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2017 BOARD OF COMMISSIONERS
Paul D. Kenner, President
Jeffrey L. McClure, Vice President
Michael J. Murphy, Secretary

PUBLIC UTILITY DISTRICT No. 1 *of Whatcom County*

Agenda for the
Regular Meeting of January 24, 2017
8:00 a.m. at the PUD Office

1. Public Comment
2. Approval of Meeting Minutes held January 10, 2017
3. Approval of Claims for January 24, 2017
4. Utility Rate Study Update
5. Resolution No. 689 – Review and Affirm Supplemental Customer Water Service Conditions Policy
6. Approve Amendment No. 3 to General Manager's Contract
7. Manager's Report
8. Adjourn

Next Commission Meetings

February 14 and 28, 2017 – Regular Meetings

*All meetings begin at 8:00 a.m. at PUD Administration Office -
1705 Trigg Road, Ferndale, WA unless other location announced.*

PUD #1 of Whatcom County (360) 384-4288

MINUTES OF THE MEETING OF THE COMMISSION

January 10, 2017

The regular meeting of the Board of Commissioners of Public Utility District No. 1 of Whatcom County was called to order at 8:00 a.m. by Commissioner Paul Kenner. Said meeting was open to the public and notice thereof had been given as required by law. Those present included Commissioner Mike Murphy and Legal Counsel Jon Sitkin. Staff: Steve Jilk, General Manager; Ann Grimm, Administrative Assistant; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Brian Walters, Director of Utility Operations; Annette Smith, Director of Finance; Duane Holden, Manager of Construction and Facilities; Alec Strand, Project Manager; Paul Siegmund, Manager of Automation and Technology; Mike Macomber, IT/SCADA Tech; Aaron Peterson, IT/SCADA Tech; Fred Disch, Water Systems Supervisor; Jon Littlefield, Electric System Supervisor; and, Lew Gaskill, Accountant I; and Traci Irvine, Accountant I.

Public attending: Robin Dexter, Environmental Working Group; Dave Olson, Citizen;
Max and Carole Perry, Citizens; TJ Lee, Phillips 66

Public Comment

No comments made.

Approval of the Meeting Minutes and Claims

The Commissioners were presented with the Minutes of the Special Meeting December 20, 2016 and the following Claims of January 10, 2017:

VENDOR NAME	AMOUNT
3-D CORPORATION	1,409.70
APERTURE ELECTRICAL	10,441.20
APPLIED DIGITAL IMAGING	44.57
BELLINGHAM HERALD	1,084.25
BIRCH EQUIPMENT COMPANY	2,913.16
CENTRAL WELDING SUPPLY	100.88
CHMELIK SITKIN & DAVIS	8,411.26
CORNERSTONE MANAGEMENT, INC.	2,921.00
CRABTREE, DEVIN	190.56
CULLIGAN NORTHWEST	78.85
FCS GROUP	1,207.50
FERNDALE ACE HARDWARE	81.95
FERNDALE CITY OF	157.55
FERNDALE LUBE	69.40
FRONTIER	1,392.13
GRAINGER	158.99
HARDWARE SALES, INC.	137.36
HD FOWLER CO, INC	71.30
HEALTH PROMOTIONS NORTHWEST	90.00
IVOXY CONSULTING LLC	5,574.19

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KCDA PURCHASING COOPERATIVE	69.34
LAPLAUNT, DAVID	61.12
LAW SEMINARS INTERNATIONAL	830.00
LENOVO US INC.	1,692.93
LITHTEX NW LLC	124.78
MALLORY SAFETY & SUPPLY LLC	196.72
MASSMUTUAL RETIREMENT SVCS LLC	8,458.33
MINMAX	2,400.00
MORTIMER, TOM	337.50
NESS CRANE SERVICE, INC	813.08
NORTH COAST ELECTRIC COMPANY	6,490.04
NORTHWEST MOWING & GARDENING	447.42
PACIFIC SURVEY & ENGINEERING	3,765.68
PLATT ELECTRIC SUPPLY CO	1,424.58
PORTAL WAY FARM & GARDEN	131.49
PUBLIC POWER COUNCIL	7,966.00
PUGET SOUND ENERGY, INC	17,416.33
REGENCE BLUE SHIELD	35,552.43
REISNER DISTRIBUTION, INC	1,382.35
RICOH USA	291.14
SMITH MECHANICAL	1,659.74
SSC - SANITARY SERVICE COMPANY	513.66
SURETY PEST CONTROL	59.79
TEAMSTER LOCAL #231	410.00
UNITED WAY OF WHATCOM COUNTY	315.00
VERIZON WIRELESS	1,244.50
WA ST SUPPORT REGISTRY	250.00
WASHINGTON DENTAL SERVICE	2,853.65
WASHINGTON TEAMSTERS WELFARE	9,747.90
WHATCOM COUNTY AUDITOR	98,065.66
WHATCOM FARMERS CO-OP	3,563.19
WHATCOM JANITORIAL	877.50
GRAND TOTAL	\$245,947.65

ACTION: Commissioner Murphy motioned to approve the MINUTES OF THE SPECIAL MEETING HELD DECEMBER 20, 2016 and the CLAIMS OF JANUARY 10, 2017. Commissioner Kenner second the motion. Motion passed unanimously.

Weather/Operations Update

Director of Utility Operations Brian Walters provided an update and slideshow of the recent extreme wintery conditions, frazil ice on the river and how it is creating quite a challenge for our Water Operations Crew. Highlights included:

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Watching the Weather:

When low temperatures and high northeast winds are forecasted, Water Operations anticipates frazil ice will occur. Large diesel-fueled rental compressors were delivered, and additional crew was placed on standby status.

Frazil Ice Occurrences:

Two (2) frazil ice events occurred: December 16 - 18, 2016 and January 3 – 5, 2017. The second event had considerably more impact than the first.

Frazil Ice Mitigation Strategy:

Air burst intervals for the fish screen blow-offs are decreased. Normally, a blow-off occurs every two hours to remove sediment and during frazil ice, blow-offs are scheduled to occur within minutes apart. Freeze gates in the settling basins are opened for proper water flow through the system and pumping is reduced when necessary. When needed, the crew also manually de-iced parts which were frozen over. On January 3, a “perfect storm” arose and blow-offs were scheduled every 25 seconds which barely allowed enough water to be drawn into the plant. Pumping capacity was decreased significantly due to the frazil ice. A photograph from 2004 depicted the entire river froze to solid ice, however, withdrawal capacity remained at normal as no frazil ice occurs at this stage.

Effects on Settling Basins:

With continuous northeast wind and freezing conditions, the west end of the basins at Plant 1 became iced over. At Plant 2, the new basins were more exposed to conditions. These were drained in an effort to keep possible equipment damage minimal.

Lessons Learned:

Exposure of the settling basins to the northeast wind continues to be an operations issue and additional compressor capacity under “ideal” frazil ice conditions is needed at the Plant 2 Intake. And the lack of storage on the industrial water system limits options and impacts our customers. Walters reiterated the importance of the intertie line, which is critical to moving water when either water plant is having difficulty.

Measures Considered to Mitigate Frazil Ice Impact on Operations:

Installing weather coverings over Plant 2 settling basins would help with ice and algae bloom issues in the summertime. Purchasing a large compressor to keep onsite, although cost for a used one is pricey. Reconsider the storage option for the industrial water system, and urge customers to consider onsite storage and pressurization of their water distribution systems. Since Plant 1 is the oldest and most vulnerable, a new substation and standby generator is recommended.

As this wintery weather continues, Water Systems Supervisor Fred Disch indicated that the PUD will keep the compressors here on standby. Commissioner Murphy thought that the covers for the basins made sense, especially on double duty for winter and summer conditions. Jilk said the greatest need is to get the water into the intakes and the district had looked at a Teflon-type of coating to repel ice on the screens. He will readdress the water storage options later this year. Walters added that Disch and the water operations crew has done a great job during these events. The Commissioners added their appreciation for the crew’s hard work as well.

Manager’s Report

No report.

Election Districts Update

Background: For Whatcom County government elections the county was originally divided into three voting districts and as such the Port of Bellingham and the PUD mirrored these district boundaries. In November 2015 the voters of Whatcom County approved an amendment to the Whatcom County Charter to require that the county be divided into five districts (Ordinance 2015-029), with each district being comprised of (as nearly as possible) one-fifth of the county’s population. In April 2016, new County election district boundaries were approved. These changes affected elections for County government elected County officials.

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Per PUD statutes, the PUD district boundaries do not have to follow County (or Port) rules and create two additional districts. Legal Counsel Sitkin explained that according to RCW 54.12.010 (6) that the boundaries of the public utility commissioner districts may be changed only by the public utility district commission, and shall be examined every ten years to determine substantial equality of population in accordance with chapter 29A.76 RCW. District staff is charged to develop a process to review the district boundaries (the current district boundaries are equal in population) for the Commission to evaluate and then a required public hearing would be scheduled. More information on this will be forthcoming.

New District Staff

Annette Smith introduced the District's newest employee, Traci Irvine. Traci's background is in payroll and accounting, and she will be replacing long-time employee Lew Gaskill who is retiring at the end of January as the Accountant 1 position.

Executive Session at 8:45 a.m.

Commissioner Kenner requested an Executive Session to review and consider potential litigation. Kenner stated that no formal action will be asked of or taken by the Commission following the Executive Session. He estimated the time for the Executive Session will be approximately 20 minutes.

There being no further business for the regular meeting, the Commission adjourned the regular meeting at 8:45 a.m. to Executive Session.

Executive Session Adjourn

There being no further business for the Executive Session, the Commission reconvened to the regular meeting at 9:12 a.m.

Adjourn

There being no further business for the regular meeting, the Commission adjourned the regular meeting at 9:13 a.m.

President/Commissioner

Secretary/Commissioner

Commissioner

PUBLIC UTILITY DISTRICT No.1

of Whatcom County

1705 Trigg Road Ferndale, WA 98248
P: (360) 384-4288 F: (360) 384-4849

AGENDA ITEM # 4
JANUARY 24, 2017

Memo

To: Commissioners Kenner, McClure & Murphy
From: Stephan Jilk
Date: January 24, 2017
Re: Update on District's Utility Rate Study by FCS Group

Background – On May 26, 2015, the District entered into a Professional Rate Development Consulting Services Agreement with FCS Group to perform a utility rate study and analysis related to the District's services. Director of Finance Annette Smith will provide an update on the study at the January 24, 2017 Commission Meeting.

Requested Action – Information only. No requested action.

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AGENDA ITEM # 5
JANUARY 24, 2017

Memo

To: Commissioners Kenner, McClure and Murphy

From: Stephan Jilk

Date: January 24, 2017

Re: Resolution No. 689 – Supplemental Customer Water Service Conditions Policy –
Review and Affirm

Requested Action – Review and confirm Resolution No. 689 – Resolution Adopting a Supplemental Customer Water Service Policy.

Background – The citizens of Washington State voted to legalize the cultivation, distribution and use of marijuana in a well-regulated manner in accordance with Initiative 502, which has since been become law and codified in Chapter 69.50 RCW. The United States federal government, Department of Justice has stated in what is known as the Cole Memorandum in August of 2013 that while marijuana cultivation and sale is legal in certain states it remains unlawful under federal law, the Department of Justice may not prosecute such activity although prosecution is not prohibited.

In order to provide predictability to PUD water customers that may use PUD water to serve marijuana production and processing operations, the District adopted Resolution 689, on December 16, 2014, approving a “Supplemental Customer Water Service Conditions Policy”. This policy essentially advises District Customers that use or could use water provided by the District to serve this type of business may be interrupted under conditions where the federal government enforces the federal statute regarding marijuana production and processing. In which case the District will terminate the supply of water to District customers utilizing the water in the production and/or processing of marijuana.

With changes taking place at the White House, a new President, and potential changes in the leadership at the Department of Justice that could affect the federal government’s position on the enforcement of federal drug laws it is important for our District to again review the status of the regulations dealing with service to marijuana production and processing facilities.

This recommendation is to allow the Commission to review/discuss and affirm the District’s policy on service to customers and policy on potential interruption to that service as impacted by the federal government’s regulatory stance. If the Commission re-affirms Resolution 689 staff will send letters of notice to water service customer’s affirming such.

Recommended Action – Review and confirm Resolution No. 689 – Resolution Adopting a Supplemental Customer Water Service Policy.

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**NOTICE
UPDATE RE: SERVICE TO MARIJUANA OPERATIONS
January 2__, 2017**

On December 16, 2014 the Commission for the Public Utility District No. 1 of Whatcom County adopted a Supplemental Customer Water Service Policy ("Supplemental Water Policy") as part of Commission Resolution No. 689 that addressed, among other issues, service to marijuana cultivation and related operations.

Resolution No. 689 and the Supplemental Policy was based, in part, the assure consistency with the United States Department of Justice ("DOJ") "Cole Memorandum" dated August 2013 that provided the DOJ may not prosecute the cultivation, distribution and/or sale of marijuana authorized under state law, as the Cole Memorandum may be revised or amended.

As part of the Supplemental Policy adopted by Resolution No. 689 the District Commission specifically reserved the right to terminate and discontinue service to marijuana cultivation and related operations.

With the election of a new President and the appointment of a new US Attorney General, the rescission of the Cole Memorandum and a new policy regarding the enforcement of federal marijuana laws is a possibility.

Public Utility District No. 1 of Whatcom County takes this opportunity to remind its customers that the water service may be terminated to any property that uses water for the cultivation of marijuana or related operations. Customers who may have contracted for water service from the Public Utility District No. 1 of Whatcom County use water subject to the Supplemental Policy and the potential of termination of water in such instances without a right of recourse.

RESOLUTION NO. 689

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY ("DISTRICT")
ADOPTING A SUPPLEMENTAL CUSTOMER WATER SERVICE
CONDITIONS POLICY**

WHEREAS, pursuant to RCW 54.16.030, Public Utility District No. 1 of Whatcom County ("District") has the authority, but not the obligation, to provide raw and/or industrial water, including water for fire flow purposes, along with the authority to establish rules, regulations, requirements, and otherwise fully control the use, distribution, an price thereof; and,

WHEREAS, the citizens of the State of Washington voted to legalize the cultivation, distribution, and use of marijuana in a well regulated manner in accordance with Initiative 502, which has since become law and codified in Chapter 69.50 RCW; and,

WHEREAS, although the state legalized marijuana to some extent, the United States Department of Justice ("DOJ") has stated in what is known as the Cole Memorandum of August 2013 ("Cole Memorandum"), that while the cultivation, distribution, and sale of marijuana is now authorized under state law, such activity remains unlawful under federal law, the DOJ may not prosecute such activity if such activity occurs consistent with a well regulated framework within a state, although such prosecution is not prohibited; and,

WHEREAS, the District provides water that is used by its customers that is consistent with the District's water rights, such as irrigation or fire flow purposes, without an obligation or duty to inspect the type of land use activities engaged in by the customer, which are outside of the control of the District; and

WHEREAS, it is prudent to provide predictability to potential customers by establishing reasonable conditions in advance of the consideration of any contract with the District for the provision of water that may be used by a customer.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Public Utility District No.1 of Whatcom County as follows:

1. The Commission makes the following findings:
 - a. The District provides raw water and in some circumstances potable water pursuant to policies and a contract approved by the Commission that includes a provision(s) that requires that the use of water is consistent with applicable local, state, and federal laws and regulations so that, among other reasons, the District's water rights are not impaired;
 - b. The District, its officials, employees, and agents may provide water for irrigation and/or fire flow purposes provided that the use of the water does not impair the District's water rights. However, the District does not otherwise examine the nature or purpose of the irrigation, or the occupancy rating of a structure for fire code, building code or for fire protection purposes. For instance, the District may confirm that the use is for irrigation, and the instantaneous and annual quantities of water and the consumptive effects of the water, but otherwise does not consider what crops are irrigated nor evaluate in advance that the use is consistent with zoning. As such, when providing water for irrigation and/or fire flow, the District does not participate in any selection or approval of crops to be irrigated, or the activities occurring within a structure. Accordingly, the District, by allowing water for irrigation use, or fire flow does not intentionally participate, aid or abet or endorse or regulate any particular conduct of its customers and no such inference shall be taken from this Resolution;

- c. Federal law and state law are in conflict concerning the cultivation, distribution, and sale of marijuana, and it is the intent of this Resolution to assure that the use of water by a customer does not impair the District's water rights, and in accordance with guidance from the DOJ and specifically in reliance upon the Cole Memorandum; and,
 - d. It is prudent to adopt reasonable conditions of service pursuant to the Cole Memorandum.
2. Adopts the District's Supplemental Customer Water Service Conditions Policy ("Policy") attached hereto and directs staff to publish a copy of such policy in the normal course of business.
 3. This Resolution and attached policy shall not be construed to impose a duty on District officials, employees, agents, and assigns to provide water to any entity, nor obligate the District to inspect the conduct of District customers to determine the purpose of the customers' use of the water provided by the District or evaluate the crops that may be irrigated.
 4. In adopting the attached policy, the Board relies on guidance from the federal government contained in the Cole Memorandum.
 5. Any interpretations and application of this Resolution and the attached policy shall be consistent with any contract for water executed by the District and a customer, and in the event of a conflict between any provision of a contract and this Policy, the terms of the contract shall control.

ADOPTED by the Board of Commissioners of Public Utility District No. 1 of Whatcom County at a special meeting thereof held this 16th day of December, 2014.

Public Utility District No. 1 of Whatcom County

President

Vice President

Commissioner Secretary

**PUBLIC UTILITY DISTRICT NO. 1
OF WHATCOM COUNTY, WASHINGTON**

SUPPLEMENTAL CUSTOMER WATER SERVICE CONDITIONS POLICY

SECTION 1 – BACKGROUND:

Pursuant to RCW 54.16, the District engages in general municipal water supply services consistent with its statutory authority and the limitations on use set forth in the District's applicable water rights, subject to the limitations of State water law and the adopted policies and requirements of the District.

SECTION 2 – PURPOSE AND OBJECTIVES:

- A. The provision or service and the continuation of water service to any customer, as well as the establishment of any terms or conditions on water service are within the sole discretion of the District.
- B. The purpose of this Policy is to assure that the provision of water is consistent with the United States Department of Justice ("DOJ") Cole Memorandum of August 2013 ("Cole Memorandum"), as may be revised or amended.
- C. The purpose of this Policy is to supplement existing policies and requirements, and does not amend any existing policy. Nothing in this Policy shall create a duty of obligation to provide water service to any person or entity.

SECTION 3 – GENERAL CONDITIONS OF SERVICE:

In addition to those customer obligations and conditions set forth in any District policy, contract or law elsewhere, the District's service to any customer is conditioned upon the terms of this section. To provide clarity to customers, but without limiting and discretion of the District, the District shall deny or discontinue service if:

1. A request by a federal, state or local agency is made to cease water service to a district customer whose use violates applicable law.
2. A court order directs the District to discontinue water service to a customer.
3. A written request, demand, threat of criminal prosecution, or actual criminal prosecution is made or initiated against the District, its officials, employees, agents or assigns for delivery of water service to a customer whose use of the water service violates the law.
4. The customer fails to maintain possession of a valid and lawfully issued license by the State of Washington required for the customer to engage in any activity which may be lawful under state law, but constitutes a violation of federal law.
5. There is a change in the law or there is express pre-emption of federal law occupying the field of regulation which requires termination of service.
6. Any other factor as determined by the District Commission in its sole discretion.

SECTION 4 – NO LIMITATION ON DISTRICT DISCRETION OR RELEASE OF INFORMATION:

This Policy provides no limitation on the exercise of the District's discretion to deny service.

This Policy contains no limitation or requirements related to providing government agencies with customer information, including data related to consumption of water.

SECTION 5 – NO DUTY TO DEFEND:

The District shall have no duty to defend against a lawsuit brought to enjoin water service to a customer and shall comply with such court order.

SECTION 6 – SERVICE TERMINATION BY GOVERNING AUTHORITY AND RESTORATION:

Where service is terminated at the direction of any state, county, city, fire or police authority, an inspection of the customer's facilities by the appropriate authority, as determined by the District will be required prior to restoration of service.

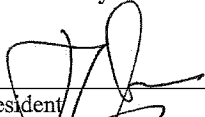
SECTION 7 – VALIDITY:

If any portion of this Policy is for any reasons held to be unlawful, unconstitutional, or void, such invalidity shall not affect the validity of the remaining portions of this Policy.

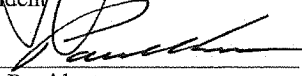
EFFECTIVE: December 16, 2014.

ADOPTED by the Board of Commissioners of Public Utility District No. 1 of Whatcom County at a special meeting thereof held this 16th day of December, 2014.

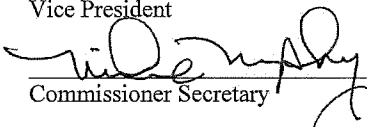
Public Utility District No. 1 of Whatcom County



President



Vice President



Commissioner Secretary

PUBLIC UTILITY DISTRICT No.1
of Whatcom County

1705 Trigg Road Ferndale, WA 98248
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AGENDA ITEM # 6
JANUARY 24, 2017

Memo

To: Commissioners Kenner, McClure and Murphy
From: Stephan Jilk
Date: January 24, 2017
Re: General Manager Employment Contract Amendment No. 3

Requested Action – APPROVE AMENDMENT NO. 3 TO THE GENERAL MANAGER’S EMPLOYMENT CONTRACT.

Background – The General Manager entered into an employment contract with the District that commenced January 1, 2012 with an expiration date of December 31, 2016. That contract was amended on December 17, 2013 and amend a second time in December, 2015. The current term of the contract expires December 31, 2018.

This third amendment allows for changes in sections 5.3 and 10.5, Sick leave and Termination Benefits.

Fiscal Impact – None.

Recommended Action – APPROVE AMENDMENT NO. 3 TO THE GENERAL MANAGER’S EMPLOYMENT CONTRACT.

THIRD AMENDMENT TO EMPLOYMENT AGREEMENT

THIS THIRD AMENDMENT TO EMPLOYMENT AGREEMENT (the "Amendment") is entered into between WHATCOM PUBLIC UTILITY DISTRICT #1 (hereinafter referred to as the "PUD") and STEPHAN JILK (hereinafter referred to as the "General Manager"). In consideration of the mutual covenants and promises contained herein, the PUD and the General Manager agree as follows:

WHEREAS, the General Manager and the PUD entered into an Employment Agreement (the "Employment Agreement") commencing January 1, 2012, with an expiration date of December 31, 2016, and;

WHEREAS, the Employment Agreement was amended on December 17, 2013, extending the term of the Agreement to December 31, 2018 ("First Amendment"), and;

WHEREAS, in December, 2015, the Commission amended the Employment Agreement to provide for the District's Contribution to the General Manager's Retirement, and;

WHEREAS, the parties now desire to further amend the Employment Agreement to address vacation leave and sick leave.

NOW, THEREFORE, in consideration of the following terms and conditions, the parties agree as follows:

1. Sick Leave. Section 5.3 of the Employment Agreement is deleted and replaced with the following:

5.3 Sick Leave. The General Manager shall accrue one (1) day (eight (8) hours) of sick leave per month effective on the commencement date of this Agreement and retain any unused sick leave benefits accrued up to the commencement date of this Agreement for previous employment with the PUD. Such sick leave shall be cumulative from month-to-month and year-to-year. The provision in section 5.3 of the agreement limiting maximum accrual of sick leave to 960 hours is hereby deleted. The General Manager has accrued sick leave benefits because of employment with the PUD prior to the effective date of this Agreement. The General Manager shall retain any unused sick leave benefits accrued to the effective date of this Agreement.

2. **A new section of the Employment Agreement is added as follows:**

5. Deferred Payout of accrued vacation leave and sick leave. Upon the departure of the General Manager for any reason, any payout of any accrued sick leave and/or vacation leave, if any, may be paid out over a period of up to two years or in a lump sum payment at the discretion of the District.

3. **Termination of Employment.** Section 10.5 of the Employment Agreement is added as follows:

10.5 Death. If the General Manager dies, the agreement is terminated immediately. Upon such termination, the General Manager's spouse will receive his final paycheck, plus all accrued but unused vacation leave and sick leave at the General Manager's final salary rate, plus all accrued retention compensation earned by the General Manager.

4. **Other terms and conditions.** All other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of conflict between this Amendment and the Agreement, this Amendment shall control.

Print Name: Paul Kenner, President

Date:

Print Name: Stephan Jilk, G.M.

Date: