

## WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.  
**202002005**

Originating Department:	85 Health
Division/Program: (i.e. Dept. Division and Program)	8540 Environmental Health / 854080 Solid Waste
Contract or Grant Administrator:	Kathleen Roy
Contractor's / Agency Name:	Freedom 2000 dba Cando Recycling and Disposal

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?	If yes, RFP and Bid number(s):	Contract Cost Center:	140101
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			

Is this agreement excluded from E-Verify?	No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>	If no, include Attachment D Contractor Declaration form.	
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If YES, indicate exclusion(s) below:

<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).
<input checked="" type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Work related subcontract less than \$25,000.
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
<input type="checkbox"/> Interlocal Agreement (between Governments).	

Contract Amount:(sum of original contract amount and any prior amendments):  <p style="text-align: center;">\$9,000 paid to Whatcom County per year for 5 years</p>	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance</li> <li>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.</li> </ol>
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Summary of Scope: Lease for access easements and the use and occupancy of the closed Point Roberts Johnson Road landfill site to provide citizens of Whatcom County the opportunity to recycle and dispose of self-hauled waste.

Term of Contract:	5 Years	Expiration Date:	7/31/2025
Contract Routing:	1. Prepared by:	JT	Date: 12/11/2019
	2. Health Budget Approval:	KR	Date: 01/02/2020
	3. Attorney signoff:	RB	Date: 01/06/2020
	4. AS Finance reviewed:	M Caldwell	Date: 02/21/2020
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:	✓	Date: 2-14-2020
	7. Submitted to Exec.:	✓	Date: 5-8-2020
	8. Council approved (if necessary):	✓	Date: 3-23-2021
	9. Executive signed:	✓	Date: 3-24-2021
	10. Original to Council:	✓	Date: 3-29-2021

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

This Agreement is made and executed on the 1<sup>st</sup> day of August, 2020, by and between WHATCOM COUNTY, a municipality hereafter referred to as the 'COUNTY' and FREEDOM 2000 LLC, a Washington limited liability company, dba CANDO RECYCLING AND DISPOSAL, hereafter referred to as 'CANDO', located in Point Roberts, Washington.

**I. RECITALS**

WHEREAS, the County has previously closed its solid waste landfill facility located on County owned property at 2005 Johnson Road in Point Roberts; and

WHEREAS, it has previously been determined by the County that handling of solid waste and recycling in Point Roberts can be more effectively accomplished 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 Johnson Road landfill site; and

WHEREAS, the County has in existence, a facility at the Johnson Road landfill site suitable for continued operation of the solid waste drop box/container and recycling facility; and

WHEREAS, the Washington State Utilities and Transportation Commission (WUTC) has granted Cando a Certificate of Public Convenience for the purpose of providing solid waste collection and source-separated recycling services to residents and businesses in Point Roberts; and

WHEREAS, it is possible that the County as owner of the property may require that a portion of the site be readily available to meet other needs; and

WHEREAS, it is helpful to the parties to identify the incidental uses to which the property may be put by the Lessee in conjunction with the operation of the facility described herein; and

WHEREAS, it is prudent for the parties to make provision within the lease for a transition to another leaseholder in case that becomes necessary during the course of this lease term; and

WHEREAS, the County and Cando mutually agree to the terms of the Agreement herein;

NOW THEREFORE, IT IS UNDERSTOOD AND AGREED:

**II. DEFINITIONS**

A. "Facility" means the drop box/container and recycling site and the improvements and equipment located thereon and operated by the Cando under the terms of this Agreement.

B. "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, blockades, public riots, breakage, explosions, or accident to machinery, pipelines or materials, other cause, whether of the kind enumerated or otherwise, which is not reasonably within the control of the party claiming the suspension.



C. "Hazardous Waste" shall mean:

1. any dangerous or extremely dangerous 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 waste" or "dangerous waste", pursuant to any state or federal law, including but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., and the Model Toxics Control Act, Chapter 70.105 RCW, 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 regulation under the Toxics Substance 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.

D. "Premises" is that portion of Property on which the Facility is operated and as described in Exhibit "B" attached hereto which shall include any easements to access the Premises as described below.

E. "Property" is the real property owned by the County and described in Exhibits "A" and Exhibit "C" attached hereto.

F. "Solid Waste" shall be defined by Chapter 70.95 or regulations promulgated thereunder.

G. "Suspicious Waste" is waste which Cando reasonably suspects may be or contains "Unacceptable Waste".

H. "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.

### III. AGREEMENT

A. Facility

1. The County hereby leases the Premises to Cando, for the purpose of operating and maintaining the Facility for the convenience of the residents of Whatcom County. The County further agrees to provide to Cando the non-exclusive use that area outside the Property's lower gated and fenced area, which is necessary for staging and maintaining Cando's curb-side Solid Waste pickup activities in Point Roberts, as shown in Exhibit "B". Notwithstanding the foregoing, the County reserves the right to reasonably modify the Facility layout and area to meet County-defined needs on reasonable notice to Cando.

2. The County agrees to provide Cando and its customers access to the Premises by the easement as set forth in the Statutory Warranty Deed recorded under Whatcom County Auditor's File No. 1278685 extending from Johnson Road to the Property boundary and a grant of access over County land through and to the Property, all as shown in Exhibits "A", "B", and "C".

B. Representations/Warranties

1. The County represents and warrants that it has the right, title and interest in the Property<sup>1</sup> and other properties necessary to grant Cando and the public the right to the access, limited use and limited occupancy of the Premises described under the terms of this Agreement.

2. The County represents and warrants that the operation of the Facility as described in this Agreement does not violate applicable provisions of the County's zoning code, and that no additional land use permit is required (although other permits are likely to be required), provided that access to and use of the Facility is provided only to Cando and its members, agents, and employees, members of the public, local businesses, and recycling collectors, for purposes consistent with the County's Solid Waste Comprehensive Plan. This warranty does not extend to (i) any incidental uses beyond use of the Facility as described herein to which Cando may put the Premises in the course of the lease term designated herein; (ii) Incidental use of the office for business that does not interfere with the use of the Facility as described herein; (iii) Cando's use and storage of equipment that is used primarily in the transfer site business described herein; or (iv) other incidental use beyond that primary use, so long as these incidental uses do not interfere with Cando's and the public's primary use of the Facility and do not otherwise violate land use regulations.

C. Acceptance of Premises

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

D. Rent and Term

1. Cando shall pay rent to the County in the amount of seven hundred and fifty dollars (\$750) per month payable in advance on the 1<sup>st</sup> day of the month during the term of this Agreement.

2. This Agreement shall be for a term of five (5) years commencing on August 1, 2020 and ending on July 31, 2025, unless terminated earlier per the provisions of Section O, below. The parties further agree to an option to renew for an additional five (5) years, which may be exercised only upon mutual agreement of the parties. The Agreement of the County shall be manifested by the signature of the County Executive.

E. Scope of Operation

Cando shall maintain and operate (the Facility) upon the Premises. The Facility shall be for the use of the general public and businesses. Cando agrees to maintain and operate the Facility



by providing drop box/containers for the separation of recyclables, putrescible garbage, and other materials that may be agreed upon between Cando and the County.

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

1. Cando shall make the Facility open and available to the public a minimum of two (2) days per week between the months of May through September, and one (1) day per week between the months of October through April, during the hours of 12:00pm to 4:00pm. This schedule may be altered by mutual written agreement if the volume so dictates.

2. In the operation of the Facility, Cando shall not be required to receive, accept or dispose of any Suspicious Waste, Unacceptable Waste, Hazardous Waste, or any other waste which would violate local, state, or federal environmental laws or regulations. Cando reserves the right to inspect any and all waste and other material delivered to the Facility and may reject any such material which Cando believes, or the local area health jurisdiction, or State Department of Ecology ("Ecology") advises, would upon disposal, present a significant risk to human health or the environment or create or expose the County, Facility users, or Cando to significant potential liability.

3. Subject to Section 2 above and Section 4 below, in the operation of the recycling center, Cando shall accept, at a minimum, newspaper, mixed paper, cardboard, aluminum, glass (clear, brown, and green), scrap metal, tin cans, and plastic bottles. So long as it is legally permitted to do so, Cando is allowed to accept batteries, used oil and antifreeze, and may chip woody debris on site. Cando shall be entitled to salvage any materials remaining in Solid Waste received for disposal at the Facility.

4. Cando may refuse the right of access to the Facility to anyone who has violated rules and regulations prescribed by public law pertinent to the operation of the disposal site or to the nature of the waste disposed or which they seek to dispose, or is delinquent on account of any money due to Cando for acceptance of Solid Waste or recyclable materials. Cando may, with the approval of the County, also assess to users of the Facility, a reasonable additional fee or charge as a penalty for failure to comply with the rules and regulations prescribed by the County or Ecology for Solid Waste handling.

F. Disposal and Operation Fees:

1. Cando, upon mutual agreement with the County as to the proposed rate(s), shall have authority to establish rates at the Facility for recycling and Solid Waste disposal, and all revenues collected shall be for the benefit of Cando. The fees charged shall be mutually agreed upon, reviewed annually, and listed in the Whatcom County Unified Fee Schedule. Cando shall prominently post all user fees at the Facility and shall be solely responsible for the collection of such fees.

2. Cando, upon mutual agreement with the County, 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, Cando 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 Cando, nor shall any of the employees of Cando be deemed to be employees of the County.

H. Maintenance of Facilities/Commit No Waste:

1. Maintenance of the Facility and the Premises shall be the responsibility of Cando except as provided otherwise in this Agreement. The County shall provide snow removal following notification by Cando. Cando shall be otherwise responsible for routine cleaning maintenance (i.e., removal of obstructions, dust control, and spill clean-up) to insure a safe ingress and egress for the public. Cando shall maintain the integrity of all structural improvements as deemed necessary by a competent engineer, including periodic structural repairs to concrete Z-walls. Cando will also ensure the satisfactory inspections of truck scales and other improvements necessary to the operation of the facility and regulated by Washington State Registrations and Licenses Department.

Further, by mutual agreement as to any cost sharing by the parties, the County shall be responsible for installation and maintenance of any future water line, utilities, or perimeter fence, as required.

2. Cando covenants not to commit waste nor permit anyone else to commit waste on the Premises during the term of the contract and to keep the Premises in a neat and orderly condition, provided that this shall not prevent Cando from engaging in the open burning, by mutual agreement, of certain waste materials in compliance with applicable laws, rules and regulations, nor any other conduct or activity reasonably related to the ordinary operation of the Facility.

3. Cando further agrees that the gates and facilities will be secured in the absence of an attendant. In accordance with this Agreement, Cando agrees to maintain, in good condition, the structures and the concrete retaining walls utilized at the Facility.

I. County's Right-of-Entry:

The County retains the right and Cando 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 reasonable times for the purposes of inspecting the same and for all other lawful purposes, including operation of the portion of the landfill site on the Property and 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 preservation of public health and safety by the Health Officer and/or Director of the Whatcom County Health Department.

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 Department  
509 Girard Street  
Bellingham, WA 98225

CANDO Freedom 2000, dba Cando Recycling and Disposal  
PO Box 865  
Point Roberts, WA 98281

K. Utilities:

All costs and charges for utility services provided to the Premises during the term of this Agreement shall be paid by Cando. Real property taxes, if any, shall be the responsibility of the County.

L. Liens:

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

M. Sublease and Assignment:

Cando agrees not to let or sublet the whole or any part of its limited interest hereunder in the Premises or assign this Agreement or any interest therein without the written consent of the County.

N. Right of Cando to Make Improvements:

Cando may improve or alter the Premises for purposes consistent with fulfillment of its obligations under this Agreement, with prior written consent of the County. Cando shall, before making any improvements or alterations, submit plans and designs to the County for approval. Cando agrees to maintain the existing facilities in good condition at all times, including but not limited to fenced storage area, scale house, structures, and other improvements which exist on the Premises as of the date of this Agreement, Cando shall have the right to remove, alter, or improve any structure or improvement which may be placed upon the Premises by Cando during the term of this Agreement. Cando may remove any improvements that it may install upon the Premises during the period of this Agreement or within 30 days of the termination of this Agreement. If removal of such improvements occurs after the termination of the Agreement, Cando shall conduct such removal only at times and in a manner with which the County concurs, which shall minimize interference with any ongoing operations upon the Premises to which the County has granted its permission. The County shall not unreasonably withhold its concurrence. If such improvements are not removed within the above-stated time period, or a mutually agreed written extension thereof, they shall become the property of the County.

The parties agree to negotiate with each other in good faith and if the County offers to purchase some or all of the improvements that Cando has installed and/or placed upon the Premises, in the event this lease is terminated during its term or is not extended. If the parties are able to agree upon the sale and purchase of any or all of the improvements, the price for such improvements shall be the fair market value thereof, which shall be established by agreement of the parties, or in case the parties are not able to agree upon that value, by a commercial appraiser agreed upon by the parties, or such appraiser as agreed upon by two persons, each party choosing one such person. The



parties agree that the 30-day period for the removal of improvements following the termination or expiration of this Agreement as set forth above shall be tolled during any negotiations contemplated in this paragraph.

O. Reduction or Termination of Service:

If there is a reduction in the volume or waste so that, in Cando's reasonable determination, it is no longer feasible to operate the Facility, Cando may terminate the Agreement upon 30 days written notice to the County.

The County may terminate the lease prior to the end of the lease term for reasons of public necessity, which it must determine in good faith, including but not limited to the following: 1) failure of Cando to abide by the terms of this Agreement, if, after the County has given written notice to Cando of such failure, Cando fails to cure promptly, which shall in any event be no longer than 30 days; 2) sale of Cando to a person or party who does not possess or maintain WUTC certification for the collection of garbage and recyclables in Point Roberts, so long as the County's adopted plans and/or ordinances require certification; 3) failure of Cando to provide regular curbside garbage and/or recycling services, so long as the County's adopted plans and/or ordinances require this service; 4) Cando's failure to maintain its WUTC certification or upon the WUTC's termination or withdrawal of Cando's certificate following 30 days' notice from the County and an opportunity to cure.

P. Indemnification and Hold Harmless:

1. Cando 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 employees or contractors thereof, against and from any loss, damage, costs, charge, expense, liability, claims, demand or judgements, 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 Cando, its subcontractors and/or employees, except to the extent such injury or damage shall have been caused by or resulted from the negligence of the County or duly elected or appointed officials or employees or contractors. In case any suit or cause shall be brought against the County on account of any act, action neglect, omission, or default on the part of Cando, its agents, subcontractors, and/or employees, Cando 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 county, but only to the extent that such costs, charges, fees, expenses, and judgements are attributable to the negligence of Cando or its agents.

2. The County agrees and covenants to indemnify, defend, and save harmless Cando and its officers and directors, against and from any loss, damage, costs, charge, expense, liability, claims, demand or judgements, 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 County, its subcontractors and/or employees, except to the extent such injury or damage shall have been caused by or resulted from the negligence of Cando. In case any suit or cause shall be brought against Cando on account of any act, action, neglect, omission, or default on the part of the County, its duly elected or appointed officials or employees or contractors, the 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 judgements that may be incurred or obtained against Cando, but only to the extent that such costs, charges, fees, expenses, and judgements are attributable to the negligence of the County or its duly elected or appointed officials or employees or contractors.

3. The County shall indemnify and hold Cando, its officers, directors and shareholders, employees, agents, and subcontractors free and harmless from liability from claims, demands, losses, or expenses, including attorney's fees and costs, with respect to claims by third parties for personal injury, property damage, or other loss to the extent such arises out of the County's past or current operation, closure or post-closure of the Facility, including but not limited to liability or claims arising out of pollution, contamination, or release of chemicals or landfill gas except to the extent such claims arise out of any negligent or intentional actions or omissions of Cando, 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. Cando shall maintain in effect throughout the term of this Agreement, or any renewal thereof, commercial general liability insurance covering the Premises and its appurtenances in the amount of \$1,000,000 for injury or death of any one person and \$1,000,000 for injury or death of any number of persons in one occurrence, and property damage liability insurance in the amount of \$1,000,000.

2. Cando shall file proof of such insurance with the County prior to the effective date of this Agreement.

R. Laws and Regulations:

1. Cando agrees to conform to and abide by all lawful rules, codes, laws and regulations in connection with the use of the Premises and the construction of improvements and operation of Cando's business thereon and not to permit said Premises to be used in violation of any lawful rule, code, law, regulation, or other authority. Further, Cando shall obtain all necessary permits and licenses for the use and occupancy of the Premises.

S. Mediation:

Notice of any demand for mediation shall be filed in writing with the other party to this Agreement. Demand for mediation shall be made within a reasonable time, and only after a written claim identifying the subject matter of the dispute based upon this Agreement between the parties. The mediation shall be conducted by a neutral mediator agreed upon by both parties.

T. Force Majeure:

Neither Cando nor the County will be liable for failure to perform its part of the Agreement when the failure is due to Force Majeure. However, 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, subject to RCW 36.01.050, venue and jurisdiction of any suit brought to enforce any of the terms shall be in the duly-established courts located within Whatcom County, Washington.

V. Integration and Modification:

This written lease Agreement, including any addenda hereto, represents the full and complete Agreement of the parties hereto, and the parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this lease Agreement. No change or addition to it shall be valid or binding upon either party unless such change or addition be in writing, and executed by both parties.

W. Waiver:

Waiver by Lessor of any default in performance by lessee of any of the terms, covenants, or conditions contained herein, shall not be deemed a continuing waiver of that default or any subsequent default.

X. Severability:

It is understood and agreed by the parties hereto that if any part of this lease Agreement is determined to be illegal, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed as if the lease Agreement did not contain the particular illegal part.

THIS AGREEMENT is entered into as of the day and year first written above.



PROGRAM APPROVAL

  
\_\_\_\_\_  
John Wolpers, Environmental Health Manager

2/14/2020  
\_\_\_\_\_  
Date

HEALTH DEPARTMENT APPROVAL

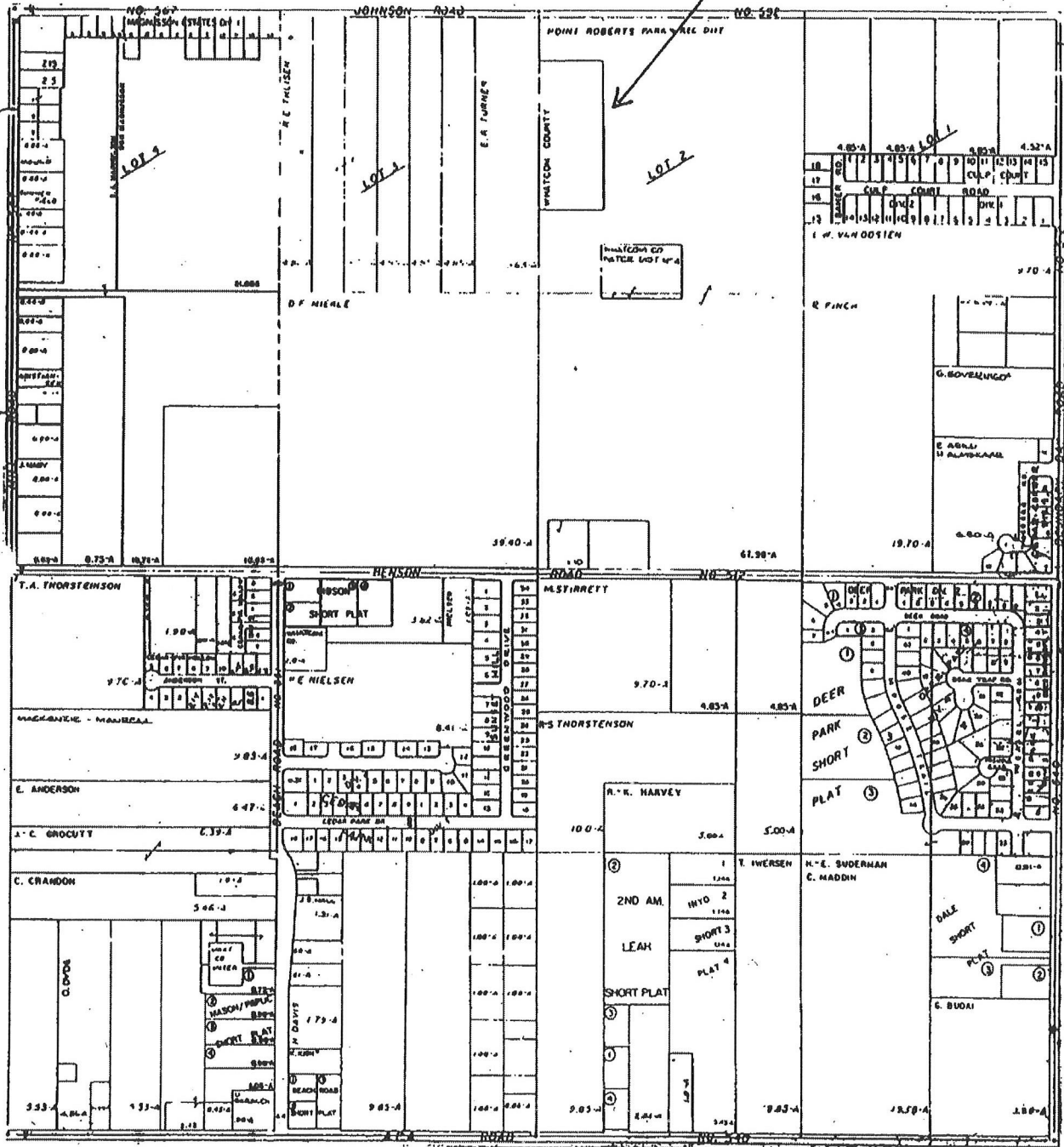
  
\_\_\_\_\_  
Regina A. Delahunt, Director

2/14/2020  
\_\_\_\_\_  
Date



EXHIBIT 'A'

Subject Property



SECTION 2, TOWNSHIP 40 NORTH, RANGE 3 WEST



EXHIBIT 'B'

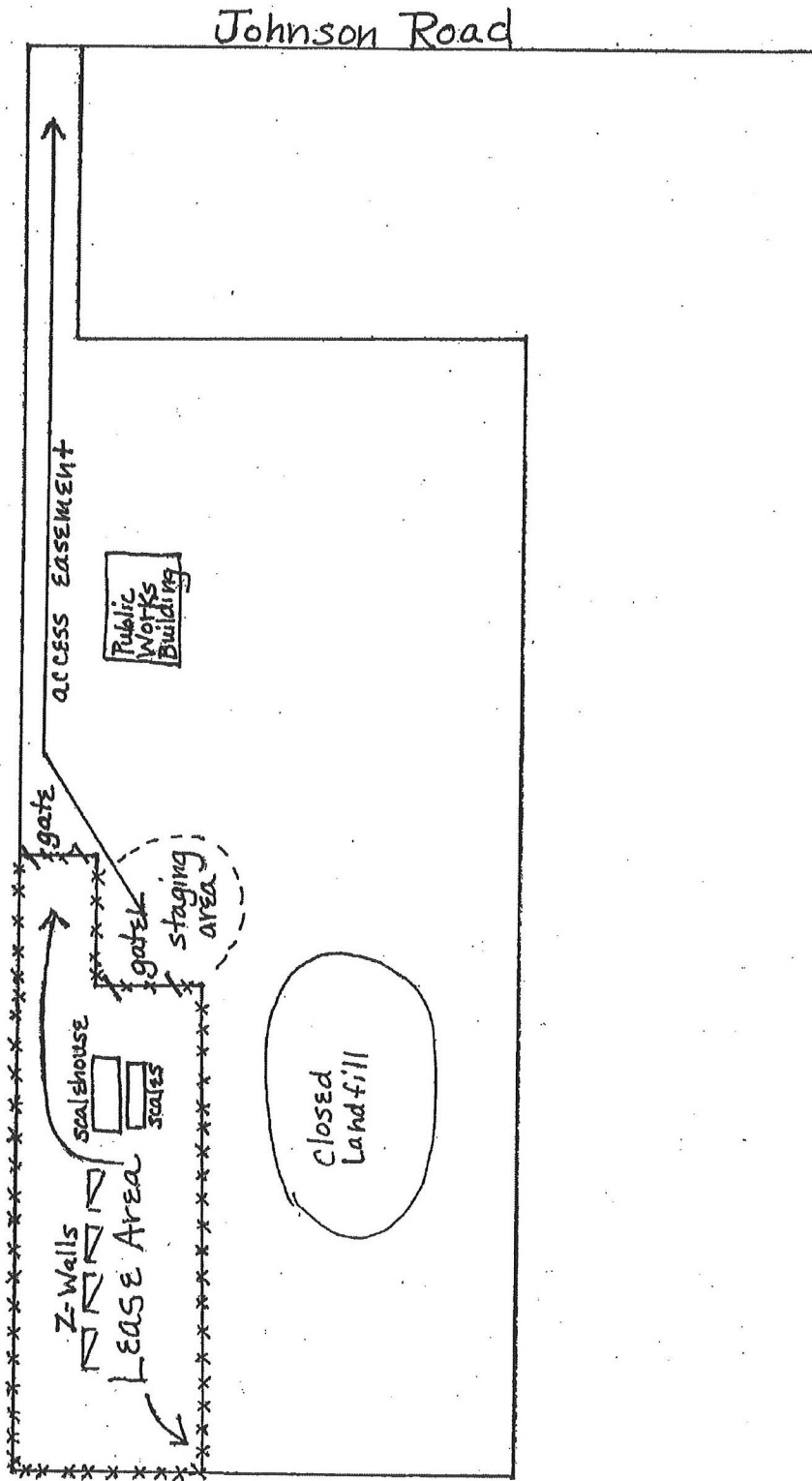


EXHIBIT "C"  
LEGAL DESCRIPTION

A parcel of land in Government Lot 2, Section 2, Township 40 North, Range 3 West of W.M., more particularly described as follows:

Beginning at the Southwest corner of said Government Lot 2, thence northerly along the west line of said Government Lot 2, 400.68 feet to the true point of beginning; thence continuing northerly along said west line 700 feet; thence easterly at right angles to said west line, 312.31 feet; thence southerly parallel to said west line, 700 feet; thence westerly at right angles to said west line, 312.31 feet to the true point of the beginning; containing 5 acres, more or less.

Together with a perpetual easement 30 feet wide described as follows:

The west 30 feet of the west half of the Northeast quarter, less the above-described tract, in said Section 2.

EXHIBIT "D"  
INSURANCE





## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

**Name Of Person Or Organization:**

WHATCOM COUNTY  
509 GIRARD ST  
BELLINGHAM WA 98225

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions**:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
**GENERAL LIABILITY ENHANCEMENT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**Schedule**

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1. Incidental Malpractice Liability	Included
2. Expected Or Intended Injury	Included
3. Non-Owned Watercraft	Up to 51 Feet in Length
4. Non-Owned Aircraft	Included
5. Property Damage Liability	
• By Use of Elevators	Included
• "Borrowed Personal Property" (Deductible: \$1000)	\$25,000
• Premises Rented to You or Temporarily Occupied by You With Permission of Owner	\$300,000
6. Medical Payments	\$10,000
7. Supplementary Payments - Increased Limits	
• Bail Bonds	\$1,000
• Loss of Earnings	\$500 a day
8. Broad Form Named Insured	Included
9. Newly Formed Or Acquired Organizations - Covered up to 180 days	Included
10. Additional Insured - Broad Form Vendors	Included
11. Knowledge of Occurrence	Included
12. Unintentional Failure To Disclose Hazards	Included
13. Definitions	

## 1. INCIDENTAL MALPRACTICE LIABILITY

- A. The definition of "bodily injury" in Section V – Definitions is amended to include injury arising out of the rendering or failure to render medical or paramedical services to persons by any physician, dentist, nurse, emergency medical technician or paramedic who is employed by you to provide such services.
- B. Paragraph 2.a.(1)(d) under WHO IS INSURED (Section II) does not apply to nurses, emergency medical technicians or paramedics referred to in a. above.

This coverage does not apply if you are engaged in the business or occupation of providing any services referred to in paragraph A. above.

## 2. EXPECTED OR INTENDED INJURY

Exclusion a. under COVERAGE A (Section I) is replaced by the following:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured.

This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

## 3. NON-OWNED WATERCRAFT

Paragraph (2) of Exclusion g. under COVERAGE A (Section I) is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
- (a) Less than 51 feet long; and
  - (b) Not being used to carry persons or property for a charge.

Paragraph (2) applies to any person, who with your expressed or implied consent, either uses or is responsible for the use of the watercraft;

## 4. NON-OWNED AIRCRAFT

The following paragraph is added to Exclusion g. under COVERAGE A. (Section I):

This exclusion does not apply to

- (6) An aircraft that is:
- (a) Hired, chartered or borrowed with a paid crew; and
  - (b) Not owned by any insured.

However, paragraph (6) does not apply if other insurance is available to the insured for a loss we cover under paragraph (6), whether primary, excess, contingent or any other basis.

## 5. PROPERTY DAMAGE LIABILITY

- A. Exclusion j. under COVERAGE A (Section I) is revised as follows:

1. The paragraph immediately following paragraph (6) is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, explosion, smoke or leakage from fire protection systems) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

2. The following paragraphs are added to Exclusion j. under COVERAGE A (Section I):

Paragraphs (3) and (4) do not apply to the use of elevators.

Paragraph (4) of this exclusion does not apply to "property damage" to "borrowed personal property" while:

- (a) The "borrowed personal property" is on premises occupied by you and owned, leased or rented by you; and
- (b) "Property damage" insurance under this policy applies to the premises.

Subject to paragraph 2. under LIMITS OF INSURANCE (Section III), the most we will pay for "property damage" to "borrowed personal property" is \$25,000 any one "occurrence". Our obligation to pay damages on your behalf applies only to the amount of damages in excess of \$1,000. The deductible amount applies to all damages because of "property damage" as the result of any one "occurrence" regardless of the number of persons or organizations who sustain damages because of that



"occurrence". We may pay any part or the entire deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

The insurance provided for "property damage" from the use of elevators and for "property damage" to "borrowed personal property" is excess over any other valid and collectible property insurance (including any deductible portion thereof) available to any insured whether primary, excess, contingent or on any other basis.

**B.** The last paragraph under Exclusions (Section I – Coverage A) is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, explosion, smoke or leakage from fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in paragraph 6. under LIMITS OF INSURANCE (Section III).

**C.** Paragraph 6. under LIMITS OF INSURANCE (Section III) is replaced by the following:

6. Subject to 5. above, the Damage To Premises Rented To You Limit of \$300,000 is the most we will pay under COVERAGE A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, explosion, smoke or leakage from fire protection systems, while rented to you or temporarily occupied by you with permission of the owner.

**D.** Paragraph 4.b.(1)(a)(ii) under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV) is replaced by the following:

(b) That is Fire, Explosion, Smoke Or Leakage From Fire Protective Systems insurance for premises rented to you or temporarily occupied by you with permission of the owner;

## 6. MEDICAL PAYMENTS

**A.** Paragraph 1.a. under COVERAGE C – MEDICAL PAYMENTS (Section I) is replaced by the following:

**1. Insuring Agreement**

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within three years of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

**B.** Paragraph 7. under LIMITS OF INSURANCE (Section III) is replaced by the following:

7. Subject to 5. above, the Medical Expense Limit of \$10,000 is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

## 7. SUPPLEMENTARY PAYMENTS

Paragraph 1. under SUPPLEMENTARY PAYMENTS – COVERAGES A AND B (Section I) is revised as follows:

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

b. Up to \$1,000 for cost of bail required because of accidents or traffic laws violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

## 8. BROAD FORM NAMED INSURED

The following is added to paragraph 2. under WHO IS INSURED (Section II):

Any subsidiary and subsidiary thereof which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part. The insurance afforded herein for any subsidiary not named in the Coverage Part as a named insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its limits of insurance.

## 9. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Paragraph 3.a. under WHO IS INSURED (Section II) is replaced by the following:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

## 10. ADDITIONAL INSURED - BROAD FORM VENDORS

The following is added to WHO IS INSURED (Section II):

Any person or organization with whom you have agreed, because of a written contract or agreement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

### a. Exclusions

The insurance afforded the vendor does not apply to:

#### (1) Contractual Liability

"Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption

of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement.

#### (2) Express Warranty

Any express warranty unauthorized by you.

#### (3) Physical or Chemical Change

Any physical or chemical change in the product made intentionally by the vendor.

#### (4) Repackaging

Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing or substitution of parts under instructions from the manufacturer, and then repackaged in the original container.

#### (5) Failure to Make Inspections, Adjustments, Tests or Servicing

Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

#### (6) Demonstration, Installation, Servicing or Repair

Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product.

#### (7) Labeling, Re-labeling or Other Use of Products After Distribution

Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

- b. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

- c. This insurance does not apply if "bodily injury" or "property damage" included within the "products-completed operations hazard" is excluded either by the provisions of the Coverage Part or by endorsement.

## 11. KNOWLEDGE OF OCCURRENCE

The following is added to paragraph 2 under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

Knowledge of an "occurrence", offense, claim or "suit" by any agent, servant or employee of any insured, or receipt by any agent, servant or employee of any insured of any demand, notice, summons or other legal paper in connection with a claim or "suit", shall not in itself constitute knowledge of any insured or receipt by any insured unless such "occurrence", offense, claim, or "suit" is known to or received by:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A manager, if you are a limited liability company; or
- (4) An "executive officer" or insurance manager, if you are a corporation.

## 12. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Paragraph 6. under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV) is replaced by the following:

### 6. Representations

- a. By accepting this policy, you agree:
  - (1) The statements in the Declarations are accurate and complete;
  - (2) Those statements are based upon representations you made to us; and
  - (3) We have issued this policy in reliance upon your representations.
- b. We will not deny coverage under this Coverage Part because of your unintentional failure to disclose all existing hazards at the inception date of your policy.

## 13. DEFINITIONS

A. The following definitions are revised under DEFINITIONS (Section V):

### 1. Bodily Injury

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these at any time.

## 2. Insured Contract

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, explosion, smoke or leakage from fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the liability of another party to pay for "bodily injury" or "property damage" to a third person or organization.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or

damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

**3. Mobile Equipment**

Paragraph 12.f.(1)(a)(b)(c) does not apply to self-propelled vehicles of less than 1000 pounds gross vehicle weight.

**4. Personal and Advertising Injury**

The following is added to the "personal and advertising injury" definition:

"Personal and advertising injury" includes discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:

- (1) Not done intentionally by or at the direction of;
  - a. Any insured; or
  - b. Any "executive officer," director, stockholder, partner or member of the insured; and
- (2) Not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.

**B. The following definition is added under DEFINITIONS (Section V):**

**Borrowed Personal Property**

"Borrowed personal property" means personal property other than "auto" which you receive from another for temporary use in your business with the intent to return it or its equivalent.

"Borrowed personal property" does not include:

- a. Personal property owned by:
  - (1) You or your spouse if you are an individual;
  - (2) Your members, partners or their spouses if you are a partnership or joint venture;
  - (3) Your members or managers if you are a limited liability company;
  - (4) Your "executive officers" or directors if you are an organization other than a partnership, joint venture or limited liability company; or
- b. Personal property that is rented, leased or hired.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

### **Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.



**RECEIVED**

**MEMORANDUM**

FEB 26 2020

**TO:** Satpal Sidhu, County Executive  
**FROM:** Regina A. Delahunt, Director  
**RE:** Point Roberts Solid Waste Transfer Station Lease Agreement  
**DATE:** February 14, 2020

**WHATCOM COUNTY  
EXECUTIVE'S OFFICE**

Enclosed are two (2) originals of a contract between Whatcom County and Freedom 2000 dba Cando Recycling and Disposal for your review and signature.

▪ **Background and Purpose**

Whatcom County has a closed solid waste landfill facility located on County owned property in the Johnson Road area of Point Roberts. The County has determined that it is in public interest to continue to provide citizens of the County with the opportunity to recycle and to dispose of self-hauled waste at the Johnson Road Landfill site, and therefore has leased the facility to a private company to provide that service. The lease requires that the leaseholder also provide solid waste curbside collection services, and since Cando Recycling and Disposal has been granted an exclusive G-Certificate by the Washington Utilities and Transportation Commission for the Point Roberts area, they are the only service provider that can fulfill this requirement.

▪ **Funding Amount and Source**

Cando Recycling and Disposal will pay the County for access easements and the use and occupancy of the property in the sum of \$750 per month for a period of five years with the option to renew for an additional five-year term. These funds are included in the 2020 budget. Council approval is required.

▪ **Differences from Previous Contract**

This is a new lease Agreement; however, a similar lease agreement has been in place with this Contractor since 2010.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.

