

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

202008056

Originating Department:	Parks
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Administration
Contract or Grant Administrator:	Michael McFarlane
Contractor's / Agency Name:	City of Bellingham
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> 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 <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: _____	
Is this agreement excluded from E-Verify? No <input checked="" type="radio"/> Yes <input type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:	
<input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency	
<input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000.	
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>N/A</u>	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: <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. 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.
This Amendment Amount: \$ _____	
Total Amended Amount: \$ _____	
Summary of Scope:	
Agreement to lease a portion of County owned property at Boulevard Park to the City of Bellingham for purposes to construct a new park restroom building.	
Term of Contract: 28 years	Expiration Date: August 15th, 2048

Contract Routing:	1. Prepared by: Michael McFarlane	Date: 8/11/20
	2. Attorney signoff: <u>BW</u>	Date: <u>8/12/2020</u>
	3. AS Finance reviewed: <u>Bennett</u>	Date: <u>8/20/2020</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: <u>8/27/2020</u>
	7. Council approved (if necessary): _____	Date: <u>9-15-2020</u>
	8. Executive signed: _____	Date: <u>9/16/2020</u>
	9. Original to Council: _____	Date: <u>10-7-2020</u>



LEASE

THIS LAND LEASE (“Lease”) is entered into this 16th day of September, 2020 between **WHATCOM COUNTY** (“County”), a municipal corporation of the State of Washington, and the **CITY OF BELLINGHAM**, a municipal corporation of the State of Washington (“City”).

RECITALS

WHEREAS, the City owns certain property along the waterfront of the City (“City Property”), generally located below and west of South State Street, which it has developed into a public park (“Boulevard Park”);

WHEREAS, the City Property is depicted in Exhibit A;

WHEREAS, the County owns certain property along the same waterfront (“County Property”), which it acquired for park purposes;

WHEREAS, the County Property is depicted in Exhibit A;

WHEREAS, in August 1978, the County leased the County Property to the City on a long-term basis, so the City could incorporate the County Property into Boulevard Park;

WHEREAS, the City’s Boulevard Park now includes both the City and the County Properties;

WHEREAS, the restrooms installed by the City on City Property at the north end of Boulevard Park have failed and cannot be repaired;

WHEREAS, the City needs to construct additional public restrooms to accommodate visitors to Boulevard Park; and

WHEREAS, the City and County agree that the City can lease the western half of the Bayview Drive right of way abutting the County Property to the right of way centerline, as depicted in Exhibit A (“Land” or “Leased Area”), to construct and operate the additional public restrooms for Boulevard Park (“Restrooms”);

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. EXHIBITS

Exhibit A – Depiction of Boulevard Park

Exhibit B – Depiction of Public Restrooms

2. LEASE OF LAND

In consideration of the covenants and conditions set forth below, the County leases the Land to the City for the construction, operation, and maintenance of the Restrooms for the term and on the conditions contained herein.

3. CITY'S CONSTRUCTION

3.1 Construction of City's Improvements. City shall be responsible for all costs of constructing the Restrooms, which are depicted in Exhibit B. The Restrooms shall be constructed by a licensed contractor (the "Contractor") in accordance with plans and specifications (the "Plans") approved by the City of Bellingham's Planning & Community Development Department. City shall cause the construction of Restrooms to be commenced, and thereafter pursued in an expeditious and diligent manner to completion. The Restrooms and related utilities may be located in the Leased Area and/or a portion of the County Property previously leased by the City.

3.2 Permits. City agrees to obtain and comply with all necessary Federal, State, and local permits for the construction, operation, and maintenance of the Restrooms.

3.3 Future Improvements. City, at its expense, shall have the right to construct future improvements to the Restrooms as City considers appropriate; provided that all design changes to the exterior appearance of City's Improvements are subject to County's approval, which shall not be unreasonably withheld. County's approval shall be given within five (5) days of receipt of written notice from the City of any change. If County fails to respond within the five-day period, the change shall be deemed approved.

3.4 Ownership of Improvements. The parties agree that during the term of this Lease and any extension thereof, the City owns the Restrooms and all fixtures and improvements thereto, and County has no ownership therein.

4. TERM/RENEWALS

4.1 Term. The term of this Lease shall be for twenty-eight years commencing on August 15th, 2020 regardless of date of execution.

4.2 Renewal Period. There is no renewal of this lease

5. RENT

City's consideration for the Lease shall be the provision of a waterfront park with Restrooms to the public, including the County's residents. City shall pay no rent to County.

6. USE/MANAGEMENT

6.1 Management of the Premises. City shall be responsible for the ongoing management of the Restrooms and Land. City recognizes that County is relying on the City to manage and maintain the Restrooms and Land in a first-class manner.

6.2 City's Responsibilities. City shall be responsible for all maintenance and repairs to the Restrooms and the Land and shall maintain same in reasonably good operating condition. City agrees not to allow conditions of waste and refuse to exist on or about the Restrooms or the Land.

7. UTILITIES.

7.1 Construction, Hookup, and Metering. City shall be responsible for the construction and hookup charges necessary to bring all utilities to the Restrooms.

7.2 Usage Charges. City shall pay the charges for all utilities used in construction and operation of the Restrooms.

8. INDEMNIFICATION

The City agrees to indemnify, defend, and hold harmless the County its officers, agents, volunteers, and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, court costs or other alternative dispute resolution costs resulting from the City's use of the Land or Restrooms during the term of the Lease, unless such claim was caused by the negligence of County.

9. TERMINATION OF LEASE

9.1 Expiration of Lease Term. Upon expiration of this Lease or any extension thereof, the Land shall immediately revert to the County, together with title to any improvements on the Land, including the Restrooms.

9.2 Default. If, in the judgment of the County, the City shall at any time fail to comply with the terms of this Lease by either failing to actively use the Land as part of the City's park system, or failing to operate and maintain the Land and Restrooms in a reasonably good state of repair and appearance, the County shall provide written notice of such failure to the City. If within 60 days of such written notice, the City fails to cure the defect in its performance, or the parties do not reach agreement on the ways and means of such a cure, this Lease shall be terminated, and the Land shall immediately revert to the County, together with title to any improvements on the Land, including the Restrooms.

9.3 Improvement of Land as Right-of-way. If at any time the City determines that the Land, which is an unimproved right of way, needs to be improved for right of way purposes, the City shall provide the County 60-days written notice of the City's decision. After the 60-day

notice, the City may remove the improvements on the Land, including the Restrooms, and improve the Land as a right of way.

10. ASSIGNMENT OF LEASE

City shall not assign or sublet this Lease without the prior written permission of County.

11. MISCELLANEOUS PROVISIONS

11.1 Laws and Regulations. City agrees to comply with all lawful rules, codes, laws and regulations in connection with its use of the Land and the use and construction of the Restrooms.

11.2 Attorney’s Fees. If either the City or County commences legal proceedings against the other party to interpret or enforce any term and condition of this License, the non-prevailing party shall pay to the other party all expenses of litigation, including reasonable attorney’s fees as may be fixed by the court having jurisdiction over the matter.

11.3 Governing Law and Venue. This Lease shall be governed in accordance with the laws of the State of Washington. Both parties consent to the exclusive jurisdiction of Whatcom County Superior Court in connection with any dispute arising under this Lease.

11.4 Notices. Any notice that either party desires or is required to give to the other party shall be in writing addressed to the other party at the following addresses:

<p>To City:</p> <p>Parks & Recreation Department City of Bellingham 210 Lottie Street Bellingham, WA 98225 Attn: Parks Director (360) 778-8300</p> <p>With a copy to:</p> <p>Office of the City Attorney City of Bellingham 210 Lottie Street Bellingham, WA 98225 Attn: City Attorney (360) 778-8270</p>	<p>To County:</p> <p>Whatcom County Parks & Recreation 3373 Mount Baker Highway Bellingham WA 98226</p> <p>Attn: Director Parks & Recreation (360)778-5850</p>
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Or such address as may have been specified by notifying the other party of the change of address.

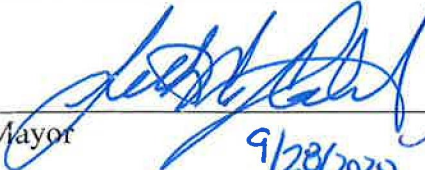
Notice shall be deemed served on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United States Postal Service by certified mail, return receipt requested.

11.5 Modification. This Lease may not be modified, amended, or changed in any respect, except by a written instrument executed by both parties.

11.6 Recitals.

The parties agree the Recitals are true and accurate statements and are included as terms of this Lease.

CITY OF BELLINGHAM:




Mayor
9/28/2020 *ms*

Attest:



Finance Director

Approved as to Form:




Office of the City Attorney

WHATCOM COUNTY:



Satpal Singh Sidhu, County Executive

Approved to Form:



Office of the Prosecuting Attorney



Michael McFarlane, Director
Whatcom County Parks & Recreation Dept.

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 30th day of September, 2020, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared SETH FLEETWOOD, known to me to be the Mayor of the **CITY OF BELLINGHAM**, a municipal corporation of the State of Washington, that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said first class municipal corporation of the State of Washington, for the purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



Elisabeth A. Oakes

Signature

Elisabeth A. Oakes

Print Name

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham

My commission expires 6/19/2023

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 16th day of September, 2020, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared SATPAL SINGH SIDHU, known to me to be the COUNTY EXECUTIVE of **WHATCOM COUNTY**, a municipal corporation of the State of Washington, that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation of the State of Washington, for the purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

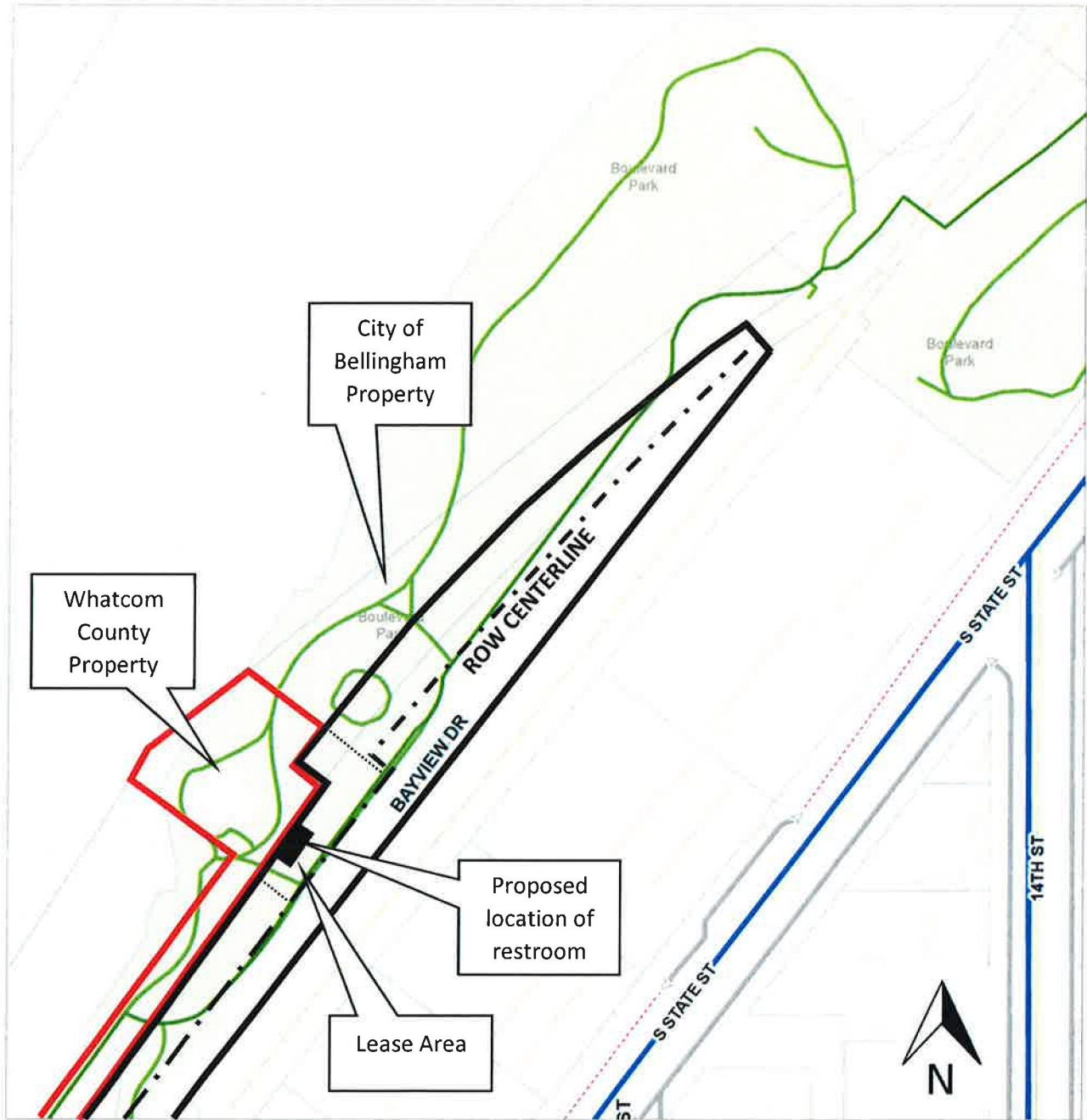


[Handwritten Signature]
Signature

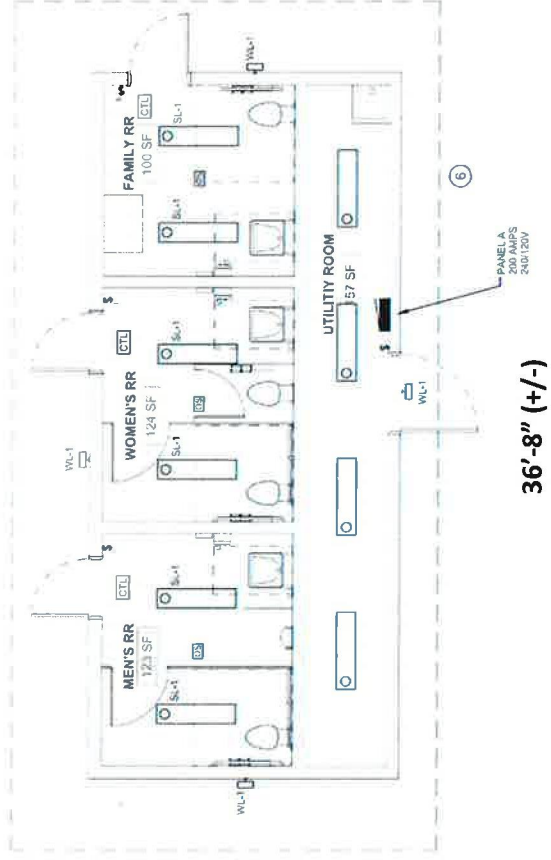
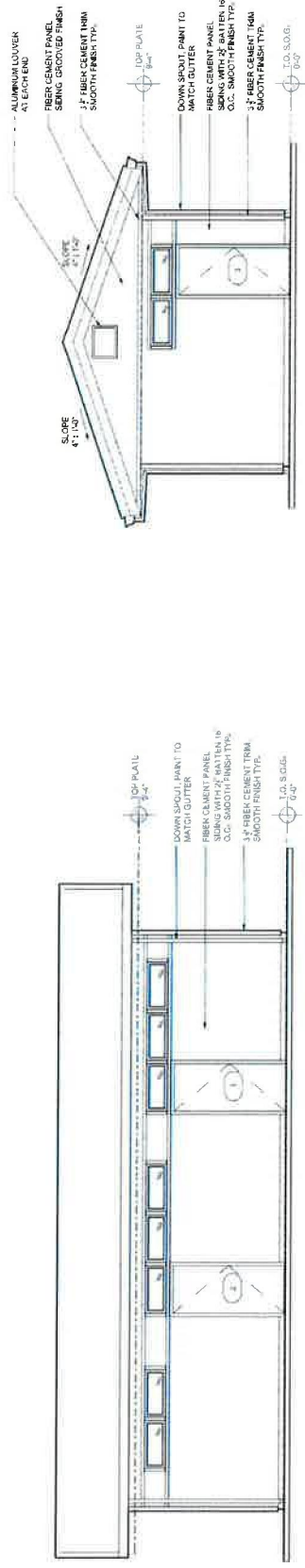
Sandy Kortheis
Print Name

NOTARY PUBLIC in and for the State of
Washington, residing at Bellingham
My commission expires 7/7/2023

**EXHIBIT A
DEPICTION OF BOULEVARD PARK**




**EXHIBIT B
DEPICTION OF RESTROOM BUILDING**





MEMORANDUM

TO: Satpal Sidhu, County Executive

FROM: Michael McFarlane, Director 

DATE: August 26, 2020

RE: **Lease for Property at Boulevard Park – City of Bellingham**

Enclosed are two copies of a lease agreement between Whatcom County and the City of Bellingham for property located at Boulevard Park. The City currently leases the adjoining property from the County and desires to construct a new restroom building for park purposes. This agreement leases the County owned road and right-of-way to the City for the building site.

This agreement will expire at the same time the existing lease expires in 2048. It is expected that at that time, a new lease will be entered into that will combine both parcels into a single agreement.