

WHATCOM COUNTY
CONTRACT INFORMATION SHEET

Whatcom County Contract Number:
202310018

Originating Department:	85 Health and Community Services
Division/Program: (i.e. Dept. Division and Program)	8540 Environmental Health / 854080 Solid Waste Infrastructure
Contract or Grant Administrator:	Jennifer Hayden
Contractor's / Agency Name:	Sanitary Service Company

Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:	

Does contract require Council Approval?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	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?	If yes, grantor agency contract number(s):	CFDA#:
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	

Is this contract grant funded?	If yes, Whatcom County grant contract number(s):
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Is this contract the result of a RFP or Bid process?	Contract Cost Center:
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If yes, RFP and Bid number(s):	140201



Is this agreement excluded from E-Verify?	No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>
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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 checked="" 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 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):	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:
\$6,997 over 5 years, plus state leasehold tax	<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.

Summary of Scope: Lease for access easements and the use and occupancy of the closed Cedarville and Birch Bay landfill sites to provide citizens of Whatcom County with the opportunity to recycle and dispose of self-hauled waste.

Term of Contract:	5 Years, 2 Months	Expiration Date:	12/31/2028
Contract Routing:	1. Prepared by:	JT	Date: 07/03/2023
	2. Health Budget Approval	JS	Date: 07/21/2023
	3. Attorney signoff:	RB	Date: 07/21/2023
	4. AS Finance reviewed:	A. Martin	Date: 08/11/2023
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Executive Contract Review:		Date: 10/24/2023
	8. Council approved (if necessary):	AB2023-595	Date: 09/26/2023
	9. Executive signed:		Date: 10/24/2023
	10. Original to Council:		Date:



Memorandum

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: Sanitary Service Company - Cedarville and Birch Bay Transfer Station Lease Agreement
DATE: OCTOBER 17, 2023

Attached is a lease agreement between Whatcom County and Sanitary Service Company for your review and signature.

▪ **Background and Purpose**

Closed solid waste landfill facilities are located on County-owned property in the Birch Bay and Cedarville areas. The County has determined that it is in the public interest to continue to provide citizens of the County with the opportunity to recycle and dispose of self-hauled waste at the landfill sites, and therefore has leased the sites to a private company to provide permitted solid waste drop-box facilities.

▪ **Funding Amount and Source**

Sanitary Service will pay the County for access easements and the use and occupancy of the property, the sum of \$50 per month, plus the state leasehold tax (12.84%, per RCW 82,29A.030 and 82.02.030), for each site, for a five-year term. Council authorization is required per WCC 3.08.100.

▪ **Differences from Previous Contracts**

This is a new agreement; however, Sanitary Service Company has held the combined lease for the two facilities since 1998. This agreement revises Section F.1(a.) to modify the County's process for revising fees by removing the requirement for County Council authorization in order to align with the County's process for amending the Unified Fee Schedule. This agreement includes no other significant revisions from the agreement ending on 10/31/2023 (WC contract number 201811007).

Please contact Jennifer Hayden, Environmental Health Supervisor at 360-778-6036 (JHayden@co.whatcom.wa.us) or Kathleen Roy, Financial & Administrative Manager at 360-778-6007 (KRoy@co.whatcom.wa.us), if you have any questions.

Encl.

Whatcom County Contract No.

202310018

**LICENSE and LEASE AGREEMENT
FOR THE USE OF COUNTY-OWNED PROPERTY FOR
SOLID WASTE DROP BOX FACILITIES**

THIS AGREEMENT, executed on the 1st day of November, 2023 by and between WHATCOM COUNTY, a municipal corporation hereafter referred to as the 'COUNTY' and SANITARY SERVICE COMPANY INCORPORATED located at 1001 Roeder Avenue, Bellingham, Washington 98225, hereafter referred to as the 'COMPANY'.

I. RECITALS

WHEREAS, the solid waste landfill facilities located on County-owned property in the Cedarville Road area (the Cedarville landfill) and the Birch Bay area (the Birch Bay landfill) are now closed;

WHEREAS, it has been determined by the County that solid waste collection can be more properly handled by private enterprise; and further, that it is in the public interest to continue to provide citizens of the County the opportunity to recycle and to dispose of self-hauled waste at the Cedarville Landfill and Birch Bay Landfill sites; and

WHEREAS, Whatcom County has in existence facilities at the Cedarville Landfill and Birch Bay Landfill sites suitable for continued operation of solid waste drop box and recycling facilities; and

WHEREAS, the Company is a franchised hauler which is already operating within the Cedarville and Birch Bay areas;

NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED:

II. DEFINITIONS

- A. "Acceptable Waste" means any and all waste that is "solid waste" as defined in RCW 70.95.030 except "Unacceptable Waste" as defined hereafter.
- B. "Drop Box/Recycling Sites" means the drop box facilities for solid waste and recyclable materials to be operated by the Company on County property located at the Cedarville Landfill and Birch Bay Landfill sites.
- C. "Effective Date" means the date following the execution of this Agreement by the Parties when this Agreement is Approved by the Whatcom County Executive.
- D. "Facilities" shall mean the Drop Box/Recycling Sites and the improvements and equipment located thereon and operated by the Company under the terms of this Agreement.
- E. "Force Majeure" means acts of God, landslides, lightning, forest fires, storms, floods, freezing, earthquakes, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars (including nuclear), blockades, public riots, breakage, explosions, or accident to machinery, pipelines or materials, pandemics, other cause, whether of the kind enumerated or otherwise, which is not reasonably within the control of the party claiming the suspension.
- F. "Hazardous Waste" shall mean:
 - 1. Any dangerous or extremely hazardous waste as defined in Chapter 70.105 RCW or designated by rule adopted thereunder; or
 - 2. Waste that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous" or "dangerous", pursuant to any state or federal law, including but not limited to, the

Resource Conservation and Recovery Act, 42 U.S.C. § et seq., and the Model Toxics Control Act, Chapter 70, 105CRW, as amended, and the regulations promulgated thereunder; or

3. Contains polychlorinated biphenyls or any other substance, the storage, treatment, transportation, or disposal of which is subject to the regulation under the Toxic Substances Control Act, 15 U.S.C § 2601-2654, as amended and the regulations promulgated thereunder; or
 4. Contains a radioactive material, the storage, transportation, or disposal of which is subject to state or federal regulation.
- G. "Property" is the real property owned by the County and indicated in Exhibits "A" and "B" attached hereto.
- H. "Solid Waste" shall be defined by Chapter 70.95 or regulations promulgated thereunder.
- I. "Suspicious Waste" is waste which the Company reasonably suspects may be or contains "Unacceptable Waste".
- J. "Unacceptable Waste" means any and all waste that is either:
1. Waste which is prohibited from receipt at the Disposal Sites by state, federal or local law, regulation, rule, code, ordinance, order, permit or permit condition; or
 2. Hazardous Waste as defined above; or
 3. Household Hazardous Waste, as defined in WAC 173-350.

"Unacceptable Waste" shall not include residential waste unless residential waste becomes unacceptable waste or as a result of a change in law, regulation, rule, code, ordinance, order, permit or permit condition which becomes effective after the Effective Date of this Agreement.

III. AGREEMENT

A. Drop Box/Recycling Sites.

1. The County hereby agrees to provide to the Company, access to and control of the County property (the "Property") described on Exhibits "A" and "B" attached hereto and made a part hereto, for the sole purpose of the Company operating and maintaining drop box facilities for the receipt of recyclable materials and acceptable solid waste as set forth herein (the "Facilities") for the convenience of the residents of Whatcom County.
2. The County agrees to provide the Company and its customers access to the Property by non-exclusive assignment of a private easement extending from Cedarville Road to the property boundary and a grant of access over County land through and to the Property, all as shown in Exhibit "A" attached hereto and made a part hereof.

B. Representations/Warranties.

1. The County represents and warrants that it has the right, title and interest in the Property and other properties necessary to grant the Company the right to the access, use and occupancy described under the terms of this Agreement.
2. The County agrees to provide the Company and its customers access to the Property by non-exclusive assignment of a private easement extending from Cedarville Road to the property boundary and a grant of access over County land through and to the Property, all as shown in Exhibit "A" attached hereto and made a part hereof.

C. Acceptance of Property.

1. The Company acknowledges that it is familiar with the property and the improvements thereon, that no representations have been made by the County as to said property and improvements except for those representations made in writing contained in this Agreement and the Company hereby accepts said premises and improvements for the purposes of this Agreement as they are now situated.

D. Rent and Term.

1. The Company shall pay the County for the access easements and the use and occupancy of the Property for the limited purpose stated in Section A. 1 above, the sum of fifty (\$50) for each site per month plus the state leasehold tax of 12.84%, for a total of \$56.42 per month for each site, payable in arrears as invoiced to the Company every three months during the period of this Agreement.
2. This Agreement shall be for a period of five (5) years beginning November 1, 2023, with an expiration of December 31, 2028. The agreement of the County shall be manifested by the signature of the County Executive. This Agreement may be terminated by either party, with or without cause, effective no sooner than 30 days after providing the other party notice of that intent in writing in accordance with the notice requirements of this Agreement.

E. Scope of Operation.

The Company shall maintain and operate solid waste and recycling drop box facilities (the "Facilities") upon the property. The Facilities shall be for the use of the general public and businesses and not for the use of commercial franchised solid waste and recycling collection companies. The Company agrees to maintain and operate the Facilities by providing drop boxes for the separation of recyclables, putrescible garbage and other materials that may be agreed upon between the Company and the County.

In performing such functions, the Company shall provide sufficient personnel, equipment and utilities for operation of the Facilities in accordance with this agreement. Notwithstanding the foregoing:

1. The Company shall make each Facility open and available to the public one day per week during the hours of 9:00 a.m. to 5:00 p.m. This schedule may be altered by mutual written agreement if the volume so dictates.
2. In the operation of the solid waste drop boxes, the Company shall not be required to receive, accept or dispose of any suspicious or hazardous waste which would violate local, state or federal environmental laws or regulations. The Company reserves the right to inspect any and all waste and other material delivered to the Facilities and may reject any such material which the Company believes, or Whatcom County Health and Community Services or State Department of Ecology advises the Company would upon disposal present a significant risk to human health or the environment or create or expose the County, facility users, or the Company to significant potential liability.
3. In the operation of the recycling centers, the Company shall accept, at a minimum, the current inventory of recyclables, including newspaper, mixed paper, cardboard, aluminum, glass (clear, brown and green), scrap metal and tin cans. The Company may accept other recyclables, upon mutual agreement of the parties. So long as it is legally permitted to do so, the Company also intends to accept vehicle batteries and used oil. It is understood that the County will continue to maintain the existing on-site oil waste tank for disposal of oil to be picked up and transported by others. The Company shall be entitled to salvage any materials remaining in solid waste received for disposal at the Facilities.
4. The Company may refuse the right of access to the Facilities to anyone who has violated rules and regulations prescribed by public law pertinent to the operation of the disposal sites or to the nature of the waste disposed or which they seek to dispose, or is delinquent on account of any money due the Company for acceptance of solid waste or recyclable materials.
5. The Company may store empty containers at each Facility.

The Company may, with the approval of the County, also assess to users of the Facilities a reasonable additional fee or charge as a penalty for failure to comply with the rules and regulations prescribed by Whatcom County Health and Community Services or Ecology for solid waste handling.

F. Disposal and Operation Fees.

1. The Company shall have authority to establish rates at the Facility for recycling and solid waste disposal, with review and approval by the County as described herein:

- a. Not less than sixty (60) days prior to the effective date of a rate adjustment, the Company shall provide a written notice of the proposed rate adjustment to the County, including a written explanation of the basis for such rate adjustment. The County shall consider the request and if acceptable, will approve the rate adjustment, whereupon the rate shall be listed in the Whatcom County Unified Fee Schedule, or such other similar public document that County chooses to utilize for publication of rates.
 - b. If the County for any reason refuses to approve the rate adjustment as requested by the Company, it shall inform the Company in writing of its refusal, whereupon the Company shall have the discretion, as its sole option, of terminating this Agreement upon thirty (30) days written notice to the County.
 - c. If the County does not inform the Company of a decision to deny the proposed rate adjustment, but otherwise fails to review and approve the proposed rate adjustment within sixty (60) days following the Company's written notice and explanation to the County of a proposed rate adjustment, the rate adjustment proposed by the Company shall become effective as proposed on the date proposed.
2. Notwithstanding the review and approval process set forth above, on an as-needed basis the Company may reject, or make reasonable additional charges for or fix new or additional rates for the disposal of, solid waste which would result in unusual operating or disposal cost, expense or liability, or require special environmental handling or disposal.

G. Independent Contractor.

In the performance of this Agreement, the Company shall act independently and not as an employee, agent or representative of the County. The County shall have no control or supervision of any kind over the employees of the Company.

H. Maintenance of Facilities/Commit No Waste.

1. Maintenance of the Facilities and the Property shall be the responsibility of the Company. The County shall provide snow removal and sanding maintenance following notification by the Company. Further, the County shall also provide full access maintenance during times when County construction is occurring and make any repairs unless the damage results from negligent acts of the Company. The Company shall be otherwise responsible for routine cleaning maintenance (i.e. removal of obstructions, dust control and spill clean clean-up) to insure a safe ingress and egress for the public. Further, the County shall be responsible for installation and maintenance of any future water line, utilities or perimeter fence as required.
2. Company covenants not to commit waste nor permit anyone else to commit waste during its possession of the Property and to keep the Property in a neat and orderly condition.
3. The Company further agrees to maintain all County facilities and equipment utilized in accordance with the Agreement in good condition at all times and that the gates and facilities will be secured in the absence of an attendant.
4. The Company agrees to provide containers for and properly dispose of all miscellaneous waste on the facility, including but not limited to, used oil waste containers.

I. County's Right-of-Entry.

The County shall retain the right and the Company shall not interfere with the exercise of the right of the County and its agents and employees to enter into and upon the Property at all reasonable times for the purposes of inspecting the same and for all other lawful purposes, including operation of the portion of the landfill sites on the Property and use of the scales or other facilities for the purpose of disposing of debris and other solid waste materials if it is determined to be in the best interest of the County and necessary for the health and preservation by Whatcom County Health and Community Services.

J. Notices.

All notices, demands or other writing in this Agreement provided to be given, or sent, or which may be given, made or sent, by either party hereto to the other, shall be deemed to have been fully given, made or sent when mailed to the following address and party:

COUNTY Whatcom County Health and Community Services
509 Girard Street
Bellingham, WA 98225

COMPANY Sanitary Service Company, Inc.
PO Box 1702
Bellingham, WA 98227

K. Utilities.

All costs and charges for utilities furnished during the term of this Agreement shall be paid by the Company. Property taxes, if any, shall be the responsibility of the County. The County shall maintain a water tank of similar size to that which now exists on the site for wash downs and fire protection.

L. Liens.

The company shall keep the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by the Company. In the event the Company becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the Company, then the County may cancel this Agreement at the County's option.

M. Sublease and Assignment.

The Company agrees not to let or sublet the whole or any part of its limited interest hereunder in the Property or assign this Agreement or any interest therein without the written consent of the County, which consent shall not be unreasonably withheld.

N. Right of Company to Make Improvements.

The Company may improve or alter the Property for purposes consistent with fulfillment of its obligations under this agreement, with prior written consent of the County. The Company shall, before making any improvements or alterations, submit plans and designs to the County for approval. The Company agrees to maintain the existing facilities in good condition at all times, including but not limited to scales, computers, structures, waste oil tanks and other existing improvements which exist on the Property as of the date of this Agreement, provided that the Company shall have the right to remove, alter or improve any facility which may be placed upon the Property by the Company during the period of this Agreement; provided further that the Company may remove any improvements that it may install upon the Property during the period of this Agreement within 30 days or the termination of this Agreement. If such improvements are not removed they shall become the property of the County.

O. Reduction or Termination of Service.

During the term of this agreement if Whatcom County takes any legislative or executive action that may cause a reduction in the volume of the waste at the Drop Boxes and/Recycle Facilities, the Company in mutual agreement with the County may reduce the hours of the facility operations or terminate this Agreement. If there are other reasons that may cause a reduction in the volume of waste so that it is no longer feasible to operate, the Company may terminate the agreement upon 30 days written notice to the County.

P. Indemnification and Hold Harmless.

1. The Company agrees and covenants to indemnify, defend and save harmless the County and those persons who were, now are, or shall be duly elected or appointed officials or members or employees thereof (hereinafter referred to as "Whatcom County"), against and from any loss, damage, costs, charge, expense, liability, claims, demand or judgments, of whatsoever kind or nature, whether to persons or property, arising wholly or partially out of any act, action, neglect, omission or default on the part of the

Company, its subcontractors and/or employees, except to the extent such injury or damage shall have been caused by or resulted from the negligence, recklessness, or intentional wrongdoing of The County. In case any suit or cause shall be brought against Whatcom County on account of any act, action, neglect, omission or default on the part of the Lessee, his agents, subcontractors, and/or employees, the Company hereby agrees and covenants to assume the defense thereof and to pay any and all costs, charges, attorney fees and other expenses and any and all judgments that may be incurred or obtained against Whatcom County.

2. Whatcom County agrees and covenants to indemnify, defend and save harmless the Company and its officers and directors, against and from any loss, damage, costs, charge, expense, liability, claims, demand or judgments, or whatsoever kind or nature, whether to persons or property, arising wholly or partially out of any act, action, neglect, omission or default on the part of the County, its subcontractors and/or employees, except to the extent such injury or damage shall have been caused by or resulted from the negligence, recklessness, or intentional wrongdoing of the Company. In case any suit or cause shall be brought against the Company on account of any act, action, neglect, omission or default on the part of the County, its agents, subcontractors, and/or employees, Whatcom County hereby agrees and covenants to assume the defense thereof and to pay any and all costs, charges, attorney fees and other expenses and any and all judgments that may be incurred or obtained against the Company.
3. Whatcom County shall indemnify and hold the Company, its officers, directors and shareholders, employees, agents and subcontractors free and harmless from liability from claims, demands, losses, or expenses including attorneys' fees and costs, with respect to claims by third parties for personal injury, property damage or other loss which arises wholly or partially out of the County's past or current operation, closure or post-closure of the Cedarville Landfill and Birch Bay Landfill, including but not limited to liability or claims arising out of pollution, contamination or release of chemicals or landfill gas. Such indemnity shall not include claims arising as a result of any negligent, reckless, or intentional actions of the Company, its agents, employees, officers, or directors.
4. In the event of any suit against any party indemnified under this Agreement, the indemnifying party shall appear and defend such suit provided that the indemnifying party is notified in a timely manner of the suit. The indemnified party shall have the right to approve counsel chosen by the indemnifying party to litigate such suit which approval shall not be unreasonably withheld.

Q. Insurance.

1. The Company shall maintain in effect throughout the term of this Agreement, or any renewal thereof, personal injury liability insurance covering the Property and its appurtenances in the amount of \$1,000,000.00 for injury or death of any one person and \$1,000,000.00 for injury or death of any number of persons in one occurrence, and property damage liability insurance in the amount of \$500,000.
2. The Company shall file proof of such insurance with the County prior to occupancy of the Property.

R. Laws and Regulations.

The Company agrees to conform to and abide by all lawful rules, codes, laws and regulations in connection with the use of the Property and the construction of improvements and operation of the Company's business thereon and not to permit said Property to be used in violation of any lawful rule, code, law, regulation or other authority.

S. Mediation.

Notice of the demand for mediation shall be filed in writing with the other party to this Agreement. The demand for mediation shall be made within a reasonable time after the claim. The act of mediation between the Company and the County shall be between one designee provided by the Company and one designee provided by the County and one neutral mediator agreed upon by both parties. The decision of the mediators shall be binding upon both parties.

T. Force Majeure.

Neither the Company nor the County will be liable for failure to perform its part of the Agreement when the failure is due to fire, flood, road closures, strikes or other industrial disturbances, inevitable accident, war (including

nuclear), riot, insurrection, pandemics, acts of God or for any other cause beyond the reasonable control and without the fault or negligence of either the County or the Company. But, in any case, the party claiming the benefit of this provision shall use due diligence to remove any such causes and to resume performance under the agreement as soon as is feasible.

U. Interpretation and Venue.

This agreement shall be at all times interpreted under and in accordance with the laws of the State of Washington, and venue and jurisdiction or any suit brought to enforce any of the terms shall be in Whatcom County, Washington.

IN WITNESS WHEREOF, the parties have signed this agreement on: 10/24/2023

SANITARY SERVICE COMPANY:

Paul A. Razo 10-16-23
Paul Razo, President Date

WHATCOM COUNTY:

Recommended for Approval:

Sue Sullivan 10/23/2023
051358A396BB46E...
Sue Sullivan, Environmental Health Manager Date

Erika Lautenbach 10/24/2023
955C651A30374BD...
Erika Lautenbach, Health and Community Services Director Date

Approved as to form:

Royce Buckingham 10/24/2023
1EE5DDBD9542404...
Royce Buckingham, Senior Civil Deputy Prosecutor Date

Approved:

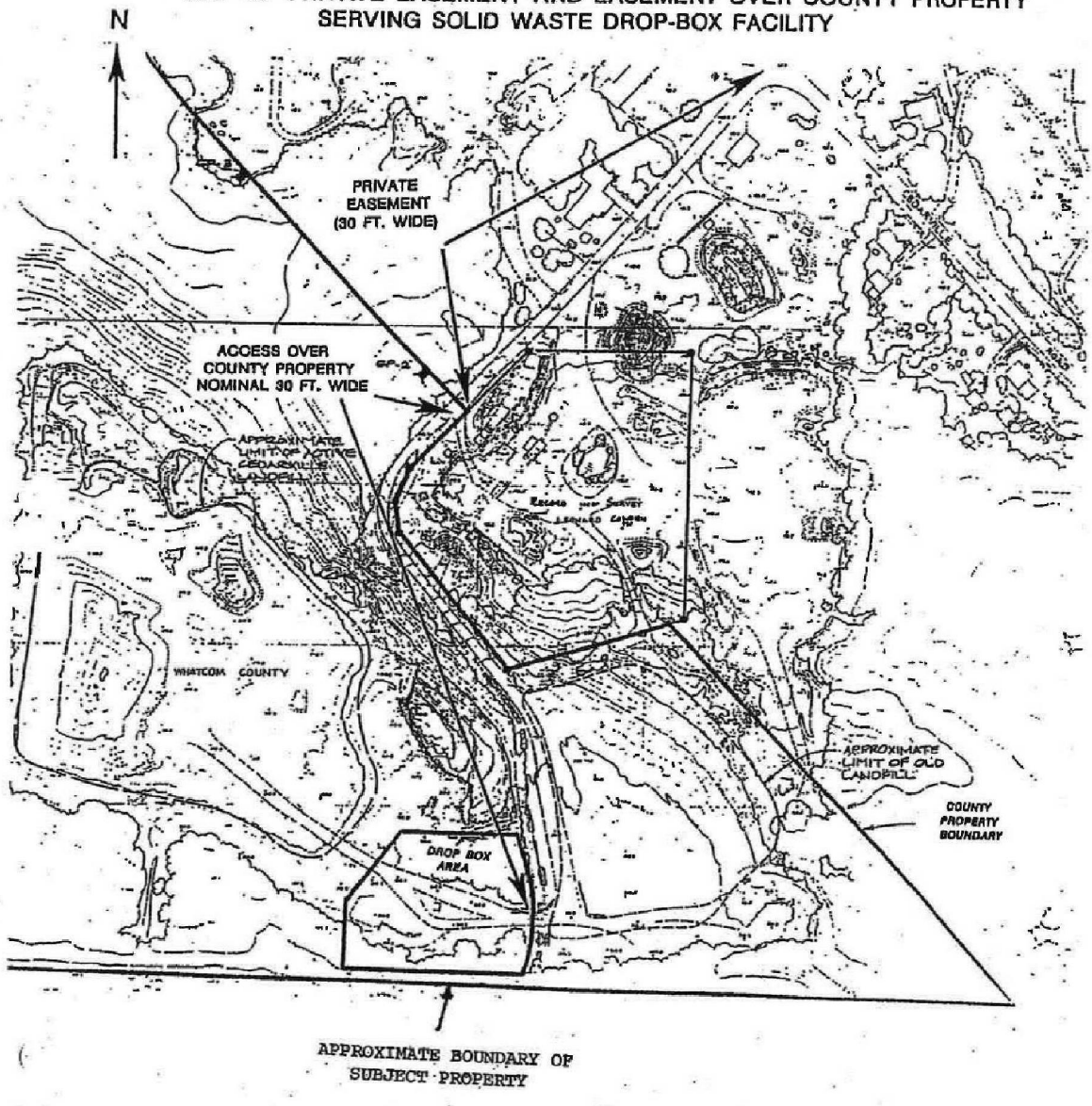
Accepted for Whatcom County:

Satpal Singh Sidhu 10/24/2023
1192C7C18B664E3...
By: Satpal Singh Sidhu, Whatcom County Executive Date

EXHIBIT "A"
(INSURANCE)

Exhibit B

**MAP OF PRIVATE EASEMENT AND EASEMENT OVER COUNTY PROPERTY
SERVING SOLID WASTE DROP-BOX FACILITY**



CEDARVILLE

BIRCH BAY - LYNDEN SITE

SECTION 29, T40N, R1E
WHATCOM COUNTY, WASHINGTON.

