agreement.
- f. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.
- g. No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by each party to this Agreement at the time of the amendment, supplement, restatement or termination.
- h. This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the dates shown hereunder.

Dated at Waterloo, Ontario, this *8th* day of *June*, 2009

UNIVERSITY OF WATERLOO

per: *David Johnston*

David Johnston
President

per: *[Signature]*
VP, Administration & Finance

Dated at Stratford, Ontario, this 23rd day of November, 2009

THE CORPORATION OF THE CITY OF STRATFORD

Daniel B. Mathieson
Mayor – Daniel B. Mathieson

Joan Thomson
Clerk – Joan Thomson