

# WESTERN WASHINGTON UNIVERSITY ITEM SUBMITTED TO THE BOARD OF TRUSTEES

**TO:** Members of the Board of Trustees

**FROM:** President Sabah Randhawa by:  
Joyce Lopes, Vice President for Business and Financial Affairs

**DATE:** April 11, 2024

**SUBJECT:** **WWU Ground Lease Agreement and Interlocal Agreement with the City of Bellingham for Developing and Operating the Coast Salish Longhouse, House of Healing Building Project**

**PURPOSE:** Action Item

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## **Purpose of Submittal:**

Western Washington University is requesting approval to enter into a Ground Lease and amended Interlocal Agreement with the City of Bellingham for the Coast Salish Longhouse, House of Healing Building project.

## **Proposed Motion:**

MOVED, that the Board of Trustees, upon the recommendation of the President, amend the Interlocal Agreement and enter into a long-term Ground Lease Agreement to develop and operate the Coast Salish Longhouse, House of Healing Building and associated amenities for a period of seventy-five (75) years, with two optional ten (10) year renewals.

## **Supporting Information:**

The vision for a Coast Salish Longhouse on WWU's Bellingham campus originated from the Native American Student Union in 2016 to address current and historic issues faced by American Indian student at WWU. The WWU Office of Tribal Relations is committed to building the Longhouse as an integral cornerstone in support of their mission of:

- Pursuing justice and equity in its policies, practices and impacts for advancing a deeper understanding and appreciation for the sense of place.
- Pursuing the academic, personal and professional success of its Indigenous students, faculty and staff.
- Building and sustaining beneficial working relationships with the Coast Salish people and expanding Western's strength in academia to serve the current and future needs of tribal communities.

The House of Healing will provide a cultural center for meetings, workshops, educational seminars, and cultural gatherings.

In early-spring 2022, Western Washington University began working with the City of Bellingham to determine the most appropriate way to develop the property within the Sehome Hill Arboretum to house the Coast Salish Longhouse, House of Healing Building while continuing to provide space for the public to enjoy the Sehome Arboretum.

Several options were discussed including trading properties, sale, and leases. Ultimately, it was determined that a Ground Lease Agreement is the best path forward to serve the joint interests.

Prior to today, these documents have been approved by the Sehome Hill Arboretum Board of Governors and the Bellingham City Council.

Attachments:

- Amended Interlocal Cooperation Agreement, Sehome Hill Arboretum
- Ground Lease, WWU Sehome Hill Arboretum Coast Salish House of Healing

## GROUND LEASE

### Western Washington Sehome Hill Arboretum Coast Salish House of Healing

**THIS GROUND LEASE** (this “**Lease**”) made as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the “**Commencement Date**”) is by and between the City of Bellingham (“**City**”), a Washington municipal corporation (“**Landlord**”), and Western Washington University (“**Western**” or “**University**”), a division of the State of Washington, (“**Tenant**”). The City and Western may be referred to herein individually as a “**Party**” or collectively as the “**Parties**”.

## RECITALS

A. The City is a City of the First Class incorporated under the laws of the State of Washington. The City has authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens and thereby to control the use and development of the Sehome Hill Arboretum (“**Arboretum**”) and specify zoning and land use regulatory controls within the jurisdictional limits of the City. The Arboretum property is depicted in **Exhibit A**.

B. The Arboretum is jointly owned and managed by the City and Western under the terms of the 2014 Interlocal Agreement that is being amended concurrent with the execution of this Lease (“**2024 Amended ILA**”) and 2002 Master Plan Update (“**2002 Master Plan**”). Both Parties intend to facilitate the construction of a Coast Salish Longhouse, House of Healing Building (“**HoH Building**”), including parking and appurtenant outdoor facilities on an approximately 2.0-acre portion (“**HoH Property**”) of a City-owned parcel within the Arboretum, which is depicted in **Exhibit B**. The HoH Building, HoH Property, and all appurtenances thereto are referred to as the “**HoH Project**” or “**Premises**”. The HoH Property is legally described and depicted on **Exhibit C**. The Parties also seek to assign responsibilities between them for the construction and operation of the HoH Project.

C. Western is a Regional University established by the State of Washington. RCW 28B.35.050. The Western Board of Trustees has the power to acquire property, including by lease, and may establish and erect new facilities as determined by the Board to be necessary for Western. RCW 28B.10.020; RCW 28B.35.120(5)&(6). Under the Lease created herein, Western shall have the right to construct the HoH Project on the HoH Property. The HoH Project will include construction of up to an approximately 4,500 gross square foot structure; parking for nine (9) vehicles located along Arboretum Drive and two (2) additional on-site ADA parking spaces, for a total of eleven (11) spaces to meet City Code requirements for the HoH Project (“**Project Parking**”); and open-air recreational facilities and amenities.

D. Western will also construct and manage approximately sixteen (16) parking spaces adjacent to Arboretum Drive for use by visitors to the Arboretum and HoH Project (“**Public Parking**”). The Project Parking and Public Parking (collectively, “**Total Parking**”) will be part of the HoH Project and will be operated and maintained by Western.

E. As described below, Western will lease and operate the HoH Project in support of the University’s mission of teaching, research, and public service (WAC 516-35-055), with the primary objective of providing a cultural gathering space for Western’s Native American students, faculty, and staff and a meeting place for the general public. The HoH Project will be used, under

Western’s scheduling and oversight, for Tribal activities, including, without limitation, research, celebrations, outreach, teaching, and community and cultural activities (“**Tribal Activities**”).

F. Public use of the HoH by organized groups (“**Public Use**”) shall be permitted provided that it does not conflict with the University’s mission, University functions, or Tribal Activities (WAC 516-36-001). Public Use shall be subject to Western’s reservation system, which, as detailed below, operates consistent with the requirements of WAC Chs. 516-35 and 516-36.

G. Both the City and Western find it desirable to enter into this Lease to plan for the orderly construction and operation of the HoH Project. The Parties acknowledge that the HoH Project is a culturally sensitive site that will be located on land that was historically occupied by the Coast Salish Peoples. The primary objectives of the HoH Project include serving to honor and acknowledge Native Americans. The Parties agree that the HoH Project will serve as a sacred space and that Western, in consultation with Western’s Tribal Liaison and the City, will develop guidelines and procedures (“**Operating Guidelines**”) for use of the HoH Project for Tribal Activities and Public Use consistent with the requirements of WAC Chs. 516-35 and 516-36. The parties further agree to meet at least once every two years to review the Operating Guidelines.

**NOW, THEREFORE**, the City, as Landlord, and Western, as Tenant, hereby agree:

## I. **BASIC TERMS**

1. **Definitions.** Words and phrases highlighted in bold herein and in the Recitals shall have the meaning ascribed to them by this Lease. All other words and phrases shall be interpreted using the ordinary meaning derived from dictionaries in common usage such as Oxford’s American Dictionary, Merriam-Webster’s Dictionary, or the American Heritage Collegiate Dictionary. The following definitions apply, except as otherwise specially modified:

- a. **Premises.** The “**Premises**” are located on land within the Arboretum, 600 25<sup>th</sup> Street, Bellingham, WA 98225 and consist of approximately 2.0 acres (87,120 square feet) of land, the HoH Property, as shown in **Exhibit C**. The Premises shall include all of the components of the HoH Project including, without limitation, the HoH Property, HoH Building, and the Total Parking, together with all appurtenances and improvements now or hereafter located thereon.
- b. **Commencement Date.** The Commencement Date is the date defined above (i.e. the \_\_\_\_ day of \_\_\_\_\_, 2024). See Section 3.1.
- c. **Primary Term.** The primary term of this Lease shall be seventy-five (75) years from the Commencement Date, with two optional ten (10) year renewals. See Sections 3.1 and 3.2.
- d. **Base Rent.** Tenant shall pay an annual Base Rent in the amount of one (\$1.00) dollar per annum in accordance with Section 4.1.
- e. **Operating Guidelines.** The Operating Guidelines are rules and regulations consistent with the applicable policies, procedures, Washington Administrative Codes (“WACs”), and standards utilized for the operation of Western Washington University as interpreted and enforced by Western’s administration, faculty, and staff for the operation of University facilities.

**2. Notice Addresses.**

**Landlord: City of Bellingham**  
Department of Parks and Recreation  
210 Lottie Street  
Bellingham, Washington 98225  
Attn: \_\_\_\_\_

With a Copy to:  
City of Bellingham  
Legal Department  
210 Lottie Street  
Bellingham, Washington 98225  
Attn: City Attorney

**Tenant: Western Washington University**  
516 High St  
Bellingham, WA 98225  
Attn: \_\_\_\_\_  
Vice President of Business and Financial Affairs

With a Copy to:  
Office of the Attorney General  
Attn: Senior Counsel Kerena Higgins  
2211 Rimland Drive, Suite 325  
Bellingham, WA 98226

**3. Use of Premises by Tenant.** Tenant shall use the Premises for the construction and use of the HoH Project on the Premises, which shall include any University functions and Tribal Activities including, without limitation, research, celebrations, outreach, teaching, food preparation, outdoor gatherings, and community and cultural activities. The Premises shall be exempt from BMC 8.04.090, but not other City or state fire regulations and restrictions, including, without limitation, burn bans and the City's Fire Code, and fires shall be permitted in designated areas on the Premises for Tribal Activities including traditional, sacred, and ceremonial cultural practices and food preparation. Tenant shall indemnify Landlord for any and all damages arising from these fires in accordance with Section 9.1. Tenant may charge reasonable fees or rent to third parties for the short-term or temporary use of the Premises consistent with Tenant's campus facility use and other relevant policies and subject to the City's written approval, which shall not be unreasonably denied. Long-term subleasing is not permitted unless approved in writing by the Landlord.

**4. Use of Premises by the Public.** Use of the premises by public groups (i.e. Public Use) shall be permitted, provided that such use does not interfere with the University's mission, University functions, or Tribal Activities. Public Use shall occur pursuant to procedures and reasonable controls established by Western to regulate, without limitation, the timeliness of requests, the appropriateness of space, assigned time of use, and proper maintenance of the

Premises. WAC 516-36-001. Public Use of the Premises shall be in accordance with the following requirements:

- a. Prior to occupancy of the HoH, Western shall identify a point-of-contact for scheduling Public Use of the HoH Property;
- b. Charges may be applied to any Public Use event for the costs associated with the event. WAC 516-35-020(3);
- c. Western shall approve applications for Public Use, provided that the intended use is compatible with the University mission, University functions, and Tribal Activities. Western shall have authority to accept, modify, or reject, in whole or in part, the planned Public Use, provided that Western shall make reasonable efforts to accommodate Public Use, with first priority given to University use or Tribal Activities. Western may reject a Public Use only after making reasonable attempts to accommodate the Public Use. Western shall provide reasons for such rejection to the requestor in writing. WAC 516-35-020;
- d. Weapons and Armaments. Per WAC 516-52-020, weapons and armaments are prohibited on the Premises.
- e. On an annual basis, Western shall report to the City Parks & Recreation Director, the annual number and types of applications received for Public Use of the Premises and the number of applications approved for such use.

**5. Termination Date.** The “**Termination Date**” is the day that the Lease Agreement terminates under the Primary Term, any renewal term, or upon any uncured material default by the Tenant.

## **II. PREMISES**

**1. Ground Lease.** Landlord leases to Tenant and Tenant leases from Landlord, those certain land and rentable area defined in in Section 1.1(a) (the “Premises”) for the purpose of developing the HoH Project.

**2. Parking and Operations.**

- a. Tenant will control, operate, and maintain the Total Parking. Tenant shall have the exclusive right to collect fees or enforcement fines for the Total Parking. The Public may park in the spaces free of charge after 4:30 p.m. on weekdays and all day on weekends. Enforcement shall be subject to Tenant’s parking procedures as set forth in WAC Ch. 516-12. The proceeds from any such fees or enforcement fines will inure solely to the Tenant.
- b. Tenant will own and operate the HoH Project consistent with the use provisions in Sections 1.3 and 1.4 above.
- c. The HoH Project will be located on land that was historically occupied by the Coast Salish Peoples, and its purposes include serving to honor and acknowledge Native Americans and First Nations Peoples. The HoH Project is a culturally sensitive site that will serve as a sacred space for Tribal Activities. Tenant, in conjunction with Tenant’s Tribal Liaison, shall be responsible for

developing and implementing the Operating Guidelines for the use of the HoH Project for Tribal Activities. Tenant, in conjunction with its Tribal Liaison, shall have the authority to adjust the Operating Guidelines from time to time, at Tenant's sole discretion, to address issues that may arise, to accommodate changes in Tribal use, or to facilitate the orderly operation of the HoH Project for Tribal Activities; provided that, Tenant will obtain Landlord's approval for any change in the Operating Guidelines that would require a City permit or approval under the City's then-existing ordinances or regulations. Tenant shall permit Public Use as discussed in Section 1.4 above. Tenant shall consult with Landlord and the Tribal Liaison from time-to-time to address issues that may arise from Public Use, to accommodate changes in Public Use, or to facilitate the orderly operation of the HoH Project for Public Use.

- d. Tenant may operate a "**Native Educational Food Forest**" on the Premises, so as long as the Native Educational Food Forest does not impede public access to the Arboretum and uses non-invasive vegetation and techniques that preserve the natural environment.

### **III. TERM**

**1. Lease Term.** This Lease shall be in effect for the Primary Term of seventy-five (75) years, as defined in Section 1.1(c).

**2. Renewal of the Lease Following Primary Term.** Unless the Parties negotiate a different renewal term prior to the expiration of the Primary Term, Tenant shall have the option to renew this Lease for two (2) additional terms of ten (10) years each ("**Renewal Term**"). To exercise its renewal option, at least ninety (90) days prior to the Termination Date of the Lease's Primary Term or any subsequent Renewal Term, Tenant shall provide the Landlord with written notice of Tenant's election to renew the Lease for an additional term.

- a. Tenant shall not be entitled to renew if it is in material default under the terms of this Lease at the time the option to renew is exercised. Landlord shall give Tenant written notice at least ninety (90) days prior to the Termination Date of the Primary Term, or any Renewal Term, of Landlord's determination not to renew the Lease based upon Tenant's material default. Landlord shall give Tenant an opportunity to cure the material default. Unless otherwise agreed to by the Parties, the material default must be cured prior to the Termination Date.
- b. The terms and conditions of any Renewal Term shall be the same as set forth in this Lease, except that rent may be recalculated, the required amounts of financial security may be revised, and provisions dealing with hazardous waste or other terms may be changed at the time of the renewal.

### **IV. RENT**

**1. Base Rent.** Commencing on the Commencement Date, Tenant shall pay to Landlord in care of the City Finance Director at City Hall, 210 Lottie Street, Bellingham, Washington 98225, without notice, set-off, or deduction whatsoever, annual Base Rent in the amount identified in Section 1.1(d), which the Parties agree that, along with the provisions of this

Lease, constitute adequate and valuable consideration, the sufficiency of which is hereby acknowledged.

## V. CONDUCT OF BUSINESS

1. **Operation of the HoH Project.** Tenant shall maintain and continuously operate the HoH Project during the Lease term, consistent with the Operating Guidelines. Tenant shall not use or permit the use of the Premises for any other business or purpose, without the prior consent of Landlord.

- a. Tenant shall use its best efforts to construct the HoH Building within the first twenty-four (24) months of the Lease Term specified in this Lease, which shall remain in effect unless and until Tenant notifies Landlord in writing that it is abandoning the HoH Project. In that case, the Lease shall be terminated thirty (30) days after Tenant's provision of written notice, and the Tenant shall remove all improvements and restore the site to its original condition, or its substantial equivalent, as agreed upon by the Parties.

2. **Right to Future Modifications.** Tenant may make future alterations, additions, and expansions to the structures and appurtenances located on the Premises to carry out the purposes of the HOH Project including, without limitation, accommodating changes in use patterns, student population, Tribal Activities, or Public Use; provided that such alterations, additions, and expansions are approved in writing by Landlord and are consistent with the then-existing provisions of the City Code and other applicable regulations. Tenant may not interfere with the public's access to, or the Landlord's maintenance of, any City trails on, abutting, or close to the Premises. Tenant shall not remove or cut mature trees on the Premises, which are defined as trees that are twelve (12) inches or greater in diameter at breast height, without advance written approval of the Landlord.

3. **Appearance of Premises.** Tenant shall maintain the Premises in a clean, orderly, and neat appearance neither committing waste nor permitting any waste to be committed thereon. All garbage and refuse shall be kept in sealed containers, which are to be removed at regular intervals. No sale, storage, or display of merchandise by vending machine shall be permitted outside or in front of the Premises, without the prior written consent of Landlord.

4. **Unlawful Use.** Subject to the exception in Section 1.3 above regarding fires, Tenant shall not use or permit the use of Premises, or any part thereof, for any purpose in violation of any municipal, county, state, or federal law, ordinance, rule, or regulation ("**Applicable Laws**") or in a manner that may create a nuisance. At its sole expense, Tenant shall promptly comply with and obtain all licenses and permits required by the Applicable Laws relating to or affecting the condition, use, or occupancy of the Premises or the activities conducted thereon.

5. **Hazardous Materials.** "**Hazardous Material**" shall mean any matter (whether gaseous, liquid, or solid) which is or may be harmful to persons or property, and which may now or hereafter be regulated under any Applicable Laws pertaining to health, industrial hygiene or the environment, including, without limitation, any asbestos and/or asbestos-containing materials. Hazardous Materials shall not include ordinary cleaning and maintenance products which are used with due care and in strict compliance with Applicable Laws and the instructions of the



manufacturer of such products in the reasonable and prudent conduct of Tenant's use of the Premises.

- a. Landlord's Obligations for Hazardous Materials. As of the Effective Date, Landlord is unaware of the presence of any Hazardous Materials on the Premises, as defined in any of the Applicable Laws. For any releases of Hazardous Materials discovered on the Premises that predate Tenant's use and occupancy of the Premises ("**Prior Releases**"), Landlord shall defend, indemnify, and hold Tenant and its agents, affiliates, and employees harmless from and against all claims, costs, damages, judgments, penalties, fines, losses, liabilities, and expenses, including attorney fees and costs, arising out of or in connection with the Prior Releases. Landlord shall be solely responsible for and shall defend claims, costs, damages, lawsuits, penalties, liens, losses and/or liabilities, including attorney fees and costs, necessary to remediate the Prior Releases and restore the Premises to a condition that permits Tenant's continued use and occupancy for the construction and operation of the HoH Project, unless Landlord, in its sole and absolute discretion, determines that the Prior Releases of hazardous materials cannot be cost effectively removed or remediated. Upon such a determination, Landlord shall have the right to terminate this Lease, upon written notification to Tenant, without further cost or obligation except the duty under this paragraph to defend, indemnify, and hold Tenant harmless from third-party claims. If Tenant, in its sole and absolute discretion, determines that the Prior Releases of Hazardous Materials cannot be effectively removed or remediated, Tenant shall have the right to terminate this Lease, upon written notification to Landlord, without further cost or obligation. Notwithstanding anything else set forth herein, Landlord's obligations under this Section shall survive the expiration of the Lease.
- b. Tenant's Obligations for Hazardous Materials. Tenant shall not store, use, sell, release, generate or dispose of any Hazardous Materials in, on, or about, the Premises without the prior written consent of Landlord. With respect to any Hazardous Materials stored, used, generated or disposed of from the Premises after obtaining the prior written consent of Landlord, Tenant shall (i) promptly, timely, and completely comply with all Applicable Laws for recording and recordkeeping; (ii) submit to Landlord true and correct copies of all reports, manifests and numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authority; (iii) within five (5) days of Landlord's request, provide evidence satisfactory to Landlord that Tenant has complied with, and is in compliance with all Applicable Laws and (iv) comply with all Applicable Laws regarding the use, sale transportation, generation, treatment and disposal of Hazardous Materials. As required by Applicable Laws, prior to the expiration and surrender of the Premises by Tenant, Tenant shall remove any and all Hazardous Materials which Tenant, its employees, agents, contractors and/or subleases have brought onto the Premises after obtaining the prior written consent of Landlord. For any releases of Hazardous Materials on the Premises that occur during the Lease term or that are attributable to Tenant, its employees, agents, contractors, or sub-lessees, as provided through written contracts, during the Lease term ("**New Releases**"),

Tenant shall defend, indemnify, and hold Landlord, its agents, affiliates, and employees harmless from and against all claims, costs, damages, judgments, penalties, fines, losses, liabilities, and expenses, including attorney fees and costs, arising out of or in connection with the New Releases. Tenant shall be solely responsible for claims, costs, damages, lawsuits, penalties, liens, losses, and/or liabilities, including attorney fees and costs, necessary to return the Premises and any other property of whatever nature to the property's condition existing prior to the appearance of the New Releases of Hazardous Material on or about the Premises by the Tenant; provided that Landlord's written approval of such actions shall first be obtained, which approval shall not be unreasonably withheld, so long as the actions would not have any materially adverse long-term or short-term effect on the Premises. Notwithstanding anything else set forth herein, Tenant's obligations under this Section shall survive the expiration of the Lease.

- c. Landlord's Right to an Environmental Audit. Landlord shall have the right in its sole discretion to conduct an environmental audit utilizing a contractor of Landlord's choice at the end of the Lease term, upon the earlier termination of this Lease, upon Tenant's default hereunder, or if Landlord reasonably believes that Hazardous Materials are being stored, used, sold, generated, released, or disposed of from the Premises in violation of the terms of this Section. Tenant shall be responsible for the cost of the audit and any remedial, restorative, or removal work if such audit discloses New Releases of Hazardous Materials have occurred during the Lease term or attributable to Tenant, its employees, agents, contractors, or subleases. Failure of Landlord to conduct an environmental audit or to detect conditions attributable to Tenant, its employees, agents, contractors, or subleases, whether such audit is conducted or not, shall not operate as a release of Tenant from its liability as stated in this Lease or by operation of law. Tenant's obligations herein shall survive the expiration of this Lease.

**5. Liens and Encumbrances.** Tenant shall keep the Premises free and clear of all liens and encumbrances arising from or out of its use and occupancy of the Premises. If any lien is filed against the Premises or adjacent or underlying property owned by Landlord as a result of the action or inaction of Tenant or its employees, agents, or contractors, Tenant shall, upon demand, take all reasonable and necessary steps to remove the lien or encumbrances or, in the alternative, provide the Landlord with a bond in the amount required by law to remove the lien of record.

**6. Signs.** All signs must comply with Bellingham Municipal Code (BMC) 20.42.050 D.3. Tenant shall provide Landlord with a signage plan consistent with BMC 20.42.050 D.3., the University's standard signage, and input from Tribal representatives for Landlord's approval. All signs installed by Tenant shall be removed by it, at Tenant's expense, and Tenant shall repair all damage resulting from such installation or removal, either by the end of the Lease term or the earlier termination of the Lease.

## **VI. UTILITIES AND OTHER CHARGES**

1. **Utility Charges.** Tenant shall be responsible for, and pay prior to delinquency, all charges for utilities or services used or consumed on, or supplied to, the Premises, including the charges, if any, for installing meters for them. Meter locations and installation methods shall be subject to Landlord's prior written approval. If Landlord elects to furnish any of the utilities, Tenant shall pay Landlord all charges levied by Landlord in accordance with rates established from time-to-time for the same. Landlord shall not be liable for interruption in the supply of any such utilities to the Premises.

2. **License and Taxes.** Tenant shall pay when due all license, excise, business and occupation fees and taxes and all other fees and taxes for the construction and operation of the HoH Project on the Premises and all personal property taxes levied with respect to any personal property located at the Premises. If any governmental authority levies a tax or license fee on rents payable under this Lease; on rents accruing from the use of the Premises, or levies a tax or license fee in any form against Landlord or Tenant because of, measured by, or based upon income derived from the leasing or rental thereof; or assesses a transaction privilege tax such tax or license fee shall be paid by Tenant, either directly, if required by law, or by reimbursing Landlord, for the amount thereof upon demand. If any such amount is paid directly to the taxing authority by Landlord, Tenant shall reimburse Landlord no later than thirty (30) days after the receipt from Landlord of a written request for reimbursement accompanied by appropriate documentation of the charge and Landlord's payment.

3. **Leasehold Excise Tax.** Tenant shall pay Landlord as Additional Rent, (a) all leasehold excise tax (as may be required by RCW 82.29A in lieu of real property taxes), calculated as a percentage based on the fair market rental value of the Premises, (b) any other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Premises, and (c) any taxes levied or assessed in lieu of the foregoing, in whole or in part. Tenant shall be responsible for any increase in leasehold excise tax that results from an increase in rent for the Premises over the term hereof; or for any increase due to an increase in the statutory rate during the term of this Lease. If Tenant provides Landlord with a proof of exemption from payment of leasehold excise tax issued by the Washington State Department of Revenue, then Tenant shall not be required to pay leasehold excise tax for the period that such exemption is effective. If the exemption is of limited duration, Tenant shall be required to obtain documented renewal of such exemption and provide such to Landlord to claim continued exemption under this Lease. To the extent that any rent credit provisions are a part of this Lease, Tenant's obligation to pay leasehold excise tax shall not be obviated by such credit.

## **VII. CONDITION OF PREMISES; ALTERATIONS**

1. **Condition of Premises.** Tenant acknowledges that it has examined the Premises and is in all respects familiar with the Premises and any improvements therein. Excepting the Prior Releases of Hazardous Materials discussed in Section 5.5(a), Tenant accepts the Premises and the improvements therein "As Is" and assumes the risk that the Premises are suitable for Tenant's intended purposes, i.e., the construction and operation of the HoH Project. Tenant further acknowledges that Landlord has made no representations and warranties to Tenant with respect to the Premises, and that, other than the possible remediation of Prior Releases discussed in Section 5.5(a), Landlord has no obligation to perform any work on the Premises or to install any tenant improvements therein.

**2. Compliance with Plans and Specifications.** Construction of the HoH Project, or any future modifications or additions thereto, shall comply with the plans and specifications approved by the Landlord and other permitting agencies with jurisdiction. Prior to any application for permits for the construction, alteration, replacement, removal, or major repair of any improvements on the Premises, Tenant shall submit to Landlord copies of plans and specifications that describe the proposed activity. Construction shall not commence until Landlord has approved such plans and specifications in writing, with such approval to be consistent with applicable regulations, and to not be unreasonably conditioned, delayed or withheld. Landlord shall have sixty (60) days in which to review the proposed plans and specifications. Failure to object in writing within the sixty (60)-day time period shall constitute Landlord's approval of the plans and specifications. This sixty day time period does not apply to the City's regulatory review of the plans and specifications for compliance with the City's development regulations and building code. Upon completion of construction, Tenant shall promptly provide Landlord with as-built plans and specifications.

**3. Tenant-Owned Improvements.** Any improvements, including without limitation, the HoH Building and associated infrastructure and appurtenances, or future modifications or additions thereto, located on the HoH Property, will become the property of the Tenant. So long as this Lease remains in effect, Tenant shall retain ownership of all authorized improvements, trade fixtures, infrastructure and appurtenances that it may place on the Premises (collectively, "**Tenant-Owned Improvements**"). Tenant-Owned Improvements shall not include construction, reconstruction, alteration, or addition to any unauthorized improvements. No Tenant-Owned Improvements shall be placed on the Premises without Landlord's prior written consent.

**4. Removal of Tenant-Owned Improvements.** Tenant-Owned Improvements shall be removed by Tenant by the last-applicable Termination Date, unless Landlord notifies Tenant that the Tenant-Owned Improvements may remain. Unless otherwise agreed to in writing by the Parties, Tenant is responsible for restoring the Premises to a form that is equivalent to, or better than, its original condition. If Tenant-Owned Improvements remain on the Property after the last-applicable Termination Date without the Landlord's actual or deemed consent, said Tenant-Owned Improvements will become the property of the Landlord. Following written notice to the Tenant, the Landlord may remove any remaining Tenant-Owned Improvements, and the Tenant shall pay the costs of removal and disposal, including the restoration of the Premises to its a condition that is equivalent to, or better than, its original condition.

## **VIII. MAINTENANCE OF PREMISES**

**1. Maintenance and Repair by Tenant.** At all times throughout the Lease term, Tenant shall keep the Premises in a good state of maintenance, working order, and repair ("**Good Repair**"). Tenant's obligations under this Section include, without limitation, keeping existing and future improvements/alterations in Good Repair and ensuring that all exterior doors and entrances; all windows and moldings and trim of all doors and windows; all sidewalks adjacent to the Premises; and all partitions; door surfaces; fixtures; equipment; utilities; and appurtenances, including, without limitation, lighting, plumbing, electrical, security, heating, air conditioning and ventilation systems, and fixtures are kept in Good Repair. Tenant shall keep in Good Repair the HoH Building, its roof, exterior walls, foundation, and any other appurtenances, fixtures, equipment, fencing, or landscaping located on the Premises. Tenant shall perform any of the aforementioned repair or maintenance work called to its attention by Landlord within a reasonable

period of time after receipt of such notice from Landlord. Unless determined otherwise between the Parties, Tenant shall maintain any stormwater facilities located on the Premises and the City shall be responsible for maintaining any stormwater facilities located outside of the Premises.

2. **Failure to Maintain.** If Tenant fails to keep and maintain the Premises in the condition set forth in Section 8.1, after first notifying Tenant in writing and providing Tenant with a reasonable time to effectuate a cure, Landlord may, at Landlord's sole option and as a non-exclusive remedy, put, or cause the same to be put in, the condition of Good Repair required thereunder, and Tenant shall pay Landlord the documented reasonable cost thereof upon demand.

## **IX. INSURANCE AND INDEMNITY**

1. **Indemnification.** Excepting the Hazardous Materials indemnification in Section 5.5(a), and as set forth herein, Landlord shall not be liable for any injury to any person, or for any loss of or damage to any property (including property of the Tenant) occurring in or about the Premises from any cause whatsoever. Tenant shall indemnify and save Landlord, its officers, agents, employees, and contractors, harmless from all losses, claims, damages, fines, penalties, liabilities and expenses, including, without limitation, Landlord's personnel and overhead costs and attorney fees and other costs incurred in connection with such claims, regardless of whether the claims involve litigation or bankruptcy, resulting from any actual or alleged injury to any person; or from any actual or alleged loss of, or damage to, any property; or any other damage or loss alleged to be attributable to Tenant's operation or occupation of the Premises; or caused by, or resulting from, any negligent act or omission, or breach of Applicable Laws, by the Tenant, its officers, employees, agents, volunteers, licensees, assignees, concessionaires, or any officer, agent, employee, guest, or invitee of any such person, in or about the Premises. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification provided for in this Section with respect to acts or omissions during the term of this Lease shall survive the termination or expiration of this Lease. Landlord shall not be liable for interference with light, air, view, or for any latent defect in the Premises. Tenant shall notify Landlord as soon as practicable of casualties or accidents occurring in or about the Premises. Notwithstanding the foregoing, if losses, claims, liabilities, damages, liens, costs, and expenses so arising are caused by Landlord's negligence or the concurrent negligence of both Landlord and Tenant, and/or their employees, agents, invitees, and licensees, Tenant shall indemnify Landlord only to the extent of Tenant's own negligence or that of its officers, employees, agents, invitees, and licensees. The foregoing indemnity is expressly intended to constitute a waiver of Tenant's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the fullest extent allowed by law and as necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent of their negligence. LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION 9.1 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON.

2. **Insurance.** At all times throughout the Lease term, Tenant shall participate in the State of Washington Self-Insurance Liability Program ("**Insurance Program**"), which administers a Liability Account to finance the payment of general liability (including professional liability) and vehicle liability tort claims and lawsuits arising from the negligent actions of State agencies, their officers, employees, agents, and volunteers. The Insurance Program operates under authority of RCW Ch. 4.92-*Actions and claims against state*. The current liability limit under the

Insurance Program is \$5,000,000 per occurrence. A copy of the Tenant's insurance certificate is attached as **Exhibit D**.

- a. Tenant shall maintain workers' compensation insurance as required under Title 51 RCW;
- b. Tenant's insurance coverage, other than workers' compensation insurance, shall name Landlord as an additional insured;
- c. Upon request from Landlord, Tenant agrees to provide a Certificate of Insurance and evidence that (i) the insurance is in effect and (ii) the insurance names Landlord as an additional insured.

## **X. ASSIGNMENT AND SUBLETTING**

**1. Assignment or Sublease.** Tenant shall not sublet the whole or any part of the Premises, nor shall Tenant assign, transfer, or encumber this Lease or any interest thereunder whether directly or by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of Landlord. The Landlord's decision on whether to consent to the assignment or sublease will not be unreasonably delayed. Each assignment to which there has been consent shall be by an instrument in writing, in form satisfactory to Landlord, and an executed copy of the assignment shall be delivered to Landlord. As material inducement to Landlord to execute and deliver this Lease, Tenant agrees it shall be reasonable under this Lease, and under Applicable Laws, for Landlord to withhold consent to any proposed assignment, encumbrance, or sublease if Landlord determines that any one or more of the following applies (without limitation as to other grounds for withholding consent): (a) Landlord is not assured that the proposed transferee will fully, completely, and promptly perform all obligations of Tenant under this Lease; (b) the transferee proposes to use the Premises for any purpose other than the permitted uses under this Lease; (c) the proposed transferee fails to deliver to Landlord its written assumption of all the obligations to be performed by Tenant under the Lease in connection with the portion of the Premises which is the subject of the proposed transfer; or (d) if Tenant will not continue to remain liable on this Lease. No assignment or sublease shall release Tenant from primary liability on this Lease. In lieu of giving its consent to an assignment or sublease, Landlord may elect to terminate this Lease, effective upon thirty (30) days' prior written notice to Tenant. Any assignment or sublease without Landlord's prior written consent shall, at Landlord's option, be voidable.

- a. If Tenant assigns its interest in this Lease or sublets the Premises, Tenant shall pay to Landlord any and all consideration received by Tenant for such assignment, which exceeds the reasonable out-of-pocket costs incurred by Tenant in connection with such assignment, if any. Tenant shall also pay all reasonable legal fees and other costs incurred by Landlord in connection with Landlord's consideration of Tenant's request for approval of assignments or subleases.
- b. Nothing in the foregoing shall prevent the Tenant from collecting rental or facilities charges for short-term third-party use of the Premises pursuant to Section 1.3.

**2. Assignment by Landlord.** Excepting the provisions for Prior Releases of Hazardous Materials in Section 5.5(a), if Landlord sells or otherwise transfers the Premises, or if

Landlord assigns its interest in this Lease, and such purchaser, transferee, or assignee assumes Landlord's obligations hereunder arising thereafter, Landlord shall thereupon be relieved of all liabilities hereunder arising thereafter, but this Lease shall otherwise remain in full force and effect.

## **XI. DESTRUCTION OF PREMISES**

**1. Partial Destruction.** If the Premises are rendered partially tenantable by fire or other insured casualty, and if the damage is repairable within sixty (60) days from the date of the occurrence (with the repair work and preparations therefor to be done during regular working hours on regular work days, Tenant shall repair the Premises, to the extent of the insurance proceeds available. Annual Base Rent shall be abated in the proportion that the un-tenantable portion of the Premises bears to the whole thereof for the period from the date of the casualty to the completion of the repairs, unless the casualty results from Tenant's negligence or its breach of the terms hereof. If fifty percent (50%) or more of the Premises are damaged, Tenant may terminate this Lease as of the date of such damage or destruction by giving notice to Landlord within thirty (30) days thereafter of the elections to do so.

**2. Total Destruction.** If the Premises are completely destroyed by fire or other casualty, or if it is damaged by uninsured casualty, or by insured casualty to such an extent that the damage cannot be repaired within sixty (60) days of the occurrence, or if the casualty occurs during the last year of the Lease Term, Tenant shall have the option either to restore the Premises or to terminate this Lease on thirty (30) days' written notice, effective as of any date not more than one hundred and twenty (120) days after the occurrence. If this Section becomes applicable, Tenant shall advise Landlord within sixty (60) days after such casualty whether Tenant elects to restore the Premises or to terminate the Lease. If Tenant elects to restore the Premises, it shall commence and prosecute the restoration work with commercially reasonable diligence. For the period from the date of the casualty until completion of the repairs (or the date of termination of the Lease, if Tenant elects not to restore the Premises), the annual Base Rent shall be abated in the proportion that the un-tenantable portion of the Premises bears to the whole thereof, unless the casualty results from Tenant's negligence or its breach of the terms thereof.

## **XII. DEFAULT OF TENANT**

**1. Defaults.** Time is of the essence of this Lease. If Tenant fails to comply with any covenant, term, or condition of this Lease, or if a trustee or receiver is appointed for Tenant's assets, or if Tenant makes an assignment for the benefit of creditors, or if Tenant vacates or abandons the Premises, and if such failure continues for, or is not remedied within ten (10) business days (or, if no default in the payment of rent is involved, within twenty (20) business days), after notice in writing thereof is given by Landlord to Tenant specifying the failure, then Landlord may, in its sole discretion:

- a. Declare the term hereof ended as of a specific Termination Date, reenter the Premises, and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or hereunder; or
- b. Without declaring this Lease terminated, reenter the Premises, and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid

rentals and other charges, which have become payable, or which may thereafter become payable; or

- c. Even though Landlord may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.
- d. If Landlord reenters the Premises under option (b) above, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rental or other charges thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease and Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by written notice to Tenant) be deemed to be a termination of this Lease. If Landlord enters or takes possession of the Premises, Landlord shall have the right, but not obligation, to remove all or personal property located therein and place the same in storage at a public warehouse at the expense and risk of Tenant.
- e. If Landlord elects to terminate this Lease pursuant to the provisions of options (a) or (c) above, Landlord may recover from Tenant as damages, the following:
  - i. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by Landlord in (a) retaking possession of the Premises, including reasonable attorney fees therefor; (b) maintaining or preserving the Premises after such default; (c) preparing the Premises for re-letting to a new tenant, including repairs or alterations to the Premises for such re-letting; (d) leasing commissions; (e) removing the building and other improvements and restoring the Premises to its original condition; and (f) any other costs necessary or appropriate to re-let the Premise, plus, (g) at Landlords' election, such other amounts in addition to, or in lieu of, the foregoing as may be permitted from time-to-time by the laws of the State of Washington.
  - ii. For the purposes of this Section 12.1 (and elsewhere within this Lease where applicable), the terms "rent" and "rental" shall be deemed to be the annual Base Rent.

**2. Legal Expenses.** In any dispute arising out of this Lease, the prevailing party shall be entitled to reimbursement by the non-prevailing party of the prevailing party's reasonable costs and attorney fees, whether such costs and attorney fees are incurred with or without litigation, in a bankruptcy court (i.e., in a motion for assumption or rejection of the Lease, etc.), or on appeal.



**3. Remedies Cumulative; Waiver.** Landlord's remedies hereunder are cumulative, and not exclusive, and Landlord's exercise of any right or remedy shall not be deemed to waive, alter, affect, or prejudice any other right or remedy which Landlord may have under this Lease or at law or in equity, including the right to cure Tenant's default on Tenant's behalf and recover from Tenant upon demand all costs and expenses incurred by Landlord in connection therewith, including interest thereon at a rate of six (6) percent per annum from the date incurred until paid. Neither the acceptance of rent nor any other acts or commissions of Landlord at any time or times after the happening of any default or breach by Tenant shall operate as a waiver of any past or future violation, breach, or failure to keep or perform any covenant, agreement, term, or condition hereof or to deprive Landlord of its right to cancel, terminate, or forfeit the Lease or estop Landlord from promptly exercising any other option, right, or remedy that it may have under any term or provisions of this Lease, or at law or in equity.

### **XIII. ACCESS BY LANDLORD; DEFAULT OF LANDLORD**

**1. Right of Entry.** Landlord and its agents shall have the right to enter the Premises at any time to examine the same, and to make such repairs, alterations, improvements, or additions as Landlord may deem necessary or desirable. The Landlord will request entry to the building prior to entering. If Tenant does not respond within a reasonable time and an entry is necessary or permissible, Landlord may enter the same by master key, which Tenant shall provide to Landlord upon Tenant's occupancy of the HoH, or may forcibly enter the same, without rendering Landlord liable therefor. Tenant shall not change the locks to the Premises without first advising the Landlord thereof and providing Landlord with a key. Tenant shall at all times allow access to all stormwater facilities located within the Premises. Stormwater facilities shall not be blocked or obstructed in any way. Tenant agrees that, from time-to-time, the City of Bellingham Public Works personnel may access the Premises at any time to clean, maintain, inspect, or repair stormwater facilities located within, near, or around the Premises.

**2. Default of Landlord.** Landlord shall be in default hereunder only if Tenant serves Landlord a written notice specifying the alleged default and Landlord does not remedy the failure within sixty (60) days following receipt thereof or, in the case of failure which reasonably requires more than sixty (60) days to cure, if Landlord has not commenced to remedy the same within sixty (60) days following receipt of written notice thereof. Tenant shall not exercise any remedies available to it until the grace period provided for in this Section has elapsed.

### **XIV. SURRENDER OF PREMISES**

**1. Surrender of Premises.** At the expiration or sooner termination of this Lease, Tenant shall return the Premises to Landlord in the same condition in which received, reasonable wear and tear excepted. Tenant shall remove all improvements made to the Premises, including, without limitation, the HoH Building or other structures, and shall restore the Premises to the condition it was in prior to the installation of said items. Tenant's obligation to perform this covenant shall survive the expiration or termination of this Lease. Landlord may place and maintain signs in conspicuous places on the Premises for one hundred twenty (120) days prior to the expiration or earlier termination of this Lease to advertise the Premises' availability.

**2. Holding Over.** If Tenant holds over after the expiration of the term hereof with Landlord's express prior written consent, such holding over shall be construed as a tenancy from

month-to-month on the terms and conditions set forth herein, which tenancy may be terminated by either party upon at least thirty (30) days' written notice to the other party, effective as of the last day of a calendar month. If Tenant holds over without Landlord's express prior written consent, such shall constitute a tenancy at will, terminable upon notice from Landlord, and Tenant shall be liable for all damages suffered by Landlord as a consequence of such holding over.

## **XV. MISCELLANEOUS**

**1. Notices.** Any notices required in accordance with any of the provisions herein shall be delivered personally, sent by overnight courier, or mailed by registered or certified mail to the addresses set forth in Section 1.2 or such other address as a Party shall from time to time advise in writing. If mailed, a notice shall be deemed received three (3) business days after the postmark affixed on the envelope by the United States Post Office.

**2. Successors or Assigns.** All of the terms, conditions, covenants, and agreements of this Lease shall extend to, and be binding upon, Landlord, Tenant, and their respective heirs, administrators, executors, successors and permitted assigns.

**3. Partial Invalidity.** If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each other term, covenant, or condition of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

**4. Recording.** Tenant may record this Lease or a memorandum hereof.

**5. Force Majeure.** Landlord shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligation hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of terrorism, acts of civil or military authorities, fire, floods, windstorm, earthquake, strikes or other labor disturbances, civil commotion or disorder, or war.

**6. Tenant Defined.** When the term "**Tenant**" is used herein it shall mean Western Washington University and its successors and assigns. If there is more than one Tenant, they shall all be bound jointly and severally by the terms, covenants, and agreements herein.

**7. Recycling.** Tenant will take reasonable steps to prevent the unnecessary generation of refuse through the choice and use of products and packaging and other materials in its business that minimize solid waste or that are durable, reusable, or recyclable. If so required by Landlord, Tenant will provide or obtain recycling containers for use on the Premises by the University's faculty, staff, students, invitees and members of the public and shall recycle acceptable materials in the recycling containers and otherwise participate in any recycling program established by Landlord or required by Applicable Laws.

**8. Tenant's Authority.** Tenant warrants that its execution of this Lease has been duly authorized in accordance with its constituent documents.

**9. Headings.** The headings in this Lease are for convenience only and do not in any way limit or affect the terms and provisions hereof.

10. **Gender.** Wherever appropriate in this Lease, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.

11. **Counterparts.** This Lease may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

12. **Quiet Enjoyment.** So long as Tenant pays the Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through, or under the Landlord.

13. **Entire Lease Agreement - Applicable Law.** This Lease, including the Recitals and the Exhibits attached hereto, which by this reference are incorporated herein as material terms of the Lease, set forth the entire agreement of Landlord and Tenant concerning the Premises, and supersede any other agreements or understanding, oral or written, between Landlord and Tenant. Any subsequent modification or amendment of this Lease shall be binding upon Landlord and Tenant only if in writing and signed by both. This Lease shall be governed by and construed in accordance with the laws of the State of Washington without recourse to any principal of Conflicts of Laws. Venue for any lawsuit brought under this Lease shall be in the Superior Court of Whatcom County, Washington.

14. **Execution by Landlord and Tenant.** Landlord shall not be deemed to have made an offer to Tenant by furnishing Tenant with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between Landlord and Tenant until all parties hereto have executed this Lease and fully executed copies have been delivered to Landlord and Tenant.

**TENANT:**

**WESTERN WASHINGTON UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LANDLORD**

**CITY OF BELLINGHAM**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Mayor

**ATTEST: DEPARTMENT APPROVAL**

---

Finance Director Parks and Recreation Director

**APPROVED AS TO FORM:**

---

Office of the City Attorney

STATE OF WASHINGTON }  
COUNTY OF WHATCOM } ss.

I CERTIFY that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that she/he signed this instrument, on oath stated that she/he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the **WESTERN WASHINGTON UNIVERSITY** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

\_\_\_\_\_  
NAME PRINTED

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
MY APPOINTMENT EXPIRES

STATE OF WASHINGTON }  
COUNTY OF WHATCOM } ss.

I CERTIFY that I know or have satisfactory evidence that \_\_\_\_\_  
is the person who appeared before me, and said person acknowledged that she/he signed  
this instrument, on oath stated that she/he was authorized to execute the instrument and  
acknowledged it as the \_\_\_\_\_ of the **CITY OF BELLINGHAM** to be  
the free and voluntary act of such party for the uses and purposes mentioned in the  
instrument.

DATED: \_\_\_\_\_

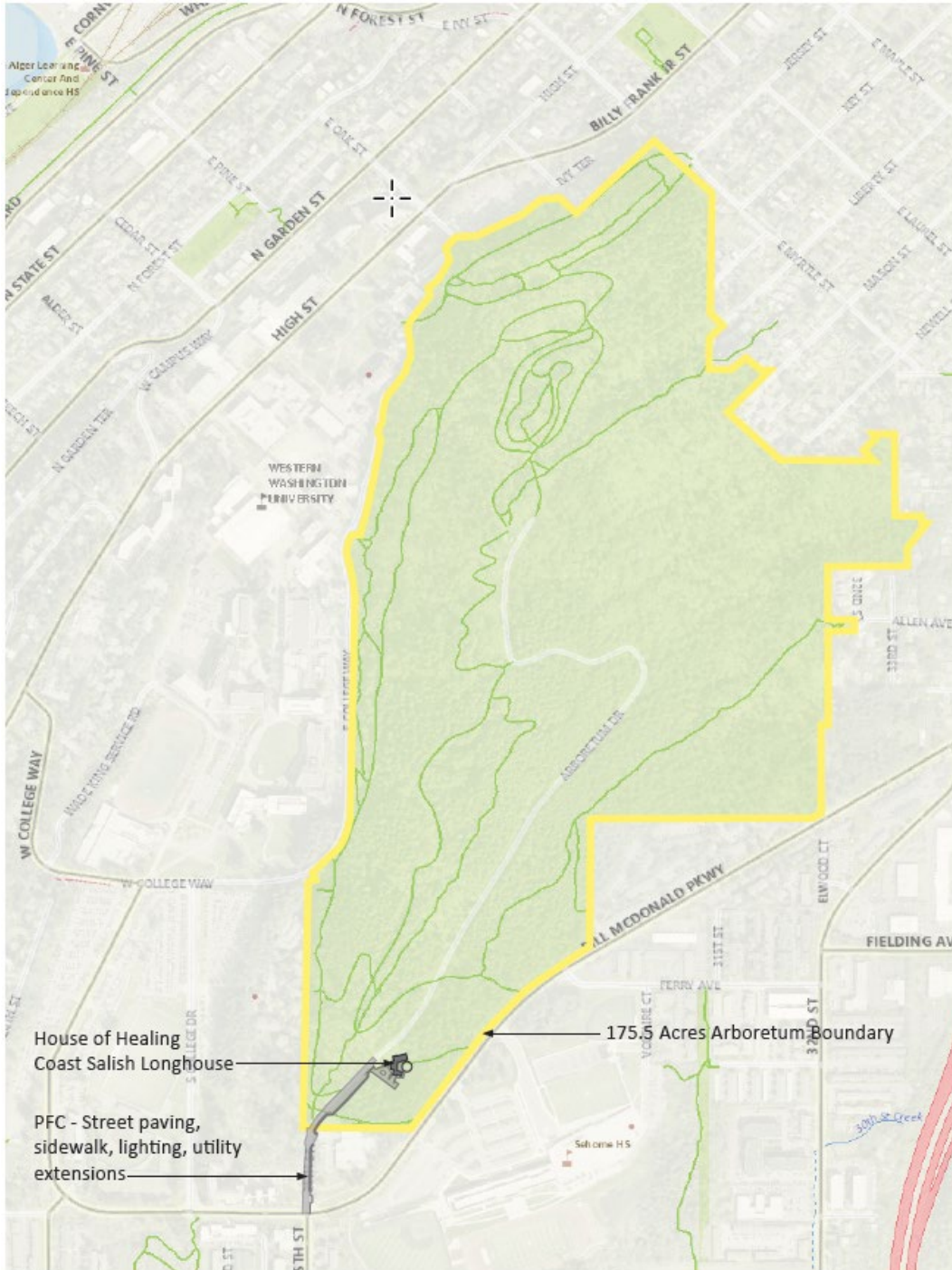
\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

\_\_\_\_\_  
NAME PRINTED

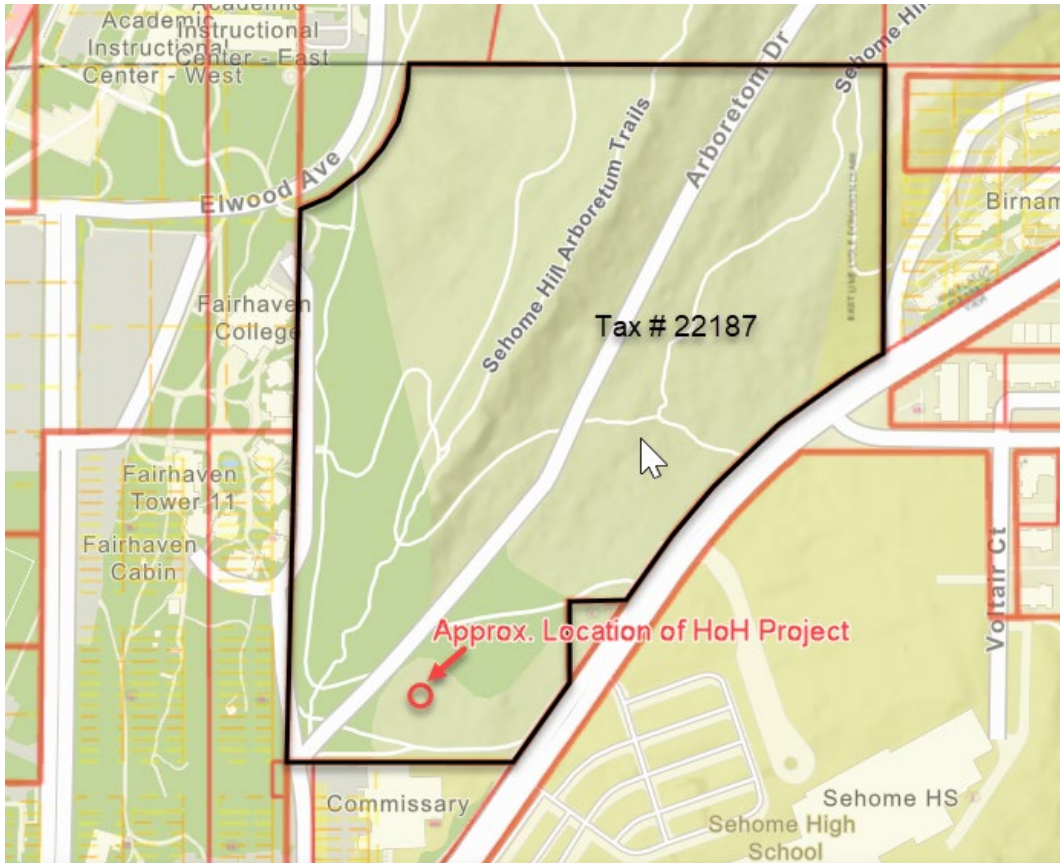
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
MY APPOINTMENT EXPIRES

## EXHIBIT A Sketch of Sehome Arboretum Showing HoH Project Site



**EXHIBIT B**  
**City-Owned Arboretum Parcel with Approximate Location of HoH Leased Premises**





**EXHIBIT C**  
**Legal Description and Sketch of HoH Property**

**LEGAL DESCRIPTION OF**  
**WESTERN WASHINGTON UNIVERSITY**  
**HOUSE OF HEALING LEASE SITE**

A tract of land lying within the Northwest Quarter of the Northwest Quarter and the Southwest Quarter of the Northwest Quarter of Section 6, Township 37 North, Range 3 East, W.M., being more particularly described as follows.

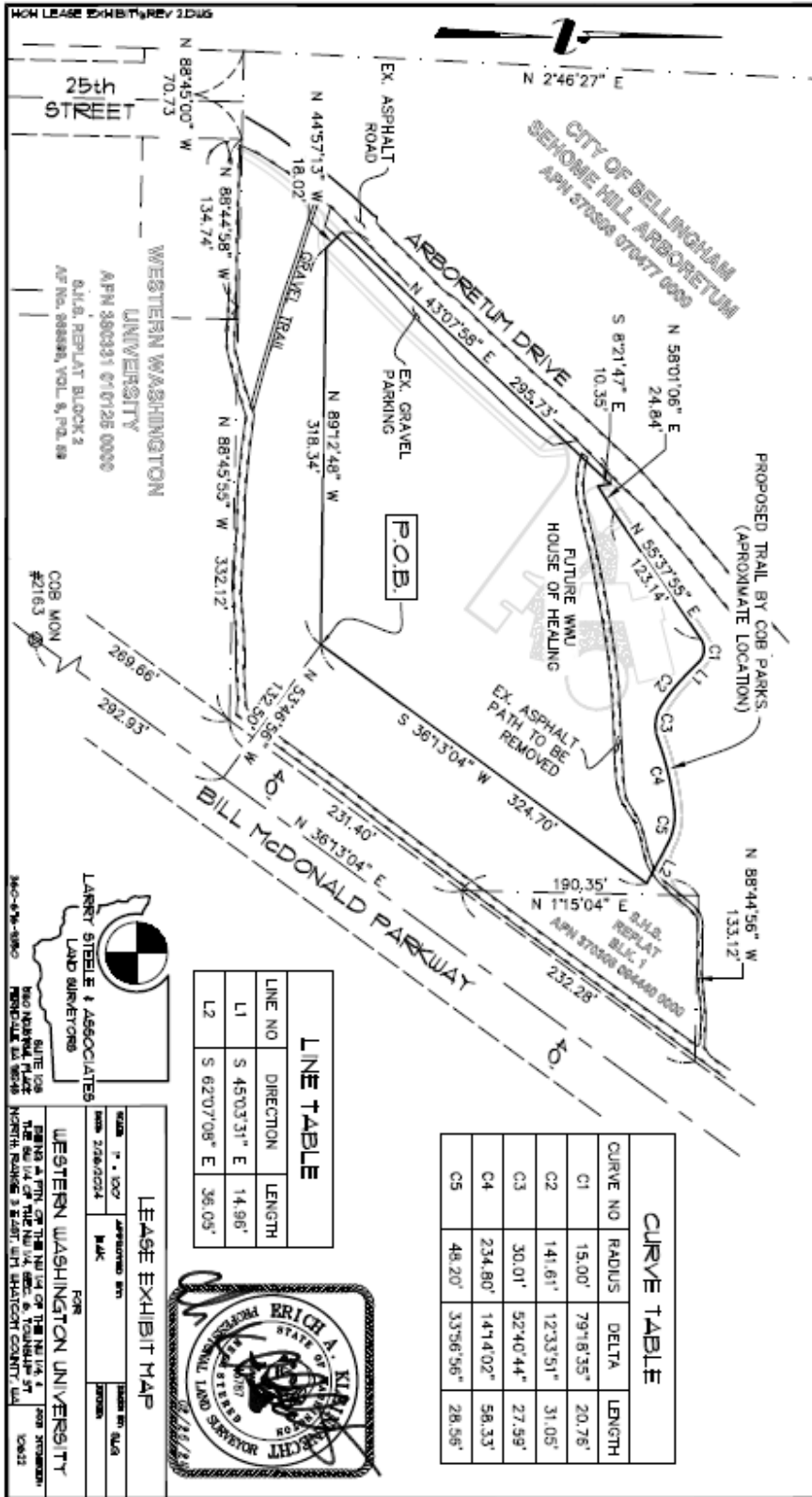
**Commencing** at the City of Bellingham Survey Control Monument Number 2163 marking a point of tangency of the centerline of Bill McDonald Parkway. Thence North  $36^{\circ}13'04''$  East, along the centerline of Bill McDonald Parkway, for a distance of 269.66 feet; Thence departing from said centerline North  $53^{\circ}46'56''$  West for a distance of 132.50 feet to the **Point of Beginning**. Thence South  $89^{\circ}12'48''$  West for a distance of 318.34 feet; Thence North  $44^{\circ}57'13''$  West for a distance of 18.02 feet; Thence North  $43^{\circ}07'58''$  East for a distance of 295.73 feet; Thence South  $8^{\circ}21'47''$  East for a distance of 10.35 feet; Thence North  $58^{\circ}01'06''$  East for a distance of 24.84 feet; Thence North  $55^{\circ}37'55''$  East for a distance of 123.14 feet to the beginning of a curve to the right that has a radius of 15.00 feet; Thence along said curve to the right through a central angle of  $79^{\circ}18'35''$  and a distance of 20.76 feet; Thence South  $45^{\circ}03'31''$  East for a distance of 14.96 feet to the beginning of a curve to the left that has a radius of 141.61 feet; Thence along said curve to the left through a central angle of  $12^{\circ}33'51''$  and a distance of 31.05 feet to the beginning of a compound curve to the left that has a radius of 30.01 feet; Thence along said compound curve to the left through a central angle  $52^{\circ}40'44''$  and a distance of 27.59 feet to the beginning of a reverse curve to the right that has a radius of 234.80 feet; Thence along said reverse curve to the right through a central angle of  $14^{\circ}14'02''$  and a distance of 58.33 feet to the beginning of a compound curve to the right that has a radius of 48.20 feet; Thence along said compound curve to the right through a central angle of  $33^{\circ}56'56''$  and a distance of 28.56 feet; Thence South  $62^{\circ}07'08''$  East for a distance of 36.05 feet; Thence South  $36^{\circ}13'04''$  West for a distance of 324.70 feet, more or less, to the **Point of Beginning**.

Containing an area of 87,228 square feet (2.00 acres), more or less.

Situate in the City of Bellingham, Whatcom County, Washington.



Prepared by Larry Steele & Associates  
Land Surveyors  
5160 Industrial Place, Ste. 108  
Ferndale, WA 98248  
360-676-9350  
Job #10622  
February 26, 2024



LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	S 45°03'31" E	14.96'
L2	S 62°07'08" E	36.05'

CURVE TABLE			
CURVE NO.	RADIUS	DELTA	LENGTH
C1	15.00'	79°18'35"	20.78'
C2	141.61'	12°33'51"	31.05'
C3	30.01'	52°40'44"	27.59'
C4	234.80'	14°14'02"	58.33'
C5	48.20'	33°56'56"	28.56'

LARRY STEELE & ASSOCIATES  
LAND SURVEYORS

SUITE 108  
1400 N. UNIVERSITY BLVD.  
BELLINGHAM, WA 98225

DATE: 12/15/2024

LEASE EXHIBIT MAP


FOR  
WESTERN WASHINGTON UNIVERSITY

THIS MAP IS A PART OF THE LEASE AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

WESTERN WASHINGTON UNIVERSITY  
1400 N. UNIVERSITY BLVD.  
BELLINGHAM, WA 98225



**EXHIBIT D**  
**Insurance Certificate**

<b>CERTIFICATE OF LIABILITY INSURANCE</b>		Issue Date 12/4/2023		
<b>ISSUED BY:</b> State of Washington Department of Enterprise Services Office of Risk Management PO Box 41466 Olympia, WA 98504-1466		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE STATE OF WASHINGTON SELF INSURANCE LIABILITY PROGRAM.		
		<b>COVERAGE AFFORDED BY</b> <b>State of Washington Self Insurance Liability Program</b>		
<b>INSURED:</b> State of Washington Western Washington University ATTN: Paul Mueller 516 High Street Bellingham, WA 98225		THE STATE OF WASHINGTON, INCLUDING ALL ITS AGENCIES AND DEPARTMENTS, IS SELF-INSURED FOR TORT LIABILITY CLAIMS. ALL CLAIMS MUST BE FILED WITH THE STATE OFFICE OF RISK MANAGEMENT FOR PROCESSING IN ACCORD WITH STATUTORY REQUIREMENTS.		
<b>COVERAGES</b>				
THIS IS TO CERTIFY COVERAGE DESCRIBED BELOW IS PROVIDED TO THE INSURED NAMED ABOVE FOR THE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE AFFORDED BY THE SELF-INSURANCE LIABILITY PROGRAM IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH PROGRAM.				
TYPE OF COVERAGE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS
<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> OCCURRENCE COVERAGE	Self-Insured	Continuous	Continuous	BODILY INJURY, PROPERTY DAMAGE & PERSONAL INJURY COMBINED EACH OCCURRENCE \$5,000,000
<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY & PROPERTY DAMAGE COMBINED EACH ACCIDENT \$5,000,000
<b>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</b>	L & I	Continuous	Continuous	WC – STATUTORY
<b>OTHER</b>				
<b>DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS:</b> Coverage applies as respects tort liability claims against the State of Washington as covered by the Tort Claims Act (RCW 4.92 et seq.) The Certificate Holder, the City of Bellingham, its officers, employees, elected officials, agents and volunteers are named as additional insured, but only as respects the negligence of the State of Washington.				
<b>CERTIFICATE HOLDER:</b>		<b>CANCELLATION</b>		
THE CITY OF BELLINGHAM 210 LOTTIE STREET BELLINGHAM, WA 98225		SHOULD THE SELF INSURANCE LIABILITY PROGRAM BE CANCELLED, THE STATE OF WASHINGTON WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL NOT IMPOSE ANY OBLIGATION OR LIABILITY UPON THE STATE OF WASHINGTON, ITS OFFICIALS, EMPLOYEES, AGENTS OR REPRESENTATIVES.		
<b>CERTIFICATE NUMBER</b> CRT 2024-00375		<b>AUTHORIZED REPRESENTATIVE:</b>  Jason Siems, State Risk Manager		

**AMENDED INTER-LOCAL COOPERATION AGREEMENT**

**SEHOME HILL ARBORETUM**

**THIS AMENDED INTER-LOCAL COOPERATION AGREEMENT, MADE AND ENTERED INTO BY AND BETWEEN THE BOARD OF TRUSTEES OF WESTERN WASHINGTON UNIVERSITY AND THE CITY OF BELLINGHAM ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2024,**

**WITNESSETH:**

**RECITALS**

WHEREAS, both Western Washington University (“WWU”) and the City of Bellingham (“City”) desire to continue to cooperate in the development and operation of an arboretum area to be located on Sehome Hill in the City; and

WHEREAS, WWU and the City wish the Arboretum to continue to exist as an area to be preserved in a natural state, subject to the needs of WWU and the City, as they may be manifest by mutual agreement, to be devoted to educational, aesthetic, low impact recreation and research purposes, and to be developed in a manner which is compatible with sound ecological principles; and

WHEREAS, both WWU and the City are willing to continue to designate certain real property owned by said parties for arboretum purposes on a non-permanent basis; and

WHEREAS, WWU and the City wish to retain full ownership, right, and title in the real property which each has designated for arboretum purposes; and

WHEREAS, public agencies such as WWU and the City are authorized under the provisions of RCW Chapter 39.34 to enter into agreements with one another for joint or cooperative action;

WHEREAS, this Interlocal Cooperation Agreement supersedes and replaces the Interlocal Cooperation Agreement between the parties executed in July 2015 with a term of August 6, 2015, through August 5, 2025;

NOW, THEREFORE, the Board of Trustees of Western Washington University and the City Council of the City of Bellingham do hereby mutually agree as follows:

**AGREEMENT**

1. Intent and Purpose. WWU and the City do hereby continue their voluntary association for the development and operation of an arboretum located on Sehome Hill, within the

City hereinafter referred to as the “Sehome Hill Arboretum”. It is understood by both parties that said Arboretum (a) will be preserved in a natural state to the greatest extent possible, subject to the needs of WWU and the City, as they may be manifest by mutual agreement, (b) will be devoted to educational, aesthetic, low impact recreation and research purposes, (c) will be open to access by the public, and (d) will be developed in a manner which is compatible with sound ecological principles.

2. Board of Governors. WWU and the City do hereby authorize and direct the continuance of a joint board to be responsible for the development and coordination of the Sehome Hill Arboretum program. This joint board shall be known as the Board of Governors of the Sehome Hill Arboretum.

- a) The Board of Governors shall be composed of eight (8) members, and shall include the following individuals:
  - (i) The City Director of Parks and Recreation or his/her designated representative;
  - (ii) Two community members selected by the City;
  - (iii) WWU Associate Vice President for Facilities Development and Operations or their designee;
  - (iv) Two WWU faculty, staff, or other members of the university community selected by the WWU President, one of which will preferably be affiliated with the House of Healing Longhouse Program;
  - (v) One member-at-large selected by the Arboretum Board of Governors; and
  - (vi) One student appointed by the WWU Associated Students Organization.
- b) The Board of Governors shall serve without remuneration.
- c) The Board of Governors shall select its own chairman from the membership of the Board.
- d) The members of the Board of Governors, with the exception of the student member, shall hold their offices for terms of three (3) years, subject to reappointment. The student member will be appointed annually for a maximum of two years. The terms of office of the members of the Board of Governors shall be established so as to provide that the terms of not more than three (3) members will expire during any one year.
- e) The Board of Governors shall adopt by-laws for the Board and policy for the Arboretum.

- f) The City ordinances and regulations for Parks and Recreation Facilities shall apply and be enforced within the Arboretum boundaries.

3. Maintenance and Operation. The Board of Governors shall be empowered to work with the City and WWU in planning the use of such capital, operating and maintenance funds as shall be authorized by the City or WWU, and such endowment funds to the Arboretum as may be received by either agency.

- a) WWU shall include the total 175.5 acres of arboretum area within their annual reserve ground maintenance funds, and be responsible for on-going maintenance and operations of the Arboretum. Except as provided in Section 7 for the House of Healing Longhouse, the City shall be responsible for maintenance of roads, the parking lot, and the tower and the immediate surrounding grounds.
- b) Except as provided in Section 7 for the House of Healing Longhouse, any new capital construction costs exceeding \$2,000 will be shared by WWU and the City on an equal basis. The capital improvement projects will be administered either by WWU or the City, in cooperation with the Board of Governors.
- c) The Board shall coordinate with WWU's maintenance and operations programs, all volunteer projects associated with the Arboretum.
- d) The Board of Governors is authorized to comment/advise only as to impacts to property that lies within the jurisdiction of the Sehome Hill Arboretum.

4. Long Range Master Plan. The Board of Governors shall establish and submit priorities for maintenance and development of the Arboretum in accordance with the Long Range Master Plan adopted by the City and WWU.

5. Designation of Property. WWU and the City hereby agree to continue to designate certain real property for the Sehome Hill Arboretum. The extent and area of said real property is indicated on the Exhibit "A" maps, as approximately 38 acres, and Exhibit "B", as approximately 137.5 acres, both of which Exhibits are attached hereto and incorporated herein by this reference.

- a) It is understood and agreed by both the City and WWU that full title to, and ownership of, all real property now or in the future designated by either party for use in connection with the Sehome Hill Arboretum shall remain with the party so designating the property. Neither party hereto shall, at any time, assert, allege, or claim any right, title, easement, license, or ownership interest in any real property designated by the other party for use in connection with the Sehome Hill Arboretum.
- b) The Board of Governors shall cause adequate notice to be given to members of the public that:
  - (i) The real property contained within the Sehome Hill Arboretum area is owned by WWU and the City;
  - (ii) Members of the public have been given permission by WWU

and the City to pass over and use the property within the Sehome Hill Arboretum area; and

- (iii) Said permission is revocable by WWU and the City at any time and for any reason.

6. Observation Tower. The City will assume all responsibility for maintenance and repair of the observation tower. WWU will be responsible for normal grounds maintenance up to the building overhang, with the City being responsible for grounds maintenance under the tower. The City assumes full liability for any claims which arise as a result of the presence, or use of, the observation tower.

7. House of Healing Longhouse. The City and WWU agree to partner together to facilitate the construction of a Coast Salish Longhouse, House of Healing Building (“HoH Building”) and appurtenant outdoor facilities on a portion of the Arboretum property, which is owned by the City and is depicted in Exhibit “C” (“HoH Property”). The HoH Building, HoH Property, and all appurtenances thereto are referred to as the “HoH Project”. The parties will execute a low-cost, long-term lease, which will define each party’s rights and responsibilities for the construction and operation of the HoH Project. WWU will construct and operate the HoH Project as a cultural gathering space for its Native American students, faculty, and staff and a meeting place for the general public. The City will provide the real property for the HoH Project and \$600,000 for necessary off-site street and utility improvements for the project. WWU shall provide the City timely documentation showing that it used the \$600,000 provided by the City for the design and/or construction of the necessary off-site street and utility improvements for the HoH Project. WWU promptly return any City funds not used for the design and/or construction of these street and utility improvements.

8. Term. The term of this Agreement shall be ten (10) years, commencing \_\_\_\_\_, 2024 and ending \_\_\_\_\_, 2034, unless sooner terminated as herein provided.

- a) The Board of Governors shall be empowered to make recommendations to the City Council and to the WWU Board of Trustees concerning the continuation, modification or termination of this Inter-Local Cooperation Agreement;
- b) The Board of Governors shall submit a report of the prior year’s activities each February to the City Council and WWU Board of Trustees; and
- c) Either party may terminate this Agreement prior to the expiration of the ten-year term by providing written notice to the other party at least twelve (12) months prior to the date of intended termination.

**9. Entire Agreement. This Inter-Local Cooperation Agreement contains the entire agreement between WWU and the City and shall not be modified in any manner except by an instrument in writing executed by both parties.**

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2024

**WESTERN WASHINGTON UNIVERSITY:**

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Sabah Randhawa  
President

**Approved as to form only:**

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Kerena Higgins  
Assistant Attorney General

**CITY OF BELLINGHAM:**

**Department Approval:**

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Kim Lund, Mayor

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Nicole Oliver, Parks & Recreation Director

**Attest:**

**Approved as to form:**

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Finance Director

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Office of the City Attorney