

INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE
PORT OF BELLINGHAM AND WESTERN WASHINGTON UNIVERSITY
FOR THE CREATION OF A
DEVELOPMENT ENTITY

This Interlocal Cooperation Agreement ("Agreement") is entered into this 21st day of August, 2008 by and between the Port of Bellingham and Western Washington University for the creation of a development entity to assist the Port of Bellingham and Western Washington University in the development of a waterfront campus for Western Washington University.

WHEREAS, in 2003 the Port of Bellingham (the "Port") and the City of Bellingham (the "City") recognized that much of Bellingham's historic industrial waterfront was in transition. The Port and the City jointly funded and established the Waterfront Futures Group. This citizens' advisory panel was tasked to develop recommendations on issues regarding future development of Bellingham's waterfront.

WHEREAS, in 2004 the Waterfront Futures Group completed its work and delivered the Waterfront Framework Plan to the Port and the City. This plan envisioned a mixed use downtown waterfront with a mixture of uses including educational, commercial, residential, light industrial and a new marina in the Georgia-Pacific Corporation's aeration stabilization basin (the "ASB").

WHEREAS, in 2005 the Port acquired the Bellingham waterfront properties of Georgia-Pacific Corporation (the "Property").

WHEREAS, in 2005 the Port and the City entered into the Interlocal Agreement for the Implementation of the Waterfront Futures Group Recommendations which provided, among other things, for the implementation of the recommendations with regard to the Bellingham central waterfront area extending from the Cornwall Avenue Landfill to the south to the I&J Waterway to the north. The area is now known as "The Waterfront District."

WHEREAS, in 2005 the Port and the City entered into the Interlocal Agreement Regarding New Whatcom Special Development Area which provided, *intra alia*, for the creation of a master plan (the "Master Plan") for the redevelopment of The Waterfront District and the installation of infrastructure necessary to support the redevelopment.

WHEREAS, in 2006 the Port and other effected landowners executed a consent decree with Department of Ecology for the remediation of historic in-water contamination in and near the Whatcom Waterway. This cleanup will address the historic contamination, prepare the ASB for use as a marina and create valuable near shore habitat. These remedial activities and other remedial activities to follow will support the change of The Waterfront District from historic industrial uses to the mixed use waterfront envisioned by the Waterfront Futures Group.

WHEREAS, in Spring 2004 Western Washington University (the "University") formed an internal Waterfront Committee made up of faculty, staff and students led by the University President to consider programs and approaches to a University presence in The Waterfront District. Through legislative appropriations to support planning for the University's role in the future of The Waterfront District, the University hired Stratus Consulting Group to assist with the planning process. With the assistance of Doug Graham of Stratus, the University's Waterfront Committee invited and considered over 25 proposals from various units on campus, conducting multiple

forums regarding the proposals. By inviting developers and leaders of major urban and university re-development projects to the University Board of Trustees meetings in Fall 2007 and Winter 2008, and, finally, by presenting reports to the Board of Trustees at its meeting in April 2008, Stratus outlined alternative approaches to development of an academic facility in The Waterfront District.

WHEREAS, Western Washington University desires to develop waterfront facilities near its existing campus, with the intent of providing space for teaching and research focusing initially on the biological and environmental sciences, health sciences, other sciences and technology, business and teacher education, together with community outreach, student services, and other University-related facilities; and The Waterfront District provides a unique opportunity for the development of university facilities in close proximity to services and public space, as well as to potential private housing and commercial enterprises that are compatible both with the University's overall mission and with the specific purposes of a waterfront campus.

WHEREAS, the Port desires to cooperate in the creation of University facilities at The Waterfront District, and recognizes the synergy that can be created between development of a campus there and the successful development of the rest of The Waterfront District. In this regard, the Master Plan process conducted by the Port and the City has always included the presence of the University in The Waterfront District and it is assumed that the final Master Plan will include the presence of the University in The Waterfront District.

WHEREAS, the Port is willing to sell or lease real property in The Waterfront District to the University or other development entity for the creation of the University's waterfront campus.

WHEREAS, the Port and the University recognize that their joint goals are to plan and develop the University's waterfront campus with the adjacent property so that (i) the adjacent property could be planned and developed to accommodate future University growth, (ii) the waterfront campus and adjacent property could be planned and developed to maximize shared use facilities such as parking and open space, (iii) the probable increase in the value of the adjacent development caused by its co-location and co-development with the University's waterfront campus could be, in part, captured by the Port and the University thereby providing a cost savings in the development of the University's waterfront campus and (iv) consistent with state law the University's waterfront campus could be constructed in a timely and cost effective manner.

WHEREAS, the Port and the University recognize that it will be necessary to form a "public-private partnership" to allow for the coordinated planning, financing and development of the University's waterfront campus and the adjacent properties (the "Campus Area") in order to achieve the synergies noted above.

WHEREAS, it is anticipated that the Campus Area will encompass approximately 20 acres with the University facilities comprising approximately 12 of those acres, the Port and the University recognize that this estimated size will be refined in the planning process.

WHEREAS, in order to work closely together in the planning, financing and development of the Campus Area consistent with the Waterfront Futures Group recommendations, the Master Plan and the Port and University's respective missions and goals, the Port and the University wish to establish a non-profit corporation or other entity allowed by law under the authority of the Interlocal Cooperation Act (Chapter 39.34 RCW).

WHEREAS, the Port and the University are authorized under the provisions of the

Interlocal Cooperation Act to enter into agreements with one another for joint or cooperative action.

NOW, THEREFORE, the Board of Trustees of Western Washington University and the Commissioners of the Port of Bellingham agree as follows:

1. Adoption of Recitals: The above recitals are adopted as though they were set forth here.
2. Formation of A Development Entity: Within the next sixty (60) days, the University and the Port shall proceed towards formation of an intergovernmental entity for the purpose of carrying out the development of the Campus Area in a manner consistent with the Port's and the University's respective goals and consistent with the Master Plan. The intergovernmental entity shall be referred to in this document as the "Development Entity" and will be named at a later date.
3. Governance of the Development Entity: The Development Entity will be governed by a five member Board of Directors consisting of the following positions:
 - A member of the University Board of Trustees appointed by the University Board of Trustees;
 - The President of the University;
 - A member of the Commission of the Port of Bellingham appointed by the Commission of the Port of Bellingham;
 - The Executive Director of the Port of Bellingham; and
 - A fifth board member who is appointed by a majority vote of the other four board members.
 - 3.1. The Board shall select a chair from among its members. Except as provided below with regard to the initial appointments, each board member shall be appointed to a three year term and may be reappointed for any number of terms. However, the University may replace the trustee board member and the Port may replace the commission board member at any time. In addition, the four University and Port board members shall, by majority or tie vote, replace the fifth board member at any time. The board of directors shall serve without remuneration.
 - 3.2. The Board shall adopt staggered terms for the initial members of the board of directors as follows:
 - The member of the University Board of Trustees appointed by the University Board of Trustees for a three year term.
 - The member of the Commission of the Port of Bellingham appointed by the Commission of the Port of Bellingham for a three year term.
 - A fifth board member who appointed by a majority vote of the other four board members for a two year term.
4. Manner of Acting: In all matters the action of the Board of Directors must include an affirmative vote of at least one of the University appointed board members and an affirmative vote of at least one of the Port appointed board members.
5. Powers of The Board of Directors: The Board of Directors shall be empowered by its

authorizing documents (which shall be consistent with this Agreement), including any subsequent interlocal agreements, to accept and transfer real and personal property, to enter into contracts, leases and other legal documents, and to carry out all other powers permitted to that entity under the law applicable to that entity's formation. Without limiting the foregoing, it is anticipated that the Board of Directors will:

- Determine the exact size of the Campus Area, in part, based upon, the direction of the University as to the size of the waterfront campus and the University's projected future needs.
- Prepare a coordinated development plan for the Campus Area, which incorporates and is consistent with the University's plan for its waterfront campus.
- Recruit and retain the appropriate financial advisors to develop the financing model and assist in evaluating private development partners.
- Develop a public-private financing and development model which will allow for the coordinated planning, financing and development of the Campus Area to meet the goals stated above.
- Recruit the appropriate private development partner with the financial ability and development expertise to develop the Campus Area.
- Work closely with the Port and with the University to assist the board in refining its financing, planning and development plans.
- Provide reports to and receive input of the Port Commission and the Western Washington University Board of Trustee at significant decision points to be identified by the Entity Board.

6. Transfer of Port Property: The Port and the University recognize that the Port will transfer or lease the waterfront property needed for the Campus Area to the Development Entity for fair market value.

7. Public Records Act and Open Meetings Act: The records of the Development Entity shall be public records subject to the Public Records Act and the meetings of the board of directors shall be conducted in compliance with the Open Meetings Act.

8. Initial Operation: It is anticipated that the Board of Directors will provide to the Western Washington University Board of Trustees and to the Port of Bellingham Commissioners, a broad timeline for development of the Campus Area. In addition, the Board of Directors shall submit periodic reports (but in any event at least annually) to the University's Board of Trustees and the Port Commissioners.

8.1. The Board of Directors will prepare a *pro forma* budget from inception through December 31, 2009 with a request for Port and University operational funding through December 31, 2009. It is anticipated that the Port and the University will each contribute in kind support towards the operation of Development Entity. It is also anticipated that there will be requests for operating funds (not necessarily identical amounts) from the Development Entity to the Port and the University in subsequent years. Such requests will be submitted no later than September 1st of each year to allow inclusion of the request in the respective budgets of the Port and the University. It is anticipated that the Development Entity will work cooperatively with other Port and University

efforts (such as infrastructure planning conducted by the Port and architectural planning conducted by the University) in the planning and development of the Campus Area.

9. Term: The term of this Agreement shall be run from mutual execution of this Agreement through December 31, 2009. It shall automatically renew for additional two year terms unless either party provides written notice six months in advance of termination.

10. Disposition of Funds: At the conclusion of this Agreement any funds held by the Development Entity shall be distributed in accordance with law and as determined by the Board of Directors.

11. Survivability: All covenants, promises and performance, which are not fully performed as of the date of termination, shall survive termination as binding obligations.

12. Notices: All notices, demands, requests, consents and approvals which may, or are required to be given by either party to the other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

The Port: Port of Bellingham Executive Director
1801 Roeder Ave.
Bellingham, WA 98225

The University: Western Washington University President
516 High Street
Bellingham, WA 98225-9000

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

13. Amendment: No modification, termination or amendment of this Agreement may be made except by written agreement signed by the Port Commission and the University Board of Trustees.

14. Waiver: No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Either party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

15. Captions: The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

16. Severability: In case any one or more of the provisions contained in this Agreement shall for

any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

17. Neutral Authorship: Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction, which would interpret the provisions of this Agreement in favor of or against the party preparing the same, shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

18. Governing Law: This Agreement, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, venue shall lie exclusively in Whatcom County, Washington.

19. Recordation: Prior to its entry into force, filing or notice of this Agreement shall be made in accordance with the requirements of RCW 39.34.040.

20. Entire Agreement: The entire agreement between the parties hereto is contained in this Agreement, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

EXECUTED this 21st day of August, 2008 for:

WESTERN WASHINGTON UNIVERSITY:

By Karen W. Morse
KAREN W. MORSE
President, Western Washington University

As Authorized by the Board of Trustees in Open Session on August 8, 2008.

Approved as to form only:

Wendy Bohlke
Wendy Bohlke
Senior Counsel
Assistant Attorney General

EXECUTED this 21st day of August, 2008, for:

PORT OF BELLINGHAM

By Douglas G. Smith
DOUGLAS G. SMITH
Chair, Port of Bellingham Commissioners