

**WHATCOM COUNTY
ADMINISTRATIVE SERVICES**
Whatcom County Courthouse
311 Grand Ave, Suite 108
Bellingham, WA 98225-4083



FACILITIES MANAGEMENT
3720 Williamson Way
Bellingham, WA 98226-9156
Phone: (360) 778-5360
Fax: (360) 778-5361
Facilities@co.whatcom.wa.us

ROB NEY
Project & Operations Manager

MEMORANDUM

TO: Satpal Sidhu, County Executive
County Council

FROM: Rob Ney, Project & Operations Manager
Chris Quinn, Chief Civil Deputy for the Prosecuting Attorney's Office
Malora Christensen, Manager, Health and Community Services

RE: Division Street Lease for Swinomish Health Services dba Didgwalic
Wellness Center

DATE: December 3, 2024

Attached for your review and signature is the lease agreement between Whatcom County and Swinomish Health Services doing business as Didgwalic Wellness Center for the County's Prosecuting Attorney's Office Division of Child Support Services, located at 2028 Division Street, Bellingham, Washington 98226.

▪ **Background and Purpose**

This lease is for the purposes of securing facility space for the provision of clinical, behavioral health, and medication services for people with Opioid Use Disorder in Whatcom County.

This lease agreement will provide necessary office space for the Didgwalic Wellness Center to both provide mobile medication services and clinical and behavioral health services as well as office space for operation of a satellite facility in Whatcom County.

The lease is expected to run for three years from date of lease execution.

▪ **Funding Amount and Source**

The lease is \$10 per month to be paid by the 5th of the month. The lease is subsidized by Whatcom County as in-kind for the more than \$1M investment Didgwalic is making in staffing, mobile units, tenant improvements, and start-up costs. Didgwalic is responsible for paying for janitorial services, waste and medical waste removal, and all utilities. The cost of Facilities maintenance will be covered by opioid settlement funds for the duration of the contract, following Council approval for spending authority.

- **Differences from Previous Contract**

This is a one-time contract.

Please contact Rob Ney at extension 5360 or Chris Quinn at extension 5729 , if you have any questions or concerns regarding the terms of this agreement.

Enclosures

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202411037

Originating Department:	Administrative Services
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Facilities Management 505020
Contract or Grant Administrator:	Rob Ney
Contractor's / Agency Name:	Swinomish Health

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No

Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes No If No, include WCC: _____

Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes No If yes, grantor agency contract number(s): _____ CFDA#: _____

Is this contract grant funded? Yes No If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process? Contract _____

Yes No If yes, RFP and Bid number(s): _____ Cost Center: _____

Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

Professional services agreement for certified/licensed professional. Goods and services provided due to an emergency

Contract work is for less than \$100,000. Contract for Commercial off the shelf items (COTS).

Contract work is for less than 120 days. Work related subcontract less than \$25,000.

Interlocal Agreement (between Governments). Public Works - Local Agency/Federally Funded FHWA.

<p>Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>360.00</u> (\$10.00/mo)</p> <p>This Amendment Amount: \$ _____</p> <p>Total Amended Amount: \$ <u>360.00</u> (\$10.00/mo)</p>	<p>Council approval required for; all property leases, contracts or bid awards exceeding \$40,000, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:</p> <ol style="list-style-type: none"> Exercising an option contained in a contract previously approved by the council. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. Bid or award is for supplies. Equipment is included in Exhibit "B" of the Budget Ordinance. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
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Summary of Scope:

The contract lease is between Whatcom County and Swinomish Health Services dba Didgwálic Wellness Center for the lease of 2028 Division Street, Bellingham WA; for the purposes of provision health services.

Term of Contract:	Expiration Date: 12/31/28
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Contract Routing:	1. Prepared by: <u>Dee Ebergson</u>	Date: <u>11/22/24</u>
	2. Attorney signoff: <u>CQuinn</u>	Date: <u>11/21/24</u>
	3. AS Finance reviewed: _____	Date: _____
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____ <u>1/16/2025</u>	Date: _____
	6. Executive contract review: <u>AB2024-844</u> <u>Jlogan</u>	Date: <u>1/16/2025</u>
	7. Council approved, if necessary: <u>AB2024-844</u>	Date: <u>1/14/2025</u>
	8. Executive signed: _____ <u>1/16/2025</u>	Date: _____
	9. Original to Council: _____	Date: _____

COMMERCIAL LEASE AGREEMENT

THIS LEASE made and entered into as of December ____, 2024 by and between the WHATCOM COUNTY ADS FACILITIES, a division of Whatcom County, (“County”) as lessor, and SWINOMISH HEALTH SERVICES dba DIDG^WÁLIČ WELLNESS CENTER, an enterprise of the Swinomish Indian Tribal Community, a federally recognized Indian Tribe reorganized pursuant to §16 of the Indian Reorganization Act of 1934 (“Swinomish”), as lessee.

1. LEASE

The County hereby leases to Swinomish, and Swinomish hereby leases from Whatcom, a portion of the real property described in Section 2 (the “Premises”) on the terms and conditions set forth in this Lease.

2. DESCRIPTION OF PREMISES

- (a) The Premises is located within the real property located at 2028 Division Street, Bellingham, Whatcom County, Washington 98226 and is more particularly shown in the diagram of the Premises attached as Exhibit A and incorporated herein by this reference. The Premises includes the 2,813 square feet portion of the building located within 2028 Division Street and to include portions of the surrounding parking lot.
- (b) This Lease also expressly provides for access to the Premises by and across the real property north of the Premises, owned by Whatcom and commonly known as 2026 Division Street, Bellingham, Washington 98226.

3. TERM OF LEASE

- (a) This lease shall commence on January 1, 2025, and in no case prior to the Parties executing this Lease, and shall be for three (3) years from that date.

4. USE OF PREMISES

- (a) Swinomish shall only use the Premises for the provision health services, including counseling, distribution of lawfully prescribed medication, administration, the parking and operation of mobile medication vehicles, and parking for employees and patients. No other activities shall occur on the Premises without the prior written permission of the County.
- (b) Mobile medication units (the “MMUs”), owned by Swinomish and which may be used on the Premises, can be parked in the driveway strip to the west of the Premises from approximately 7:00 a.m. to 5:00 p.m. Parked MMUs must be parked in a way so as to allow public access through the driveway strip and unimpeded emergency vehicle access. If

needed, Swinomish shall be responsible for costs of any driveway strip improvements necessary to ensure unobstructed hard surface Fire Lane access in this area, and which access shall be a minimum twenty (20) feet wide. Swinomish shall have the right to review estimated costs for these improvements before work commences and shall notify the County if it approves or disapproves of the work and costs within five (5) business days of receipt of the estimate.

- (c) The Premises is a portion of 2028 Division Street that Swinomish will share with other tenants and/or divisions of Whatcom. Except as provided herein under Section 4(d), Swinomish shall not have access to areas of the 2028 Division Street outside of the Premises.
- (d) The area known as the break room at 2028 Division Street, highlighted in blue on Exhibit A, shall be shared between Swinomish and the occupants of the southern part of the building. This break room may be used by Swinomish staff for temporary time periods throughout the day and shall not be used as an office, conference area, or long-term storage space. General upkeep and cleaning of this break room shall be equally shared between Swinomish and the occupants of the southern part of the building. Swinomish shall be responsible for the costs of improvements to the premises or common area necessary to provide access to this shared space. Such improvements shall be completed by the County. Swinomish shall have the right to review estimated costs for these improvements before work commences and shall notify the County if it approves or disapproves of the work and costs within five (5) business days of receipt of the estimate.

5. RENT

- (a) **Base Rent.** Swinomish shall pay Whatcom, as Base Rent, ten and 00/100 dollars (\$10.00) and other good and valuable consideration per month (“Rent”).
- (b) Swinomish must pay rent due on the fifth day of the month. Swinomish may pay the Rent up to one year in advance with no prepayment penalty. The Rent due for the last month of the term will not be prorated to reflect the portion of the month that Swinomish is in actual occupation of the Premises.
- (c) The Rent involved in this Lease shall be subject to adjustment at intervals of five years. On each anniversary of five years, if the option to renew the Lease is exercised, the Rent will increase by three percent (3%), which the parties agree is an approximate average of the percentage change in the All Items Consumer Price Index of the United States Department of Labor Statistics for All Urban Consumers in the Seattle area (“CPI-U”) based on the contemporary base year for the past 20 years.
- (d) **Late Charges and Interest.** Swinomish agrees to pay, and authorizes Whatcom to collect, a late charge of six cents (\$0.06) for each dollar of each rent payment received more than ten days after the due date (after the 15th of the month). Any amounts due under the terms

of this Lease that remain unpaid for more than thirty days shall bear compound annual interest at twelve percent (12%) per annum.

6. UTILITIES

- (a) Electricity and potable water utilities will be billed by Whatcom County directly to Swinomish on regular intervals, based on sub meter readings and actual usage. Proportional share of common area utility usage will also be billed to the Swinomish. All private utilities related to phone service, internet services, or communications shall be the sole responsibility of Swinomish. Garbage will be billed to the Swinomish on regular intervals based on a pro rata share of the building.

7. JANITORIAL SERVICES

- (a) Swinomish shall be responsible for providing janitorial services for the Premises. Services shall comply with the standards established by Whatcom County Facilities Management and consistent with all LEED requirements for the building. A proportional share of common area janitorial services will also be billed to the Swinomish.

8. TERMINATION

- (a) Either party shall, at its option, have the right to terminate this Lease on the annual anniversary of this Lease on at least one-hundred fifty (150) days written notice to the other party.
- (b) Swinomish shall have the option to terminate this Lease at any time, with at least one-hundred twenty (120) days' written notice, on payment of one (1) year's Rent, at the then-current base rent rate. The one (1) year's Rent, as provided in this Section 7(b), shall begin on the effective date of termination.
- (c) If Swinomish remains in possession of the Premises at the expiration of this Lease without a written agreement through its own fault, such tenancy shall be deemed a holdover tenancy and shall be on a month-to-month basis under the same terms and conditions of this Lease at a month-to-month rental rate in effect at the expiration of the Lease, plus 50% increase of rent for each additional twelve-month period after the expiration of the Lease. All other terms of this Lease shall remain in effect. Swinomish acknowledges and agrees that this Section 7(c) does not grant any right to Swinomish to holdover, and that Swinomish may also be liable to the County for any and all damage and expenses which the County may have to incur as a result of Swinomish's holdover pursuant to this section.
- (d) The County may elect to terminate this Lease based on Swinomish's default or based on Swinomish's failure to comply with any of the material terms of this Lease. Should the County elect to terminate this Lease, it shall provide Swinomish with at least thirty (30) days to remove all equipment, personal property, structures, leasehold improvements, and

trade fixtures which may have been placed on the Premises by Swinomish during the term of this Lease.

- (e) If the County elects to terminate this Lease, the County shall retain the right to terminate all subleases, licenses, concessions, or other consensual arrangements for possession of the Premises existing between Swinomish and any third parties. Swinomish shall, on the date of the County's notice of termination, have no further right or interest in consideration receivable from such third parties, except as otherwise provided in this Lease.
- (f) Termination of this Lease under any circumstances shall immediately entitle the County to re-enter and take possession of the Premises.
- (g) Except as otherwise provided herein, Swinomish may, upon twenty (20) days' written notice, terminate this Lease without any penalty if the Premises and/or Buildings are destroyed or so damaged that the Premises is rendered untenable, unless County, within such twenty (20) day period, notifies Swinomish that it will in fact restore the Premises or actually completes such restoration work. The Premises shall not be deemed untenable if twenty-five percent (25%) or less of the Premises are damaged. In such a termination event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, except as provided herein, and Swinomish shall be entitled to the reimbursement of any pre-paid Rent.

9. **INSURANCE**

- (a) Swinomish shall procure and maintain at its own expense and keep in force at all times during the term of this Lease the following insurance:
 - (1) Public Liability and Property Damage. Broad form comprehensive public liability and property damage insurance naming Whatcom County ADS Facilities and Whatcom County as additional named insureds, including comprehensive general liability and automobile, written by an insurance company authorized to do business in the State of Washington with Swinomish's normal limits of liability, but not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate. The insurance shall include a severability of interest clause. In all cases, regardless of any deductible, the insurance shall contain a defense of suits provision. Swinomish's insurance will be primary and noncontributory with any liability insurance carried by County.
 - (2) Excess liability. Swinomish shall provide umbrella or excess liability insurance over and above the foregoing underlying insurance policies up to a minimum of Two Million Dollars (\$2,000,000) of coverage.
 - (3) Property Damage. Swinomish shall be solely responsible for property damage or any losses to any property in its care, custody, or control. The County shall not be responsible for any property damage or losses to Swinomish's property or to property in

the care, custody, or control of Swinomish.

(b) Swinomish shall comply with the following provisions concerning its insurance policies:

(1) Notice of Cancellation. Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after County is given thirty (30) days' prior written notice by registered or certified mail.

(2) Copies of Policies. Swinomish shall submit a duplicate original copy of insurance policies and/or a Certificate of Insurance naming Whatcom County ADS Facilities and Whatcom County as an additional insured with a copy of the endorsement.

(3) Renewal of Policies. At least thirty (30) days prior to the expiration of each policy, or once securing the renewal or next year insurance plan, Swinomish shall furnish the County with new policies or endorsements showing new coverage. If Swinomish does not secure the required insurance, the County may, at its option and at the expense of Swinomish, obtain the insurance for Swinomish at Swinomish's expense or terminate this Lease.

(c) Accidents. All personal property of Swinomish and Swinomish's employees, patients, and invitees placed on the Premises shall be at Swinomish's risk. County or its agents shall not be liable for any damage, either to person or property, sustained by Swinomish or others, caused by any defects now or hereafter occurring in the Premises, or due to improvements located within the Premises, or any part or appurtenance of the Premises.

(d) Accident Reports. Swinomish shall give the County written notice within fifteen (15) days after any accident or occurrence involving death of or substantial injury to any person or persons, or damage estimated in excess of Fifty Thousand Dollars (\$50,000.00) to real or personal property, occurring upon the Premises involving Swinomish's officers, agents, or employees. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Swinomish.

10. ROAD AND LANDSCAPE MAINTENANCE

The County agrees to maintain the road access and parking lots to the Premises including, without limitation, pothole repairs, strip painting, and maintenance of any landscaping or vegetation on the Premises and adjacent to any access roads.

11. MAINTENANCE, REPAIRS, AND IMPROVEMENTS

(a) Swinomish shall, at its own expense, keep and maintain the Premises, including maintenance of the interior buildings, improvements, and appurtenant facilities located in

or on the Premises, in good order and repair and in a safe, clean, and sanitary condition in compliance with the federal Occupational Safety and Health Act (“OSHA”) and all applicable federal, state, and/or local laws and regulations. All maintenance, repairs, and improvements must (1) follow best practices and (2) comply with any applicable state or local ordinances, including (without limitation) zoning, permitting, building, environmental, and Land use laws. Swinomish is responsible for paying all applicable permit fees for maintenance conducted pursuant to this Section 10. Any medical or biohazard waste created as a result of Swinomish’s use of the Premises shall be disposed of by Swinomish in conformance with all applicable laws and regulations. Any maintenance or repairs which are the responsibility of Swinomish shall be preapproved by the County. The County may elect, but shall not be obligated, to provide for any necessary maintenance and repair pursuant to this Section 11 and subject to reimbursement by Swinomish for the related costs.

(b) Tenant Improvements.

Swinomish shall have the right, at its sole cost and expense, to make improvements, alterations, or additions to the Premises (collectively, "Improvements"), provided that Swinomish shall comply with all applicable laws, ordinances, rules, and regulations governing such work, including but not limited to the provisions of Washington State’s Prevailing Wage Law (RCW 39.12), and any other applicable federal, state, and local requirements.

Public Works and Prevailing Wage.

In the event that the Improvements constitute a "public works project" under Washington State’s Prevailing Wage Law or any other applicable law, Swinomish agrees to pay prevailing wages as determined by the Washington State Department of Labor & Industries (L&I) for all labor and services required for the Improvements. For the purposes of this Section, a "public works project" shall include any construction, repair, or improvement work funded by public money or performed on a public building, including but not limited to the leased premises.

“Improvements” shall mean all improvements shown in the plans submitted in Exhibit B and to the extent modified by any change orders, as provided herein, which include all signage, partitions and fencing, freestanding workstations, built-ins, related cabinets, reception desks, all telecommunication equipment and related wiring, all carpets and floor coverings, but Swinomish Improvements shall not include any personal property of Swinomish. Swinomish is permitted to construct and install Tenant Improvements on and to the Premises during the first sixty (60) days this Lease. County shall permit reasonable access to the Premises sufficient to allow Swinomish to complete the Tenant Improvements in a timely manner.

(1) Drawings and Plans. Working drawings and/or plans and specifications compatible with the design, construction, and equipment of the Premises and containing all information as may be required for the construction of the improvements shall be

submitted to County by Swinomish within thirty (30) days of the effective date herein. At a minimum, the draws and/or plans must provide for any partition locations, plumbing locations, air conditioning systems, duct work, ceiling plans, office equipment locations, and special security systems. County shall approve the drawings and/or plans within three (3) business days after receipt of the same or designate by notice given within such time period to Swinomish the specific changes reasonably required to be made to the drawings and/or plans in order to correct for any material reason, which is limited to the following: (i) adverse effect on the Building Structure; (ii) possible damage to the Building Systems; (iii) non-compliance with applicable codes; (iv) effect on the exterior appearance of the Premises; or (v) unreasonable interference with the normal and customary business operations of other tenants on the Premises (collectively a "Design Problem"). Swinomish shall make the minimum changes necessary in order to correct any such material reason for a change and return the drawings and/or plans to County, which County shall approve or disapprove within three (3) business days. This procedure shall be repeated until all of the drawings and/or plans are finally approved by County and written approval is delivered to and received by Swinomish (the "Final Plans"), which shall be incorporated herein as Exhibit B. Swinomish agrees and understands that the review of all plans pursuant to this Agreement by County is solely to protect the interests of County in the Premises and the building thereon. The County shall not be the guarantor of, nor responsible for, the correctness or accuracy of any such plans or compliance of such plans with applicable laws.

- (2) Delivery of Improvement Documentation. Swinomish shall deliver all plans, drawings, schedules, contractor lists, and any other information reasonably related to the Tenant Improvements and the construction thereof as requested by the County.
- (3) Contractor Selection. Swinomish shall select a contractor familiar with all applicable laws and building requirements, subject to the approval of the County, which approval will not be unreasonably withheld and shall be granted or refused within two (2) business days after Swinomish's request for such approval. Swinomish shall pay for the entire cost of the Tenant Improvements and the selected contractor's work in pursuit thereof.
- (4) Change Orders. In the event Swinomish requests any changes to the Final Plans, the County shall not unreasonably withhold its consent to any such changes and shall grant its consent to such changes within one (1) business day after the County's receipt of the same, provided the changes do not result in a Design Problem. If such changes increase the cost to Swinomish of constructing the Tenant Improvements, Swinomish shall pay the contractor such increased costs.
- (5) No Fee to County. County shall receive no fee for supervision, review of materials, profit, overhead, or general conditions in connection with the Tenant Improvements.

- (6) Clean-Up Expenses. County shall clean the Premises prior to delivering the Premises to Swinomish for the commencement of the Lease, to move into the Premises, and construction of the Tenant Improvements. This cleaning shall leave the Premises clean in a manner consistent with the commencement of businesses from comparable premises, such that Swinomish may commence its business operations from the Premises immediately after County completes such clean-up. The costs of any cleaning to be provided by County pursuant to this Section 10(b)(6) shall be borne by County .
 - (7) Bonding. Notwithstanding anything to the contrary set forth in this Lease, Swinomish shall not be required to obtain or provide any completion or performance bond in connection with any construction, alteration, or improvement performed by or on behalf of Swinomish.
 - (8) Code Violation Delays. In the event that, because the Premises and/or the building do not comply with current applicable laws which pertain to new construction, including, but not limited to life-fire safety codes, disabled access codes, including, without limitation, the ADA, and/or earthquake safety codes, Swinomish incurs increased design or construction costs that would not have incurred had the Premises and/or building already been in compliance with the then, applicable laws which are applicable to new construction, then such costs shall be reimbursed by County to Swinomish within ten (10) days after receipt by County from Swinomish of an invoice documenting and evidencing such increased costs.
 - (9) Improvements After Lease Termination. Upon termination of this Lease and Swinomish's occupation of the Premises, the Tenant Improvements shall become property of County or any successor thereof, with the exception of any signage, speakers, or cameras that Swinomish is able to remove without impairing the Premises nor creating a Design Problem.
- (c) Swinomish shall prevent waste and property damage of the Premises.
- (d) County agrees that at all times it will maintain the structural and interior wall portions of the Premises, including the foundation, floor/ceiling slabs, roof, curtain wall, exterior glass and mullions, columns, beams, shafts (including any elevator shafts), stairs, parking areas, stairwells, escalators, elevator cabs, pavement, sidewalks, curbs, entrances, washrooms, mechanical, electrical, and telephone closets, and all common areas and public areas (collectively, the "Building Structure") and the mechanical, electrical, life safety, plumbing, sprinkler systems, and HVAC systems (including primary and any secondary loops) (collectively, the "Building Systems") in first class condition and repair and shall operate the Premises as a first class office building. Notwithstanding anything in this Lease to the contrary, Swinomish shall not be required to make any repair to, modification of, or addition to the Building Structure and/or Building Systems except and to the extent required because of Swinomish's use of all or a portion of the Premises for other than normal and customary medical office operations and/or to the extent required because of

Swinomish's installation of improvements or alterations which do not constitute normal, typical, and customary medical office improvements.

(1) Notwithstanding any provision set forth in this Lease to the contrary, if Swinomish provides written notice (or oral notice in the event of an emergency such as damage or destruction to or of any portion of the Building Structure and/or Building Systems and/or anything that could cause material disruption to Swinomish's business) to County of an event or circumstance which requires the action of County with respect to repair and/or maintenance, and County fails to provide such action within a reasonable period of time, given the circumstances, after receipt of such notice, but in any event not later than ten (10) days after receipt of such notice, then Swinomish may proceed to take the required action upon delivery of an additional three (3) business days' notice to County specifying that Swinomish is taking such required action; provided, however, that neither of the notices shall be required in the event of an emergency which threatens life or where there is imminent danger to property or a possibility that a failure to take immediate action could cause a material disruption in Swinomish's normal customary business activities). If such action was required under the terms of the Lease to be taken by County and was not taken within such ten (10) day period, then Swinomish shall be entitled to prompt reimbursement by County of Swinomish's reasonable costs and expenses in taking such action. County agrees that Swinomish will have access to the building, Building Systems, and Building Structure to the extent necessary to perform the work contemplated by this provision. In the event Swinomish takes such action, and such work will affect the Building Structure and/or the Building Systems, Swinomish shall use only those contractors used or approved by County in the building for work on such Building Structure or Building Systems unless such contractors are unwilling or unable to perform, or timely and competitively perform, such work, in which event Swinomish may utilize the services of any other qualified contractor which normally and regularly performs similar work in comparable buildings.

12. INDEMNITY

(a) General Indemnity. Swinomish agrees to at all times relieve, indemnify, protect, and save County harmless as well as its elected officials, officers, agents, and employees from any claims and demands, actions, proceedings, losses, liens, costs, and judgments of any kind and nature whatsoever, including reasonable expenses incurred in defending against legal actions, for death or injury to persons, or damage to property, including property owned by or under the County's care and custody, and for civil fines and penalties that are caused indirectly or proximately by:

(1) Any dangerous, hazardous, unsafe, or defective condition of, in or on the Premises, of any nature whatsoever, which exists or existed by reason of any act, omission, neglect, or any use or occupation of the Premises by Swinomish, its officers, agents, employees, sub-lessees, licensees, or invitees;

- (2) Any operation conducted on or any use or occupation of the Premises by Swinomish, its officers, agents, employees, sub-lessees, licensees, or invitees;
 - (3) Any act, omission or negligence of Swinomish, its officers, agents, employees, sub-lessees, licensees or invitees in the performance of this Lease; and,
 - (4) Any failure of Swinomish, its officers, agents, or employees to comply with any of the terms or conditions of this Lease or any applicable federal, state, or local law, ordinance, rule, or regulation.
- (b) Survival of Indemnity. Swinomish's obligation to indemnify shall not include indemnification for claims and demands, actions, proceedings, losses, liens, costs and judgments to the extent such claims and demands, actions, proceedings, losses, liens, costs, and judgments were caused by any such act, omission or negligence on the part of Whatcom County, its officers, agents, or employees. The foregoing indemnity shall survive the expiration or early termination of this Lease.
- (c) Hazardous Substances Indemnity.
- (1) Swinomish shall indemnify, defend, protect and hold County harmless as well as any and all of its elected officials, officers, agents, and employees from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses including, without limitation, diminution of the value of the Premises, damages for loss or restriction on use of rentable or useable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, reasonable attorneys' fees, consultant fees and expert fees which arise during or after the term of this Lease as a result of contamination of the Premises or any adjacent premises by Hazardous Substances (as defined in Section 12(a) of this Lease) brought upon, kept, stored, used, generated, discharged, released or disposed of on the Premises by Swinomish or Swinomish's employees, agents or invitees or their successors, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Substance from the Premises during Swinomish's occupancy of the Premises prior to or pursuant to this Lease. This indemnification of County by Swinomish includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean up, remedial, removal or restoration work required by any governmental authority because of Hazardous Substances present in the soil or groundwater on or under the Premises resulting from or arising in connection with Swinomish's operations. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.
 - (2) County shall indemnify, defend, protect and hold Swinomish and any and all of Swinomish's officers, directors, successors, agents and employees harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise during or after the term of this Lease as a result of contamination of the Premises, or any

adjacent premises, by Hazardous Substances which are brought upon, kept, stored, used, generated, discharged, released, or disposed of by County or its employees, agents, or their successors, or the escape, seepage, leakage, spillage, discharge, emission, or release of Hazardous Substances by County onto the Premises or the escape, seepage, leakage, spillage, discharge, emission, or release of any Hazardous Substance from any adjacent premises that are under the control of County during Swinomish's occupancy of the Premises under this Lease. This indemnification of Swinomish by County includes costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any governmental authority because of Hazardous Substances present in the soil or groundwater on or under the Premises resulting from or arising in connection with pre-existing Hazardous Substances or County's activities. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

13. HAZARDOUS SUBSTANCES

- (a) "Hazardous Substance(s)" as used in this Lease, refers mold, asbestos, and those materials and substances in or about the Premises, the building, or the subject land in violation of applicable law, including, without limitation, hazardous substances in the ground water or soil, not placed in the Premises, the building, or the subject land by County. Any medical waste or biohazard material created or collected by Swinomish as part of its business shall constitute "Hazardous Substance" as provided herein.
- (b) Swinomish shall not cause or permit the disposal, release, storage, or the storage for disposal of Hazardous Substances, except for amounts less than 10 kg of medical or biohazard waste and stored less than 90 days onsite in preparation for proper disposal in conformance with all applicable laws.
- (c) Without limiting the foregoing, if the presence of any Hazardous Substances on the Premises caused or permitted by Swinomish results in any contamination of the Premises or adjacent property, Swinomish shall promptly take all actions at its sole expense as are necessary to return the Premises or adjacent property to the condition existing prior to the introduction of any such Hazardous Substance to the Premises or adjacent property; provided, that County's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld, so long as such actions would not potentially have any material adverse long-term effect on the Premises or adjacent property.
- (d) The provisions of this Section 12 shall survive the expiration or early termination of this Lease and Swinomish's surrender of the Premises to County.

14. TAXES

Swinomish shall pay any taxes attributable to Swinomish's use of or business conducted on the Premises, including, without limitation, any applicable retail sales taxes, state excise taxes, and/or business and occupation taxes. County shall pay any property taxes assessed

on the Premises.

15. UNLAWFUL ACTIVITY

Swinomish agrees that it will not use or cause to be used any part of the Premises for any unlawful conduct or purpose, creation of a nuisance, illegal activity, or negligent use or waste of the Premises. Swinomish agrees to comply with all applicable Federal, state, and local laws, rules, regulations, and orders.

16. ALTERATIONS AND LIENS

- (a) Swinomish shall not make or permit any other person to make any alterations to the premises or to make any improvement thereon or appurtenant thereto without the written consent of County or as provided in Exhibit B, attached hereto. All alterations to the Premises must be made in full compliance with all applicable zoning, permitting, and building codes, as well as any other local ordinances, including but not limited to land use and environmental laws.
- (b) Swinomish shall keep the premises clear from all liens, claims, and demands resulting from work performed on the Premises, material furnished to the Premises, or operations conducted thereon at the request of Swinomish. Should any such lien, claim, or demand be contested by Swinomish, it shall bear the burden of defending against such lien, claim, or demand and Swinomish shall indemnify and hold County harmless from any liability for such liens, including, without limitation, liens arising from any alterations made to the Premises. The existence of litigation regarding any such lien, claim, or demand will not be considered to be a violation of this paragraph as long as Swinomish actively contests the lien, claim, or demand.
- (c) Swinomish shall remove all equipment, personal property, structures, leasehold improvements, and trade fixtures which may have been placed thereon by Swinomish during the term of this Lease, by the termination date of this Lease so long as such removal is done in a non-damaging manner and restores the property to its condition at the start of this lease.

17. EVENTS OF DEFAULT AND REMEDIES

- (a) The occurrence of any of the following events shall constitute a material breach and default under this Lease by Swinomish:
 - (1) If Swinomish shall have failed to pay an installment of Rent or any other amount payable hereunder when due, where such failure shall continue for a period of ten (10) days after written notice from County to Swinomish, notifying Swinomish of its failure to pay

such amounts.

(2) If Swinomish fails to comply with the requirements to maintain insurance in place (as described in Section 8) or, if any policy of insurance upon the Property or any part thereof from time to time carried by County shall be cancelled or shall be about to be cancelled by the insurer by reason of the use or occupation of the Premises by Swinomish or any of Swinomish's employees, or anyone permitted by Swinomish or such other parties to be upon the Premises or in, on, or about the Premises, and Swinomish after receipt of notice in writing from County shall have failed to take such immediate steps as shall enable County to reinstate or avoid cancellation (as the case may be) of such policy of insurance.

(3) If the Premises are, without the prior written consent of the County, used (i) by any persons other than Swinomish or its permitted assigns or subtenants, (ii) for any purpose other than that for which they were leased or occupied, or (iii) by any persons whose occupancy is prohibited by this Lease.

(4) If the premises are vacated or abandoned, or remain unoccupied without the prior written consent of County, for sixty (60) or more consecutive days while capable of being occupied.

(5) Swinomish commences any bankruptcy, reorganization, or insolvency proceeding, or other proceeding under any federal, state, or other law for the relief of debtors.

(6) If Swinomish fails to obtain the dismissal, within ninety (90) days after commencement thereof, of any bankruptcy, reorganization, or insolvency proceeding, or other proceeding under any law for the relief of debtors, instituted against it by one or more third parties or fails actively to oppose any such proceeding, or, in any such proceeding alleges its willingness to have an order for relief entered or its desire to seek liquidation, reorganization, or adjustment of any its debts.

(7) If there shall be a default of any condition, covenant, agreement, or other obligation on the part of Swinomish (other than monetary defaults described in this Section 16(a)) to be kept, observed, or performed hereunder, including, but not limited to all applicable zoning, permitting, and building codes for any work conducted by Swinomish or its employees, agents, or contractors (including subcontractors), as well as any other applicable ordinances, including but not limited to land use and environmental laws, and such default shall continue for a period of more than ten (10) days after written notice by County to Swinomish specifying the default and requiring that it discontinue; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within a ten (10) day period, Swinomish shall not be deemed to be in default if Swinomish shall within the time period set forth above commence litigation in opposition to such restriction and thereafter diligently prosecute the same to completion.

(b) In the event of any default by Swinomish, the County will have the following rights and

remedies, all of which are cumulative and not alternative and not to the exclusion of any other or additional rights and remedies in law or equity available to County by statute or otherwise.

- (1) To remedy or attempt to remedy any default of Swinomish, and in so doing to make any payments due by Swinomish to third parties (and such payments shall be deemed included in the term "Rent") and to enter upon the Premises to do any work or other things therein, and in such events all reasonable expenses of County in remedying or attempting to remedy such defaults shall be payable by Swinomish to County on demand.
 - (2) To terminate the Lease forthwith by written notice thereof to Swinomish or by leaving upon the Premises or by affixing to an entrance door to the Premises notice terminating the Lease. The Lease shall terminate on the date specified in the notice. Upon termination of the Lease, Swinomish will remain liable to County for damages in an amount equal to those amounts provided in Section 16(c), below.
 - (3) Any other remedies available at law or in equity or as elsewhere provided in this Lease.
- (c) If County elects to terminate this Lease pursuant to Section 16(b)(2), then Swinomish shall pay Whatcom, and County may recover from Swinomish:
- (1) Any unpaid Rent that had been earned at the time of such termination; plus
 - (2) The worth at the time of award of the amount of future rent, calculated as the amount by which the unpaid Rent that would have been earned after termination until the time of award exceeds the amount of such rental loss Swinomish proves reasonably could have been avoided; plus
 - (3) Any other amount necessary to compensate County for all the detriment proximately caused by Swinomish's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.
- (d) In the event of any default by Swinomish, County shall also have the right, with or without terminating this Lease, to reenter the Premises and to remove all persons and property from the Premises and take whatever actions may be necessary or advisable to relet, protect or preserve the Premises. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of at the County's discretion at the expense and for the account of Swinomish. County shall not be responsible for any damages or losses suffered by Swinomish as a result of such reentry, removal, storage, or other disposition, and no such action shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Swinomish or unless the termination thereof be decreed by a court of competent jurisdiction.

- (e) In the event of vacation or abandonment of the Premises by Swinomish or in the event that County re-enters pursuant to the terms of this Lease or lawfully takes possession of the Premises, then County may recover all rentals and make alterations and repairs to the Premises.
- (f) Upon the giving by County of a notice in writing terminating this Lease, Rent and any other payments for which Swinomish is liable under this Lease shall be computed, apportioned and paid in full forthwith. Upon termination of this Lease and the Term, Swinomish shall immediately deliver up possession of the Premises to County , and County may forthwith reenter and take possession of them.
- (g) On termination or cancellation of this Lease for any reason, County shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Swinomish and affecting the Premises or may, in County 's sole discretion, succeed to Swinomish' interest in such subleases, licenses, concessions or arrangements. Swinomish shall, as of the date of notice by County of such election, have no further right to or interest in the rent or other consideration.
- (h) County shall be in default in the performance of any obligation required to be performed by County under this Lease if County fails to perform such obligation within thirty (30) days after the receipt of notice from Swinomish specifying in detail County 's failure to perform; provided, however, that if the nature of County 's obligation is such that more than thirty (30) calendar days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Upon any such default by County , Swinomish may exercise any of its rights provided in law or at equity and shall have the right, but not the obligation, to cure any such default by County and to deduct the costs incurred by Swinomish to cure such default, including legal fees and expenses, from the amounts next due and owing under the Lease.

18. GOVERNING LAW

The interpretation and enforcement of this Lease Agreement and any matters arising under this Lease Agreement shall be governed by the laws of the Washington state.

19. DISPUTE RESOLUTION

- (a) Any controversy, claim, or dispute concerning the making, formation, validity, or obligations under or breach of this Lease and issues related to the existence, interpretation, and enforceability of the provisions of this Lease, with the specific exceptions of unlawful detainer claims and actions for a writ of restitution, shall be subject to mandatory arbitration by a single arbitrator.

(1) Arbitration under this Section 18(a) shall be governed by Swinomish Tribal Code Title

3, Chapter 7.

- (2) A competent arbitrator shall be chosen by agreement of the Parties. If the Parties are unable to agree to an arbitrator within thirty (30) calendar days of party demanding arbitration, either party may request a random selection of an arbitrator from and by Judicial Dispute Resolution, LLC in Seattle, Washington.
 - (3) The Parties may jointly agree to stay mandatory arbitration proceedings pending voluntary mediation of the controversy, claim, or dispute before a mediator jointly chosen by the Parties.
- (b) The Parties agree that pursuant to Section 18(a) and in accordance with Swinomish Tribal Code Title 3, Chapter 7, the Swinomish Tribal Court shall have the authority to compel or enforce arbitration and to review, modify, or confirm an arbitration award. In the event that any such judicial proceedings are initiated, the prevailing party shall be entitled to its attorneys' fees and costs incurred in compelling arbitration or confirming an arbitration award.
 - (c) County expressly agrees to personal jurisdiction in the Swinomish Tribal Court for the resolution of all controversies, claims, and disputes described in Section 18(a) and understands and agrees that this Lease constitutes a consensual relationship with Swinomish sufficient to give rise to subject matter jurisdiction of the Swinomish Tribal Court over such controversies, claims, and disputes.

20. ASSIGNMENT - SUBLEASE

- (a) Swinomish shall not transfer, assign, sublet, mortgage or otherwise hypothecate this Lease, or Swinomish's interest in and to the Premises, nor enter into any license or concession agreements with respect thereto, without first procuring the written consent of County . Any such attempted or purported transfer, assignment, subletting, mortgage, or hypothecation, or license or concession agreement (collectively "Transfer") without County's prior written consent shall be void and of no force and affect, and shall not confer any interest or estate in the purported transfer (the "Transferee") and shall, at County's option, constitute an incurable default under this Lease. The consent of County required hereunder shall not be unreasonably withheld; however, a condition precedent to any consent to a Transfer shall be Swinomish's agreement to pay to County as rent costs and expenses incurred by County up to two-thousand and five-hundred dollars (\$2,500) for review and consultation by County's legal counsel, securing credit reports, administrative overhead and the like. Notwithstanding the foregoing, County and Swinomish agree that in determining whether to reasonably consent to a proposed transfer, County may consider, among other things, any or all of the follow factors:
 - (1) The reputation of the Transferee (including any principals, partners, or shareholders of such assignee, subtenant to the Transferee), including, without limitation, the

Transferee's reputation for dishonesty, criminal conduct, and unethical business practices;

(2) The financial capacity of the proposed Transferee to perform its obligation under this Lease;

(3) The credit history of the proposed Transferee;

(4) Whether the proposed Transferee's use of the Premises will involve the use of any Hazardous Substances, or will in any way increase any potential liability to County arising out of or relating to Hazardous Substances;

(5) The intended use of the Premises by the proposed Transferee.

21. VACATING PREMISES

(a) Swinomish agrees that upon the termination or cancellation of this lease it will, with due diligence, remove all encumbrances, liens, and other claims or imperfections on title, remove all solid waste and Hazardous Substances, and vacate and surrender up possession of the Premises promptly, and without any further notice or demand of any kind by County.

(b) On or before termination or cancellation of this Lease for any reason, Swinomish shall remove, at its sole cost and expense, all removable alterations placed or maintained on the Premises in accordance with Section 15(c) herein. Swinomish shall leave the Premises, including all Tenant Improvements, free from Hazardous Substances; provided, that Swinomish shall not be responsible for any pre-existing Hazardous Substances disclosed in the Environmental Assessments from County. Swinomish shall leave the surface of the ground outside any improvements in a level, graded, and compacted condition with no excavations or holes resulting from the removal of any structures. Any works, structures, and improvements present on the Premises shall become the property of County upon the expiration or sooner termination of this Lease without compensation to Swinomish regardless of any improvements made to these works, structures, and improvements. Swinomish shall remove all debris within the Premises. County may elect to perform the restoration described in this Section 21 and receive reimbursement for any associated costs from Swinomish.

(c) If for any reason Swinomish fails to complete the restoration of the Premises, including the clean-up of Hazardous Substances, before the scheduled expiration of this Lease or within one (1) year following any early termination of the Lease, Swinomish shall be obligated to continue payment of the Rent until Swinomish has completed the clean-up and restoration of the Premises in accordance with the requirements of this Lease.

(d) Swinomish will have thirty (30) days following the termination or cancellation of this Lease to remove all equipment, personal property, structures, and trade fixtures which may have been placed thereon by Swinomish during the term of this Lease, so long as such

removal is done in a non-damaging manner and restores the property to its pre-leased condition. If Swinomish requires more than 30 days after termination or cancellation of this Lease to remove such property, it will pay a monthly rental amount, equivalent to the last month's rental rate, for each additional month required to vacate the Premises. Swinomish will continue to be subject to all conditions of this Lease until it vacates the Premises.

22. INSPECTION BY THE COUNTY

- (a) Swinomish shall permit County or County's agents, representatives, or employees to enter the Premises at all reasonable times for the purpose of inspection to determine whether Swinomish is complying with the terms of this Lease so as to protect County's interest in the Premises. Said inspections will be conducted so as not to interfere with Swinomish's business operations.
- (b) County recognizes Swinomish's requirement to comply with all medical confidentiality rules and laws, including, without limitation HIPAA. Such compliance requires Swinomish to secure and store personal health information ("PHI") in discrete areas within the Premises that cannot be accessed by unauthorized persons, including County. County acknowledges it need not access the PHI or discrete area it is stored in to perform routine services required under the Lease. In the event of removal or eviction of Swinomish, County is permitted to remove any PHI abandoned on the Premises, maintain the confidentiality thereof to the best of County's ability and with its available resources, and return the same to Swinomish. In addition, County shall not be considered a "business associate" of Swinomish for purposes of HIPAA.
- (c) County maintains cameras on the exterior of the Premises, which record activities at all times of the day and night. The camera recordings are not actively monitored by County at any time, but are saved and overwritten with new recordings at least every fourteen (14) days. To maintain the security of the recordings and PHI of visitors to Swinomish's facilities, County represents that these recordings are stored in a secure area that can be accessed only by authorized County representatives in accordance with County's policies and procedures and are protected and encrypted in a manner that is equal or better than County's procedures to protect its own confidential information. County further represents that the recordings will be forever destroyed at least fourteen (14) days after receipt thereof through the camera system.

23. COMPUTATION OF TIME

Unless otherwise specified in this Lease, any period of time in this Lease shall mean Pacific Time and shall begin the day after the event starting the period and shall expire at 5:00 p.m. of the last calendar day of the specified period of time, unless the last day is a Saturday, Sunday, or a federal holiday.

24. NON-WAIVER

The Parties agree that any delay or failure by either Party to enforce its rights under this Lease shall not be deemed a waiver of such rights or any of the Parties' other respective rights under this Lease.

25. SEVERABILITY

If any provision herein is held invalid, illegal, or unenforceable for any reason, this Lease shall be construed as if such provision is not contained herein and such provision shall be read to not affect any other provision.

26. ENTIRE AGREEMENT

This Lease and any addenda and exhibits thereto state the entire understanding of County and Swinomish regarding the lease of the Premises. There are no verbal or other written agreements which modify or affect this Lease, and this Lease may only be amended in writing and memorialized with all of the formalities of this Lease, including, without limitation, signatures by an authorized representative of each Party.

27. HEIRS AND SUCCESSORS

This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this paragraph contained shall be construed as a consent by County to any assignment of this Lease or any interest therein by Swinomish.

28. NOTICES

All notices or demands required under this Lease shall be made in writing and sent to County and Swinomish, respectively, at the following addresses:

County

Whatcom County ADS Facilities
Attn: Rob Ney
Address: 3720 Williamson Way
Bellingham, Washington 98226
Email: rney@co.whatcom.wa.us

Swinomish

Swinomish Health Services, dba
didg^walič Wellness Center
Attn: Beverly Keyes
8212 S. March Point Rd.
Anacortes, WA 98221
beverly.keyes@didgwalic.com

or such other addresses as the parties shall specify in writing.

29. CAPACITIES AND IDENTITY OF PARTIES

Commercial Lease Agreement-2028 Division Street

- (a) Steve Edwards will execute this agreement on behalf of Swinomish Health Services, dba didg^wálič Wellness Center, as Chairman of the Swinomish Indian Senate. Swinomish will cause any appropriate resolution from the Swinomish Indian Senate to be approved authorizing the appropriate Swinomish officials to execute this Lease on behalf of Swinomish.
- (b) County executes this document in its governmental capacity and as the owner of the Premises. County will cause any appropriate resolution from Whatcom County to be approved authorizing the appropriate County officials to execute this Lease on behalf of the County.

IN WITNESS of the above agreement, the parties have signed their names below on the date first above written.

WHATCOM COUNTY ADS FACILITIES

SWINOMISH HEALTH SERVICES
DBA DIDG^wÁLIČ WELLNESS CENTER

DocuSigned by:
Satpal Sidhu 1/16/2025
1192C7C18B664E3...

Signed by:
Steve Edwards 1/16/2025
16CE8EA89738437...

By: Satpal Sidhu
Title: Whatcom County Executive

By: Steve Edwards
Title: Chairman, Swinomish Indian Senate

EXHIBIT A PREMISES DESCRIPTION

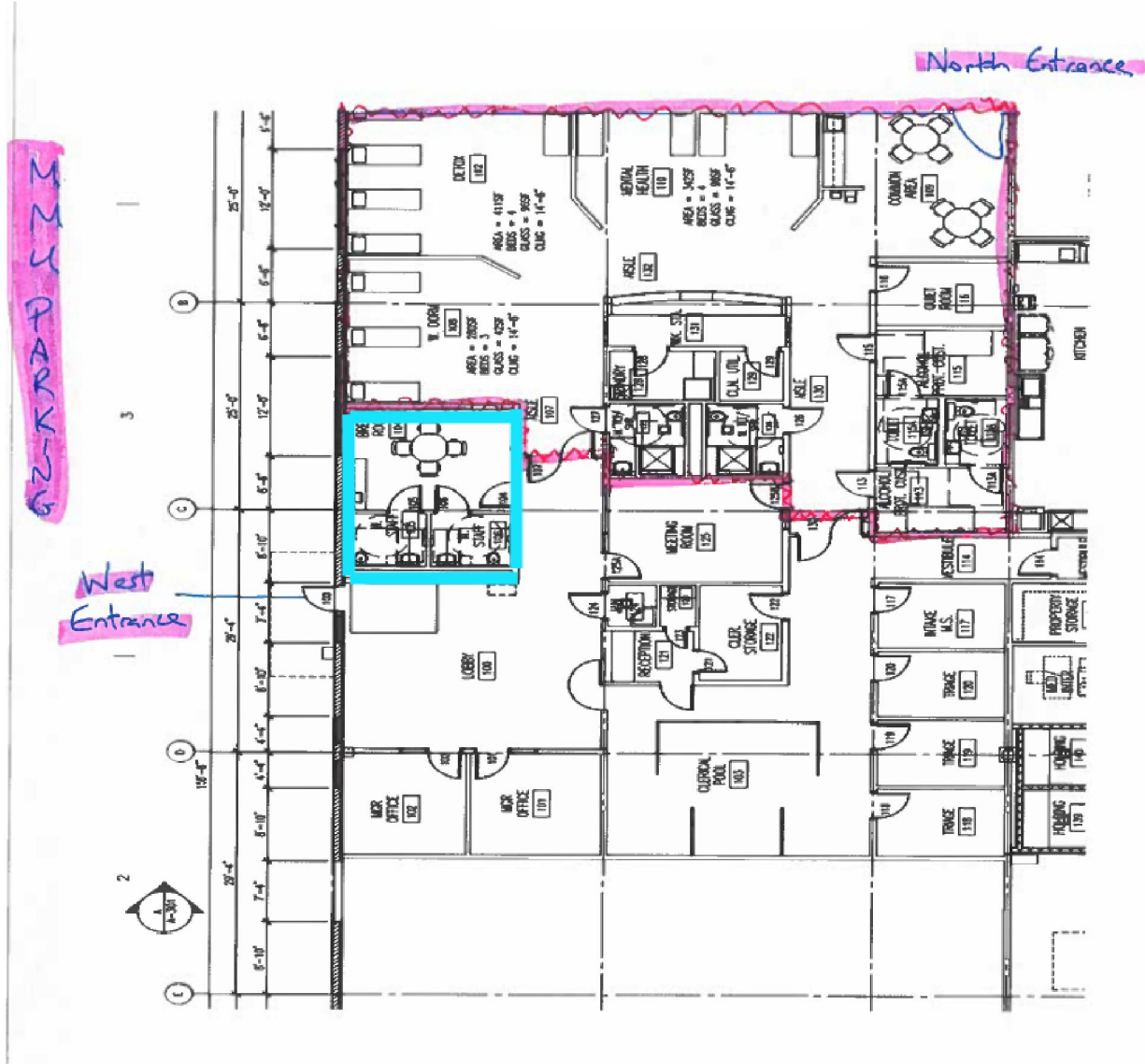


EXHIBIT B
TENANT IMPROVEMENT DRAWINGS/PLANS AND SPECIFICATIONS

The following items represent a list of tenant improvements agreed to between the Parties and to be carried out by Swinomish Health Services pursuant to the terms of the Lease Agreement.

1. Installation of modular carpet in the northwest office spaces.
2. Installation of signage for Swinomish Health Services dba didg^wálič Wellness Center on the building at the entrance to the Premises and along the access/entry road for visibility from Division Street.
3. Installation of a stand-alone surveillance system.
4. Installation of a stand-alone computer network (hard-wired) as well as a wireless network required for normal business operations.
5. Installation of two separate, temporary outdoor structures for client protection from the weather. Temporary structures will be sized as to not require any building permits.
6. Installation of a buffer along the entry sidewalk to the building that will provide visual separation from the east end of the building occupants/users. Buffer will either be a living landscape barrier or will involve the construction of a fence.

End of Scope of Work