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State Of WASH.
UTIL. AND TRANSP.
COMMISSION

November 28, 2018

Cando Recycling & Disposal
David Gellatly
PO Box 865
2005 Johnson Rd.
Point Roberts, WA 98281

RE: Cando Recycling & Disposal – Curbside Collection Services Contract 201811009 with
Whatcom County Health Department

Dear Mr. Gellatly:

Enclosed is a fully executed original of the contract amendment referenced above for your files.

If you have any questions or if you need additional information, I can be reached by e-mail at ldevries@co.whatcom.wa.us or 360-778-6016.

Sincerely,

Leah DeVries
Accounting Technician

Enc:
1 Original





MEMORANDUM

TO: Jack Louws, County Executive
FROM: ^{RAD} Regina A. Delahunt, Director
RE: Cando Recycling & Disposal – Curbside Collection Services Contract
DATE: November 9, 2018

Enclosed is one (1) original of a contract between Whatcom County and Cando Recycling for your review and signature.

▪ **Background and Purpose**

As per WCC 8.10.040 (D) – Single-family residential garbage collection, curbside collection of solid waste in Point Roberts shall be mandatory, and the fee for service, at the approved Washington Utilities and Transportation (WUTC) rate, shall be collected on the annual property tax bill and remitted to the service provider:

The attached contract implements the above requirement to collect the fee for service on the property tax bill and remit the fee for service to the service provider as invoiced on an every other month basis.

▪ **Funding Amount and Source**

Funding for curbside collection services is provided from the fee for service, collected on the annual property tax bill, at the anticipated WUTC rate \$16.96 plus tax per month, per single family residential dwelling, for an estimated 2,100 units at a not-to-exceed contract amount of \$475,000. This is a new contract which requires Council approval as it exceeds \$40,000.

Please contact Jeff Hegedus at extension #6044 if you have any questions regarding this agreement.

Encl.



WHATCOM COUNTY COUNCIL AGENDA BILL

NO. _____

| <i>CLEARANCES</i> | <i>Initial</i> | <i>Date</i> | <i>Date Received in Council Office</i> | <i>Agenda Date</i> | <i>Assigned to:</i> |
|---------------------------|----------------|-----------------|--|--------------------|------------------------|
| <i>Originator:</i> | <i>JT</i> | <i>10/23/18</i> | | <i>11/20/18</i> | <i>Finance/Council</i> |
| <i>Division Head:</i> | | | | | |
| <i>Dept. Head:</i> | <i>DAD</i> | <i>10/9/18</i> | | | |
| <i>Prosecutor:</i> | | | | | |
| <i>Purchasing/Budget:</i> | <i>Bb</i> | <i>11/2/18</i> | | | |
| <i>Executive:</i> | | | | | |

TITLE OF DOCUMENT:
Contract between Whatcom County and Cando Recycling

- ATTACHMENTS:**
1. *Memo to County Executive*
 2. *Contract Information Sheet*
 3. *2 Originals of Contract*

| | |
|--|---|
| <i>SEPA review required?</i> () <i>Yes</i> (X) <i>NO</i> | <i>Should Clerk schedule a hearing?</i> () <i>Yes</i> (X) <i>NO</i> <i>Requested Date:</i> |
| <i>SEPA review completed?</i> () <i>Yes</i> () <i>NO</i> | |

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

This contract implements the requirements of WCC 8.10.040 to collect the fee for mandatory curbside collection of solid waste in Point Roberts.

| | |
|--------------------------|------------------------|
| COMMITTEE ACTION: | COUNCIL ACTION: |
| | |

| | | |
|-----------------------------------|------------------------------|--|
| Related County Contract #: | Related File Numbers: | Ordinance or Resolution Number: |
| | | |

Please Note: *Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.*

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

201811009

| | |
|---|--|
| Originating Department: | 85 Health |
| Division/Program: (i.e. Dept. Division and Program) | 8540 Environmental Health / 854085 Solid Waste Enforcement |
| Contract or Grant Administrator: | Jeff Hegedus |
| Contractor's / Agency Name: | Cando Recycling |

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No
 Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes No If No, include WCC: _____
 Already approved? Council Approval Date: _____ (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

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

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

Is this contract the result of a RFP or Bid process? Contract _____
 Yes No If yes, RFP and Bid number(s): _____ Cost Center: 140100

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

If YES, indicate exclusion(s) below:

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

Contract Amount:(sum of original contract amount and any prior amendments):
 \$ 475,000
 This Amendment Amount:
 \$ _____
 Total Amended Amount:
 \$ _____

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:**

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: This contract implements requirements to collect a fee for service on the Point Roberts property tax bills and remit the fee for service to the service provider as invoiced on an every other month basis.

Term of Contract: 1 Year Expiration Date: 12/31/2019

Contract Routing:

| | |
|---|----------------|
| 1. Prepared by: JT | Date: 10/23/18 |
| 2. Attorney signoff: RB | Date: 10/29/18 |
| 3. AS Finance reviewed: bbennett | Date: 11/02/18 |
| 4. IT reviewed (if IT related): _____ | Date: _____ |
| 5. Contractor signed: _____ | Date: _____ |
| 6. Submitted to Exec.: _____ | Date: _____ |
| 7. Council approved (if necessary): _____ | Date: _____ |
| 8. Executive signed: _____ | Date: _____ |
| 9. Original to Council: _____ | Date: _____ |

Whatcom County Contract No.
2018 11 009

**CONTRACT FOR SERVICES AGREEMENT
Mandatory Curbside Solid Waste Collection**

Cando Recycling & Disposal, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 7,
- Exhibit A (Scope of Work), p. 8,
- Exhibit B (Compensation), p. 9,
- Exhibit C (Certificate of Insurance).

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1st day of January, 2019, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2019.

The general purpose or objective of this Agreement is to **provide solid waste management services**, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$475,000. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this 6th day of November, 20 18.

CONTRACTOR:

 David Gellatly, Owner

STATE OF WASHINGTON)
)
 COUNTY OF Whatcom) ss.

On this 6th day of NOV, 2018, before me personally appeared David Gellatly to me known to be the Owner of Cando Recycling & Disposal and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



Janice M Deptuch
 NOTARY PUBLIC in and for the State of Washington, residing at
5096 KARL My commission expires 9-9-20

GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

10.1 Term:

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

10.2 Extension:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

11.1 Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

11.2 Termination for Reduction in Funding:

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate

documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards: Not Applicable

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

- 31.1 Ownership of Items Produced:
All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.
- 31.2 Patent/Copyright Infringement: Not Applicable
- 32.1 Confidentiality:
The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.
- 33.1 Right to Review:
This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all related records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make related records and materials available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.
- 34.1 Proof of Insurance:
The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:
Property Damage per occurrence - \$500,000.00 (this amount may vary with circumstances)
General Liability & Property Damage for bodily injury- \$1,000,000.00 (this amount may vary with circumstances)
- A Certificate of insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit "C". This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.
- 34.2 Industrial Insurance Waiver:
With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this agreement.
- 34.3 Defense & Indemnity Agreement:
The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, only such injury or damage as shall have been occasioned by the negligence of the County or its appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.
- It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.
- 35.1 Non-Discrimination in Employment:
The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran

status. The Contractor shall comply with all applicable laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition: Not Applicable

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Jeff Hegedus, Environmental Health Supervisor
Whatcom County Health Department
509 Girard Street
Bellingham, WA 98225
360-778-6044
JHegedus@co.whatcom.wa.us

37.2 Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 Certification of Public Works Contractor's Status under State Law: Not Applicable

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions: Not Applicable

38.3 E-Verify: Not Applicable

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within thirty (30) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County, whichever is later. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, whichever is later, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT "A" SCOPE OF WORK

I. Background

As per WCC 8.10, *Solid Waste and Residential Recycling*, mandatory curbside collection of solid waste in Point Roberts, WA will become effective January 1, 2019 and the fee for such services shall be collected annually, as a fee for service, on the property tax bill:

8.10.040(D). Effective January 1, 2019 single-family residences located in Point Roberts, with on-site sewage systems, shall no longer be exempt from mandatory curbside collection services. As a minimum level of service, the minimum required curbside collection service shall be 26 annual pickups, to occur at the discretion of the customer on any day of the approved every other week garbage collection schedule, of a 32 gallon can and three-bin source separated recyclables. The cost of the minimum level of service, as per the approved UTC tariff, shall be billed as an annual fee on the property tax bill, at the rate of one minimum level of service per single family residence.

Service levels above the minimum level of service, as may be requested of the service provider, for larger cans, increased frequency of pickup, carry out or other services, will be invoiced directly by the service provider as per the approved WUTC tariff.

In compliance with this requirement, CONTRACTOR shall provide solid waste management services in compliance with the approved Washington Utilities and Transportation Commission (UTC) tariff. COUNTY shall collect the annual fee for the defined minimum level of service, as approved by the UTC, on the annual property tax bill and remit the fee for service, less administrative fee, to CONTRACTOR.

II. Definitions

As defined in WCC, 8.10, *Solid Waste and Residential Recycling*, 'Single-family residence' means a residential dwelling containing four or fewer dwelling units on one lot or parcel. Where two, three, or four units are on one lot or parcel, each lot or parcel shall be considered as an individual single-family residence.

III. Statement of Work

CONTRACTOR shall provide solid waste management services in full compliance with the approved Washington Utilities and Transportation Commission (UTC) tariff, and as per WCC 8.10, *Solid Waste and Residential Recycling* shall invoice COUNTY on an every other month basis for provision of the defined minimum level of service to each applicable single family residential dwelling. COUNTY shall annually provide to CONTRACTOR, by November 1 of each year, a list of addresses of applicable single family residential dwellings at which the defined minimum level of service is to be provided. COUNTY shall collect the annual fee for the defined minimum level of service, at rates as approved by the UTC, on the annual property tax bill and remit the fee for service, less an administrative fee of \$0.50 per year per single family residential dwelling, to CONTRACTOR, as invoiced, on an every other month basis. COUNTY shall be responsible for collection of delinquent accounts and CONTRACTOR shall continue to provide services to delinquent accounts until notified otherwise by COUNTY.

IV. Program Requirements

CONTRACTOR shall operate in full compliance with service and rate structures as stipulated in the approved UTC tariff and all applicable local, state and federal requirements.

V. Reporting Requirements

CONTRACTOR shall operate in full compliance with reporting requirements as stipulated in the approved UTC tariff and all applicable local, state and federal requirements.

EXHIBIT "B"
COMPENSATION

I. Budget and Source of Funding: The source of funding for this contract, in an amount not to exceed \$475,000, is the fee for service as collected on the property tax bill and remitted to CONTRACTOR.

II. Budget, Rates, and/or Allowable Costs

The rate for this contract is as follows:

CONTRACTOR shall provide the mandatory curbside solid waste collection services, defined as the minimum level of service in the UTC approved tariff, and invoice COUNTY at the currently approved UTC rate, including taxes, per applicable single family residential dwelling. CONTRACTOR shall credit COUNTY an administrative fee of \$0.50 per year per single family residential dwelling, for billing services, to be applied on the first invoice of every year.

III. Invoicing

1. CONTRACTOR shall submit itemized invoices on an every other month basis beginning on January 1, 2019 in a format approved by the County. CONTRACTOR shall submit invoices to HL-BusinessOffice@co.whatcom.wa.us. Invoices must be submitted by the 15th of the month following the defined two months of service provision.
2. Payment by COUNTY will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from CONTRACTOR. COUNTY may withhold payment of an invoice if CONTRACTOR submits it more than 30 days after the expiration of this contract.
3. Invoices must include the following statement, with an authorized signature and date:

I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.

4. Duplication of Billed Costs or Payments for Service: CONTRACTOR shall not bill COUNTY for services performed or provided under this contract, and COUNTY shall not pay the CONTRACTOR, if CONTRACTOR has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. CONTRACTOR is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

**EXHIBIT "C"
INSURANCE**



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/05/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


| PRODUCER Rice Insurance LLC 1400 Broadway P.O. Box 639 Bellingham WA 98227 | CONTACT NAME: Danielle Couldry PHONE (A/C, No, Ext): (360) 734-1161 FAX (A/C, No): (360) 734-1173 E-MAIL ADDRESS: daniellec@riceinsurance.com | | | | | | | | | | | | | | | | | | | | |
|--|--|-------------------------------|--|--------|------------|--------------------|-------|------------|--|--|------------|--|--|------------|--|--|------------|--|--|------------|--|
| | <table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A:</td> <td>Mutual of Enumclaw</td> <td>14761</td> </tr> <tr> <td>INSURER B:</td> <td></td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </table> | INSURER(S) AFFORDING COVERAGE | | NAIC # | INSURER A: | Mutual of Enumclaw | 14761 | INSURER B: | | | INSURER C: | | | INSURER D: | | | INSURER E: | | | INSURER F: | |
| INSURER(S) AFFORDING COVERAGE | | NAIC # | | | | | | | | | | | | | | | | | | | |
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| INSURER D: | | | | | | | | | | | | | | | | | | | | | |
| INSURER E: | | | | | | | | | | | | | | | | | | | | | |
| INSURER F: | | | | | | | | | | | | | | | | | | | | | |
| INSURED Freedom 2000 LLC DBA: Cando Recycling and Disposal PO Box 865 Point Roberts WA 98281-0865 | | | | | | | | | | | | | | | | | | | | | |

COVERAGES CERTIFICATE NUMBER: CL1861453164 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|-----------|----------|---------------|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | Y | Y | CPP000707107 | 07/09/2018 | 07/09/2019 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$ |
| | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY | | | | | | COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| | UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$ | | | | | | EACH OCCURRENCE \$ AGGREGATE \$ \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N | N/A | | | | PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Whatcom County is named as additional insured. This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

| | |
|---|--|
| CERTIFICATE HOLDER Whatcom County 509 Girard Street Bellingham WI 98225 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  |
|---|--|

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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

| | |
|--|-------------------------|
| 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.