

DRAFT ONLY

LEASE AGREEMENT

between

THE UNIVERSITY OF WYOMING, as Tenant

and

FREMONT COUNTY COMMUNITY COLLEGE DISTRICT, as Landlord

July 15, 2009

LEASE AGREEMENT

WHEREAS: The University of Wyoming and Fremont County Community College District, dba Central Wyoming College, desire to enter into a lease agreement (“Lease”) that shall provide dedicated space to the University of Wyoming and shall have provisions for shared space by both the University of Wyoming and Central Wyoming College;

WHEREAS: This space shall be contained in the building to be constructed and known as the Intertribal Education and Community Center (“Center”) of Central Wyoming College;

NOW THEREFORE: This Lease Agreement (the “Lease”) is entered into by and between The University of Wyoming (“Tenant”) and the Fremont County Community College District (“Landlord”).

ARTICLE 1 PREMISES & TERM

Section 1.1 Premises. Landlord, in consideration of the covenants, agreements, and conditions in this Lease, which Tenant agrees to pay, keep and perform, hereby leases to Tenant, and Tenant hereby leases from Landlord, space for the exclusive use of Tenant, which is described in Exhibit A (“Exclusive Space”) and priority use which is described in Exhibit B (“Priority Use”), and additional common space which shall be used jointly by both parties as described in Exhibit C (“Common Space”) and according to a Scheduling and Use Agreement as provided for in a separate operating agreement agreed to in writing by both parties.

Section 1.2 Term. This Lease is for a term of fifty (50) years (“Term”) within the herein described structure and improvements commencing on the Effective Date of this Lease

ARTICLE 2 PAYMENTS IN LIEU OF RENT

Section 2.1 The Parties to this Lease agree that no rent shall be due and owing from Tenant to Landlord at any time during the term of the Lease. All payments which shall be made in lieu of rent are contained in the following schedule of payments.

Schedule of Payments. In lieu of rent for the entire term of the Lease, Tenant shall provide a total amount in the sum of one million, one hundred thousand dollars (\$1,100,000). This amount shall be paid in installments according to the following construction phase completion schedule, subject to Section 2.2:

Phase I Completed (Receipt of Guaranteed Maximum Price)	\$110,000
Phase II Completed (50% Completion of Construction)	\$440,000
Phase III Completed (Substantial Completion)	\$440,000
Final Acceptance of the Project Including Equipment installation	\$110,000
Total Cost of Project for Tenant	\$1,100,000

Section 2.2 Verification of completion of construction phases. Upon completion of each construction phase as specified by the project architect, Landlord shall provide documentation to Tenant confirming that the construction phase has been completed. Tenant shall have the opportunity to verify completion of the project phase prior to making payment to Landlord not later than fifteen (15) days following submission of the documentation to Tenant, unless prior to the date payment is due, Tenant provides notice to the Landlord that it questions the completion of the Phase for which payment is required. Such notice shall set forth the reasons that Tenant questions the completion of the Phase. The parties agree to negotiate to determine a mutually agreeable resolution of any such questioning regarding

completion of a Phase within fifteen (15) days following the date the Tenant provides notice to the Landlord questioning the completion of the Phase.

Section 2.3 Means and Place of Payment. All payments shall be in United States dollars and shall be made to Landlord at the address of Landlord under Section ___11.6_____,

ARTICLE 3
PAYMENT OF TAXES

Section 3.1 Any and all Taxes which may be due for the entire term of the Lease are the sole responsibility of Landlord.

ARTICLE 4
CONSTRUCTION AND FURNISHINGS

Section 4.1 Construction of the Project. The Landlord shall be responsible for the construction of the project as an educational and community center facility which shall be known as the Intertribal Education and Community Center (“Center”), under any appropriate governmental regulations and guidelines as may be required for construction in Fremont County. The Center will be approximately 16,713 square feet of Gross Floor Area, with a project budget specified in Exhibit D. . The Tenant shall have the right to review and approve the design of the Exclusive Space, which approval shall not unreasonably be withheld and shall not impact the project schedule, and shall have the right to review and consult on the “Priority Space” and “Common Space.” The review, approval and consultation shall include the scope and design, plans, and specifications.

i. Site and Infrastructure Development. All site and infrastructure development shall be the sole responsibility of the Landlord.

ii. Conformance with Plans. Landlord agrees to develop the Center in accordance with this Lease and with the site plans and design concepts reviewed and approved by Tenant.

Section 4.2 Tenant’s furnishings. All Tenant furnishings for the Exclusive Space shall be made available to Landlord for its review, prior to its purchase.

ARTICLE 5
CONDITION, USE, MAINTENANCE, AND REPAIRS

Section 5.1 Condition of Premises; Warranties and Claims. Tenant will have the opportunity to observe and inspect, and offer its input with respect to, the construction of the Exclusive Space during construction. Upon the completion of the Center, Tenant’s final payment under Section 2.3, and the issuance of a certificate of occupancy by authorities having jurisdiction, Tenant agrees to accept the Exclusive Space in its then physical condition and state without any representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to its physical condition, usability, suitability or otherwise. Landlord shall not be required to furnish any services or facilities or to make any repairs to the Exclusive Space or Priority Space throughout the Term of this Lease except as provided in Section 5.6.

Section 5.2 Restrictions on Use. Tenant shall use the Exclusive Space primarily for office space. No use shall be made or permitted to be made of the Exclusive Space, nor acts done, that will increase the existing rate of insurance upon the Landlord, or cause cancellation of any insurance policy covering such building, or any part of it, nor shall Tenant sell, or permit to be kept, used or sold in or about the Center, any article that may be prohibited by the standard form of fire insurance policies. Tenant shall, at Tenant’s sole cost and expense, comply with any and all requirements, pertaining to the Center, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance covering the Center and appurtenances.

Section 5.3 Quiet Enjoyment. Landlord warrants to Tenant that Tenant shall have peaceful possession of the Exclusive, Priority, and Common Space, during the Term of this

Lease, free from any claim or claims by third parties, and Landlord will assume defense against any hostile claim by a third party for possession of the said space.

Section 5.4 Utilities and Routine Maintenance. Upon occupancy of the Exclusive Space by Tenant, Tenant and Landlord shall enter into a Shared Cost operating agreement stipulating shared costs including but not limited to utilities, phone and IT services, liability insurance, janitorial services, maintenance, and routine repairs based on a formula of usage which shall be agreed upon by both Parties to this Lease and shall take into account Tenant's Exclusive Space, Tenant's Priority Space, and Tenant's utilization of Common Space.

Section 5.5 Utilization of Common Space and Parking. Upon occupancy of the Exclusive Space by Tenant, Tenant and Landlord shall enter into a Scheduling and Use operating agreement that shall contain a procedure for scheduling the use of the Priority and Common Space and availability of parking that shall be agreed upon by both Parties to this Lease.

Section 5.6 Care and Repair;. Tenant shall take good care of the Exclusive Space and Priority Space. Landlord shall make all repairs to it, interior and exterior, above and below ground (including also utility lines on the land, unless the repairs are the obligation of a public utility company or are the result of Tenant's or its authorized agents', employees' or contractors' negligence or willful misconduct), structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Exclusive Space and the Center in good order, appearance, repair and condition, reasonable wear and tear excepted. Tenant shall also use reasonable efforts (a) to keep the public areas of the Exclusive Space and Common Space in a neat, clean and safe condition and free and clear from rubbish and in compliance with all regulations established by the Landlord.

i. Landscaping. Landlord shall maintain the landscaping (including without limitation trees and grass) and grounds of the Center in a well-manicured condition and appearance, and shall maintain sidewalks, irrigation between the sidewalk and the street, and lights and fixtures. Landlord shall be responsible for snow removal of all parking lots and outside areas.

Section 5.7 Compliance with Regulations. Tenant shall comply with all CWC facility use policies and procedures. Tenant shall be provided at least thirty (30) days notice and an opportunity to comment on any changes to CWC facility use policies and procedures prior to their effective date. Except as provided below, Landlord shall at its expense diligently comply with all present and future laws (including without limitation all environmental laws and the Americans with Disabilities Act), acts, rules, requirements, covenants, orders, directions, ordinances, and/or regulations, ordinary and extraordinary, foreseen or unforeseen, concerning the condition or use of the Center, or the sidewalks adjacent to it, of any federal, state, municipal or other public department, bureau, officer or authority or of the National Board of Fire Underwriters, or other body having similar functions, or of any liability, fire, or other insurance company having policies Landlord is obligated to maintain with respect to the Center (collectively referred to as the "Regulations"), whether or not they require the making of structural alterations or the use or application of portions of the Center or interfere with the use and enjoyment of the Premises.

Section 5.8 Unlawful or Dangerous Activity. Neither Landlord nor Tenant shall use or occupy the Premises or any part thereof for an unlawful, disreputable or ultra-hazardous business purpose, nor operate or conduct business in a manner constituting a nuisance of any kind. Each party shall immediately, on discovery of any unlawful, disreputable or ultra-hazardous use, or nuisance, report such activity to the other party, who shall take immediate action to halt such activity. In the event that such activity continues, the reporting party may terminate the Lease pursuant to Article 9.2.

Section 5.9 Landlord Liable; Indemnification. Landlord shall be responsible for (a) any damage or injury to any property, fixtures, merchandise or decorations or to any person or persons at any time in the Center from steam, gas or electricity or from water, rain, ice or snow, whether they may leak into, issue or flow from any part of the Improvements or from pipes or plumbing work, or from any other place, or (b) any accident or injury including death

to any of Tenant's employees, agents, tenants, subtenants, customers, invitees or to any person or persons in or about the Center (including without limitation on the sidewalks or parking areas), unless caused by the negligence or intentional misconduct of Tenant or its agents (but without waiving in any respect Landlord's governmental immunity, if any).

Section 5.10 Landlord's Right of Entry. Landlord shall also have the right to enter the Exclusive Space for the purpose of making any necessary repairs and performing any work that may be necessary by reason of Tenant's failure to make any such repairs or to perform any such work. Landlord's rights of entry shall be exercisable only at reasonable times, in a reasonable manner so as not to unreasonably interfere with the operation of Tenant's business, at reasonable intervals and on reasonable notice to Tenant unless emergency conditions exist which require immediate entry.

ARTICLE 6 INSURANCE

Section 6.1 Insurance Required. During the Term of this Lease, it is agreed that Landlord shall have the obligation of insuring the Center against loss from fire or other hazards and Tenant shall be responsible for insuring its personal property. Additionally Landlord agrees to insure against injury to the general public, and to hold Tenant harmless from any suit that may be brought as a result of a person or persons being injured on the premises of the Center, unless the injury was caused by an act of an employee of the Tenant. Tenant agrees that the cost of the liability insurance will be a shared cost as defined in the Shared Costs Operating Agreement. Landlord shall name Tenant as an additional insured on its policy of general liability insurance, and provide written proof of said insurance upon execution of this Lease. Landlord shall maintain, during the construction of the Center or any alterations costing more than \$100,000, builder's risk insurance.

ARTICLE 7 DAMAGE OR DESTRUCTION

Section 7.1 Repair and Restoration. If, at any time during the Term of this Lease, the Center is damaged or destroyed by fire or other casualty (including any casualty for which insurance coverage was not obtained or obtainable) of any kind or nature, Landlord, at its sole cost and expense, and whether or not the insurance proceeds, if any, are sufficient, shall commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss and for Unavoidable Delay) to repair, alter, restore and replace it as nearly as possible to its condition immediately prior to the damage or destruction, unless the Tenant agrees to cancel the Lease, or the Landlord decides not to rebuild the facility.

ARTICLE 8 IMPAIRMENT OF LANDLORD'S TITLE

Tenant shall not, and nothing in this Lease shall be construed to mean that Landlord has granted to Tenant any right, power or permission to, do any act or to make any agreement which may create or give rise to any right, title, interest, lien, charge or other encumbrance upon the estate of Landlord in the Center or this Lease.

ARTICLE 9 BREACH

Section 9.1 The following shall be deemed to constitute a breach of the terms of this Lease:

- i. The failure of Tenant to pay any amount of money due under this lease;
- ii. The failure of Tenant or Landlord to comply with any provision or condition of this Lease.

Section 9.2 The Party claiming a breach of this Lease must give written notice to the other Party and an opportunity of not less than thirty (30) days to correct the deficiency. If the deficiency is not resolved to the satisfaction of the Party claiming a breach, the remedy shall be filing a legal action in the Courts of Wyoming, Ninth Judicial District, Fremont County, Wyoming.

ARTICLE 10 TERMINATION

Section 10.1 Either Party may terminate this Lease without cause, by delivering written notice of intent to terminate to the other Party not later than 360 days prior to the expected date of termination. The Tenant may terminate, upon proper prior notice, with no penalty. If Landlord terminates, upon proper notice, the following penalties shall apply:

- i. Within the 1st 10 years from the issuance of the original Certificate of Occupancy – Landlord shall owe Tenant an amount equal to \$900,000.
- ii. Within the 11th to the 30th years from the issuance of the original Certificate of Occupancy – Landlord shall owe Tenant an amount of \$550,000.
- iii. Within the 31st to the 50th years from the issuance of the original Certificate of Occupancy – Landlord shall owe Tenant an amount of \$200,000.
- iv. Any amounts due and owing Tenant under this Section shall be payable in full at least 90 days prior to the final date of termination.

ARTICLE 11 MISCELLANEOUS

Section 11.1 Wyoming Law. This Lease shall be construed and enforced in accordance with the laws of the State of Wyoming.

Section 11.2 Runs With The Premises. This Lease shall constitute a right and covenant running with the Premises, and this Lease and all of its terms and provisions shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns and whenever in this Lease a reference is made to either of the Parties, it includes wherever applicable, the legal representatives, successors and assigns of that Party.

Section 11.3 Time is of the Essence. In all instances where Tenant or Landlord is required to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

Section 11.4 Venue. Invalidity of Particular Provisions. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 11.5 Amendment. This Lease and the two operating agreements, Scheduling and Use, and Shared Costs, constitutes the entire agreement of Landlord and Tenant with respect to the Centers, and these agreements cannot be amended or changed in any way except in a writing signed by both Landlord and Tenant. This Lease supersedes and replaces all prior agreements or understandings of the parties, whether written or oral.

Section 11.6 Notices. All notices required or permitted under this Lease shall be in writing and shall be given by registered or certified mail, postage prepaid, or by hand delivery, or by overnight courier, directed as follows:

If intended for Landlord, to:

Fremont County Community College District
d/b/a Central Wyoming College
Vice President for Administrative Services
2660 Peck Ave.
Riverton, WY 82501
PH: (307) 855-2105
Telecopier No.: (307) 855-2097

If intended for Tenant, to:

Vice President of Administration
University Of Wyoming
Department 3314
1000 East University Avenue
Laramie, Wyoming 82071-3314
Telecopier No.: (307) 766-4836

Any notice delivered by mail in accordance with this Section shall be deemed to have been delivered upon being deposited in any post office or postal box regularly maintained by the United States postal service, but, in the case of intended recipients who have a telecopier number listed above, only if concurrently with that deposit a copy of the notice is sent by telecopier to that intended recipient. If that copy is not sent by telecopier to any intended recipient who has a telecopier number listed above, the notice shall not be deemed to have been given until actually received by the intended recipient. Notices given in any other manner shall be effective only upon receipt. Either party, by notice given as above, may change the person and/or address to which future notices or copies of notices may be sent.

Section 11.7 Relationship of Parties. Nothing in this Lease shall be construed or deemed to make Landlord and Tenant partners, joint venturers or any other form of joint participants and Landlord and Tenant agree that the sole and exclusive nature of their relationship is as Landlord and Tenant for purposes of this Lease.

Section 11.8 Sovereign Immunity; Governmental Claims. Neither Landlord nor Tenant waives its sovereign immunity or its governmental immunity, except for purposes of disputes under this Lease, by entering into this Lease and fully retains all immunities and defenses provided by law with regard to any action based on this Lease, if any. Any actions or claims against the Landlord or Tenant under this Lease must be in accordance with and are controlled by the Wyoming Governmental Claims Act, W.S. §1-39-101 et seq.

Section 11.9 Choice of Law. The Parties hereto agree that (i) the laws of Wyoming shall govern this Lease, (ii) any questions arising hereunder shall be construed according to such laws, (iii) this Lease has been negotiated and executed in the State of Wyoming and is enforceable in a Wyoming court of competent jurisdiction, and (iv) venue for any legal action shall be in the District Court of Fremont County, Ninth Judicial District, Lander, Wyoming.

Section 11.10 Equal Employment Opportunity. All parties shall fully adhere to the applicable local, state and federal laws regarding equal employment opportunity. The Tenant's policy is one of equal opportunity for all persons in all facets of the Tenant's operations. Equal opportunity is offered to all officers, faculty and staff members, and applicants for employment on the basis of their demonstrated ability and competence and without regard to such matters as race, color, national origin, sex, religion, political belief, age, sexual orientation, veteran status, or disability.

Section 11.11 Exhibits, Section References. All exhibits to this Lease are a part of this Lease and are incorporated into it by reference. References to article and section unless otherwise stated, are to articles and sections in this Lease.

Section 11.12 Effective Date. The effective date of this Lease shall be the latest date on which both parties hereto have executed this Lease.

Section 11.13 Non-Waiver. Failure by either party to complain of any action, non-action or default of the other shall not constitute a waiver as to any breach of any covenant or condition contained herein nor a waiver of any rights hereunder. Waiver by either party of any right for any default of the other shall not constitute a waiver of any right for either a prior or subsequent default of the same obligations or for any prior or subsequent default of any other obligation.

Section 11.14 Attorney's Fees. In any action or proceeding to enforce any provision hereof in a court of law, the prevailing party shall be entitled to recover its reasonable costs and attorney's fees from the non-prevailing party.

LANDLORD:

THE FREMONT COUNTY COMMUNITY
COLLEGE DISTRICT

Dated:

Title:

Name: _____

Signature

TENANT:

THE UNIVERSITY OF WYOMING

Dated:

Title:

Name: _____

Signature

EXHIBIT A

EXCLUSIVE SPACE

The Exclusive Space shall be that space totaling 746 square feet which is dedicated solely to the exclusive use of Tenant and shall be exclusively controlled by Tenant during the Term of this Lease.

Room 119 UW Admin Asst	173 sq. ft.
Room 129 UW #3 Academic Coordinator	143 sq. ft.
Room 128 UW Office #4	143 sq. ft.
Room 127 UW Office #5	143 sq. ft.
Room 126 UW Academic Coordinator	144 sq ft.

EXHIBIT B

PRIORITY SPACE

Education/instruction and Tenant has first priority for scheduling.

Room 146 UW Small Classroom 477 sq. ft.

Room 147 UW Small Classroom 475 sq. ft.

EXHIBIT C

COMMON SPACE

The Common Space shall be that space in the Center which shall be available for use by both Tenant and Landlord and which shall be controlled by a Scheduling and Use Operating Agreement to be executed by the parties to the Lease upon completion of the construction of the Center.

EXHIBIT D

BUDGET

Central Wyoming College											
Intertribal Education & Community Center											
(in partnership with the University of Wyoming)											
	A	B									C
Project Budget: July 8, 2009	February 2008 Budget	Allocation by Revenue Source February 9, 2009									July 8, 2009 Project Budget
		HUD 2006*	HUD 2008*	UW*	State of WY*	State of WY	Donations	Tribal Donations	Petro Path	Total	
Total Project Revenues		\$990,000	\$411,600	\$1,100,000	\$1,100,000	\$1,100,000	\$249,660	\$50,000	\$32,310	\$5,033,570	
Construction Budget											
Building Construction	\$3,897,600	\$990,000	\$411,600	\$1,100,000	\$1,100,000	\$296,000				\$3,897,600	3,640,000
Site Improvements	\$400,000					\$367,690			\$32,310	\$400,000	350,000
Contingency	<u>\$350,000</u>					\$85,970				\$85,970	210,000
Construction GMP	<u>\$4,647,600</u>									\$4,383,570	4,200,000
Furniture/Equipment/Technology	\$250,000						\$200,000	\$50,000		\$250,000	250,000
	\$4,647,600										
Architectural/Engineering/Civil/Consultants	\$300,000					\$250,340	\$49,660			\$300,000	293,969
Reimbursables/Soils/Review/Permit/Misc.	<u>\$100,000</u>					\$100,000				\$100,000	100,000
Subtotal	<u>\$400,000</u>										
Total Projected Construction Budget	\$5,297,600									\$5,033,570	4,843,969
Owner Contingency											189,601
Additional Project Costs											
Furniture/Equipment/Technology (Community Enhancement Grant)	\$300,000										
7 Percent O&M Sinking Fund (Required by WCCC)	\$370,832										
Fund Raising	<u>\$348,045</u>										
Subtotal	\$1,018,877										
Total Project Budget	\$6,316,477									\$5,033,570	5,033,570

* Funding approved -- payment on a reimbursable basis