

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
WESTERN WASHINGTON UNIVERSITY, THE PORT OF BELLINGHAM
AND WESTERN CROSSING DEVELOPMENT

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") is made and entered into by and between Western Washington University, a Washington higher education institution (the "University"), the Port of Bellingham, a Washington municipal corporation (the "Port") and Western Crossing Development Corporation, a Washington non-profit corporation ("Crossing Development").

WHEREAS, in 2005 the Port acquired the Bellingham waterfront properties of Georgia-Pacific Corporation which has been branded as the Waterfront District.

WHEREAS, since 2008, the University and the Port have been working together to facilitate the creation of University facilities at the Waterfront District, recognizing the synergy that can be created by expansion of the University campus there and the successful development of the rest of the Waterfront District.

WHEREAS, on October 7, 2009 the University and the Port created Crossing Development with a board of directors composed of two representatives of the University, two representatives of the Port, and one representative appointed by the four University and Port representatives. Created as a non-profit corporation under the Interlocal Cooperation Act (Ch. 39.34 RCW) and the Washington Nonprofit Corporation Act (Ch. 24.03 RCW), Crossing Development is a governmental instrumentality of the University and the Port.

WHEREAS, in November of 2012 the Port and the City of Bellingham completed work on a set of comprehensive planning documents including a draft sub-area plan, a draft development agreement, a draft planned action ordinance, and a draft facilities agreement (the "Master Plan Documents"). The Master Plan Documents have been submitted to the City of Bellingham for land use regulatory review and approval. In this regard, the Master Plan Documents include an area designated for "institutional mixed use" anticipating the presence of the University at the Waterfront District. Once approved these documents form the basis of the Waterfront District Master Plan (the "Master Plan"). A map depicting the Waterfront District, including the initial development opportunity area and the institutional mixed use area are attached as Exhibit "A." and Exhibit "B"

WHEREAS, within the institutional mixed use area, the Port and the University anticipate that an approximately 6 acre area will be developed for University use.

WHEREAS, the area designated for institutional mixed use is within the Department of Ecology designated Georgia-Pacific West Site and is therefore the subject of a Department of Ecology supervised remedial action which may include a combination of physical remediation and the imposition of institutional controls which are required pursuant to the terms of various agreed orders and/or a consent decree (the "Remediation").

WHEREAS, the Port has determined that the presence of the University at the Waterfront District will result in economic and community development within the Port.

WHEREAS, the University owns approximately 24.09 acres of real property and improvements located on the southeast corner of Hannegan Road and Bakerview Road in Whatcom County (the "Hannegan Property").

NOW, THEREFORE, pursuant to Chapter 39.34 RCW and RCW 53.08.245 the University, the Port and Crossing Development desire to set forth their mutual understanding concerning the desire to facilitate the creation of University facilities at the Waterfront District.

1. Hannegan Property. Within thirty (30) days of the execution of this Agreement, the University shall provide notice to the current tenants terminating the lease on the Hannegan Property no later than ninety (90) days following the notice date. Within one hundred twenty (120) days of the execution of this Agreement, the University shall transfer the Hannegan Property to Crossing Development using a statutory warranty deed subject to those exceptions agreed to by the University and the Port. The University will provide a standard ALTA title insurance policy insuring the title in an amount agreed to by the University and the Port subject to those exceptions agreed to by the University and the Port. As soon as reasonably practicable, the property shall be marketed by Crossing Development for sale, sold at a price and on terms approved by four (4) of the five (5) Crossing Development board of directors members, and the net proceeds credited (after sale and closing costs) to the University's capital account. The proceeds from the sale (including interest earned on the proceeds) shall be preserved (i.e., not spent) unless such expenditure is approved by a vote of 4 of the 5 board members of Crossing Development.

2. Port Property. Within thirty (30) days after the approval and execution of the Master Plan Documents by the Port and the City of Bellingham and City approval of a binding site plan creating the parcel, the Port will transfer the approximately 6 acres of property within the institutional mixed use area of the Waterfront District to Crossing Development using a statutory warranty deed subject to those exceptions agreed to by the University and the Port and with such necessary easements or development rights as the Port and the University may agree (the "Port Property"). The Port and the University will agree on the value of the Port Property at the time of transfer and that agreed value will be credited to the Port's capital account. The determination of value will be informed by an appraisal and other factors that bear upon value to the Port, including the presence of the University at the Waterfront District, will be considered in arriving at the true and full value of the Port Property which will be credited to the Port's capital account upon transfer into Crossing Development. The Port will provide a standard ALTA title insurance policy insuring the title in the agreed amount subject to those exceptions agreed to by the University and the Port.

3. Operating Expenses for Hannegan and Port Property. The Port and the University shall continue to pay the operating costs (insurance and ordinary maintenance) for their respective properties held by Crossing Development, which costs will not be credited to the capital accounts.

4. Strategy of Crossing Development to Facilitate University Presence. Crossing Development will pursue a strategy to facilitate the University's presence at the Waterfront District. The strategy will include the following.

- Create a separate capital account in the accounting records of Crossing Development for the University and the Port such that the relative contributions can be tracked and accounted for in all transactions.
- Over the near term, it is anticipated that the University may lease space in the 10.8 acre initial development opportunity area of the Waterfront District.
- Over the longer term, Crossing Development will pursue a development project on the Port Property deeded to Crossing Development within the institutional mixed use area in the Waterfront District.
- Seek appropriate arrangements with the University and a developer for the development of University facilities on the Port Property within the institutional mixed use area of the Waterfront District with the ultimate goal of the University's acquisition of the development (the "University Development").
- Work to facilitate development with timing consistent with the timing in the Master Plan Documents.
- Incorporate the requirements set forth in the Master Plan Documents into any development, including the obligation to make payments in lieu of taxes.
- At the appropriate point in the development process, transfer the development to the University.
- Create such additional agreements for consideration by the Port and the University as may be necessary to accomplish the strategy set forth herein.

5. University Development Plan. In order to facilitate the anticipated development, provide guidance to Crossing Development and support the strategy noted above, the University will complete and approve a development plan for the University Development no later than December 31, 2015. This University Development Plan and the Master Plan Documents will be used to pursue the University Development which is anticipated to occur in the two-phased near and long term approach noted above.

6. Staff Assistance from the University and the Port. The University and the Port will provide staff resources and expertise, as each party determines that it can make available, at no cost to Crossing Development to assist in the pursuit of the development. The University and the Port will budget for these expenditures within their overall operating budgets. Out of pocket costs by either the University or the Port may be considered by the Crossing Development board of directors for reimbursement or credit to the party's capital account.

7. Capital Accounts – Tracking Contributions and Allocation of Profits or Losses of Crossing Development. Crossing Development will account for the contribution of property and/or cash by the University and the Port by maintaining a capital account for each entity. The value of the University's and the Port's contribution of property or cash shall be reflected in their respective capital accounts.

Profits or losses will be credited to these capital accounts until such time as each party's balance equals the other. After the capital account balances are equal, the profits and losses shall be split equally.

8. Environmental Remediation. The Port is responsible for the cost of and conducting the Remediation required under the applicable agreed orders and consent decree for the Georgia-Pacific West Site including the institutional mixed use area. The costs of the Remediation of the Georgia-Pacific West Site shall not be credited to the Port's capital account. Neither the University nor Crossing Development shall be responsible for the cost of and/or conducting the Remediation of the Georgia-Pacific West Site. Crossing Development will comply with any institutional controls on the Port Property required by the terms of the agreed orders or consent decree. The Port shall be responsible for any costs occasioned by a change to the consent decree

9. Termination. The University and the Port recognize that the success of Crossing Development is dependent on both parties' continuing commitment to move forward to completion of a successful project beneficial to both parties. In the event of a termination, the University and the Port acknowledge that (i) the University and the Port will receive distributions equal to their respective capital accounts and then (ii) the profits or losses will be split equally. The University, the Port and Crossing Development recognize that there are significant factors beyond their control which may affect the timing and ability to complete the anticipated development. Therefore, it is necessary to develop an exit strategy for the University and the Port.

9.1. Distribution on Termination. Any termination shall result in the University and the Port receiving their respective share of the Crossing Development assets as provided herein. The value may include a return of funds or real or personal property contributed by that party.

9.2. Events That May Be the Basis for Termination. The University and the Port each reserve the right to terminate their participation in Crossing Development for good cause. The parties recognize that among others, the following events may constitute good cause for termination:

- In the unlikely event that the plan as substantially envisioned in the Master Plan Documents is not approved by the Port and the City of Bellingham.
- The Port elects to put the Port Property to an industrial use.
- The failure of the railroad to relocate such that the University determines that the Port Property is not suitable for the University's intended use.
- The pace of development is such that Crossing Development is unable to deliver a development project and the Port determines that the development momentum would be harmed.
- The University determines that the pace of development is too slow to meet its needs.
- Infrastructure is not delivered in a timely fashion.
- The programmatic needs of the University or the Port change such that the development is no longer beneficial.
- The legislature takes action which precludes the development.

- If financial considerations make it impossible for either party to execute development plans.

9.3. Termination Timing. Either the University or the Port may terminate all agreements between the University, the Port, and Crossing Development upon one year's written notice delivered on or before March 31st of any given year with termination occurring on March 31st one year later (the "Termination Notice"). A Termination Notice delivered anytime prior to March 31st will have the effect of beginning the one year period on the next March 31st with termination one year later. Provided, that no Termination Notice may be delivered or shall be deemed effective during the twenty-four (24) months period following the transfer of the Hannegan Property to Crossing Development.

9.4. Termination In the Event of Failure to Approve a Master Plan. Notwithstanding the provisions of Section 9.2, in the event that the Master Plan is not approved by the City and the Port, either the University or the Port may terminate this Agreement on thirty (30) days written notice.

9.5. Meet and Confer. Prior to providing a Termination Notice the University and the Port shall meet and confer concerning the reasons for termination.

10. True and Full Value Determination. The University and the Port have each independently analyzed all of the components of the transactions contemplated in this MOU and have each independently concluded that the transactions contemplated herein represent "true and full value" as that term is defined in RCW 43.09.210, relevant case law and attorney general opinion.

11. Use of this MOU – Further Agreements. Once approved by the University, the Port and Crossing Development, the understandings expressed in this MOU will be used to create and the parties will strive to execute in a timely manner such agreements as may be necessary to achieve the development of the Port Property for University use as contemplated herein.

[SIGNATURE PAGE FOLLOWING]

ADOPTED by each Party in an open public meeting on the date noted.

WESTERN WASHINGTON UNIVERSITY

Dated: _____

By: _____

University President

PORT OF BELLINGHAM

Dated: _____

By: _____

Executive Director

CROSSING DEVELOPMENT CORPORATION

Dated: _____

By: _____

President

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Exhibit A: Initial Development Offering

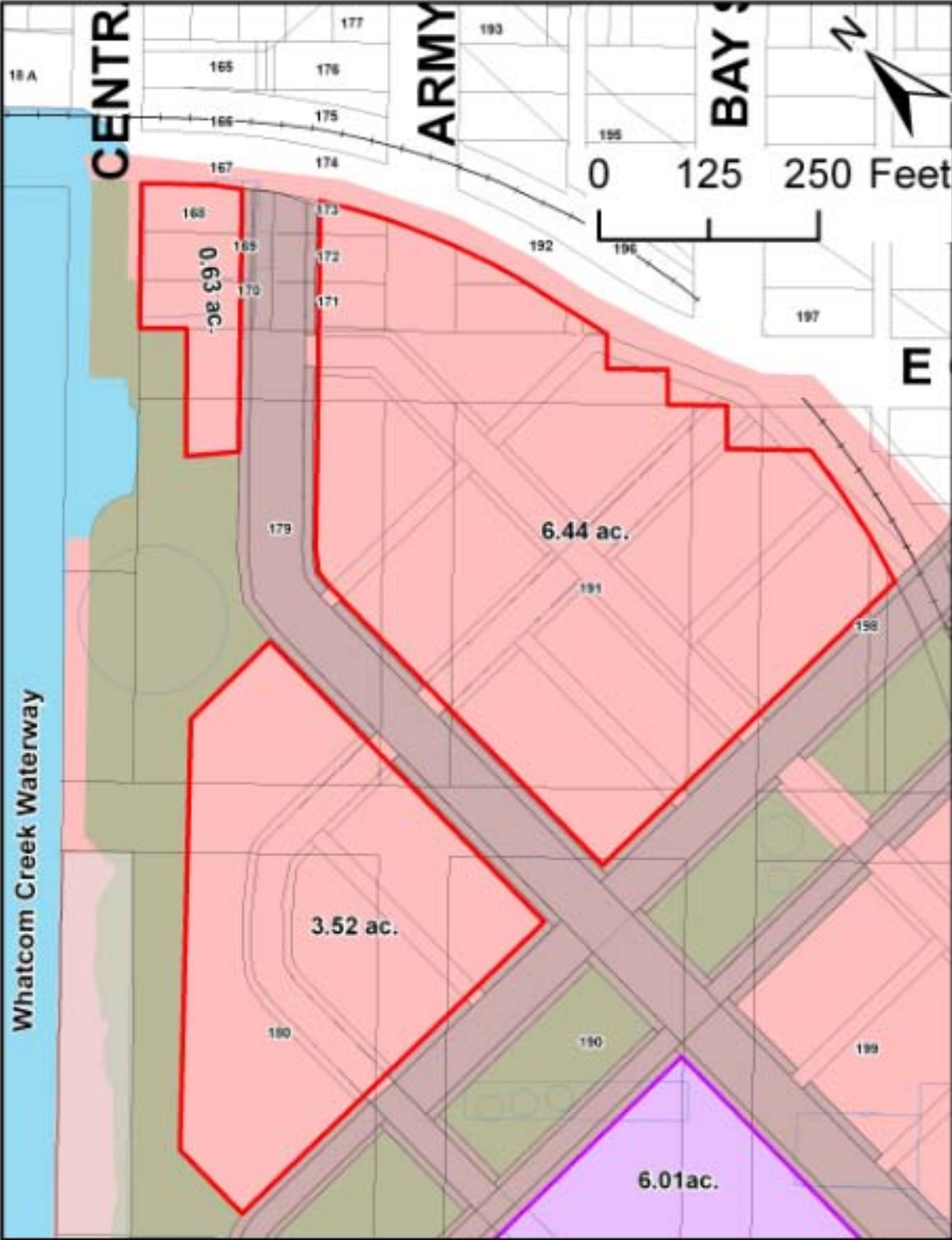


Exhibit B: Institutional Mixed Use Area

