PUBLIC UTILITY DISTRICT No. 1
of Whatcom County

Agenda for the
Regular Meeting of January 12, 2021
8:00 a.m. via Zoom Teleconference

1. Call to Order | Pledge of Allegiance
2. Approval of Agenda
3. Consent Agenda
   a) Approval of the Meeting Minutes of the Regular Meeting of December 8, 2020
   b) Approval of the Meeting Minutes of the Regular Meeting of December 15, 2020
   c) Approval of Claims for January 12, 2021
4. Old Business
5. New Business
   a) Approve Professional Services Agreement with Digital Boundary Group
   b) Select Committee Commission Representatives/Staff Alternates for 2021
6. General Manager Report
7. Commissioner Reports
8. Public Comment
9. Executive Session: Potential Litigation RCW 42.30.110(1)
   (Separate Executive Session Zoom Platform invite from Legal Counsel)
10. Adjourn

**Until further notice:** Whatcom PUD’s Offices are closed to public access.

Due to the [Updated Open Public Meetings Act General Guidance Regarding the COVID-19 Event](https://www.pudwhatcom.org), the PUD Meeting Room is not open to the public. All Commissioners will participate via teleconference.

The public meeting can accessed by internet: [https://us02web.zoom.us/j/83099917381](https://us02web.zoom.us/j/83099917381)
Or by telephone: Dial 1 (253) 215 8782 or 1 (346) 248 7799 or 1 (669) 900 6833
Webinar ID: 830 9991 7381

**Next Commission Meetings**
January 26 and February 9, 2021 | 8:00 a.m. | Regular Meetings

*Access information will be announced - the public may join the meeting by teleconference.*

Contact: Ann Grimm, Commission Clerk at (360) 384-4288 x 27 • [www.pudwhatcom.org](http://www.pudwhatcom.org)
1. **Call to Order | Pledge of Allegiance**

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 Jeff McClure. Said meeting was open to the public and notice thereof had been given as required by law. Those present via Zoom teleconference included Commissioner Mike Murphy, Commissioner Jeff McClure, Commissioner Atul Deshmane, and Legal Counsel Richard Davis. Staff attending via teleconference: Steve Jilk, General Manager, Ann Grimm, Administrative Assistant; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Brian Walters, Assistant General Manager; Annette Smith, Director of Finance; Duane Holden, Director of Utility Operations; Paul Siegmund, Manager of Automation and Technology; Aaron Peterson, IT/SCADA Technician; Mike Macomber, IT/SCADA Technician; and Traci Irvine, Accountant I.

Public attending via teleconference:
- Cynthia Weed, K & L Gates
- Scott McJannett, K & L Gates
- Scott Bauer, Northwest Municipal Advisors
- Pat Pollock, BP Cherry Point
- Lauren Turner, Phillips 66
- Max and Carole Perry, Citizens
- Dave Olson, Citizen
- Christine Grant, Citizen
- Carryn Vande Griend, PSE
- Brad Rader, Northwest Washington Fair
- Mary Rivkin, Citizen

2. **Approval of Agenda**

**ACTION:** Commissioner Murphy motioned to approve the agenda of December 8, 2020. Commissioner Deshmane second the motion. Motion passed unanimously.

3. **Consent Agenda**

   a. **Approval of Meeting Minutes of the Regular Meeting, November 24, 2020 as presented**
   b. **Approval of the Claims of December 8, 2020:**

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MASSMUTUAL RETIREMENT SVCS LLC  11,199.99
MORTIMER, TOM  3,671.25
NORTH COAST ELECTRIC COMPANY  4,499.92
NORTHWEST MOWING & GARDENING  514.54
PACIFIC SURVEY & ENGINEERING  26,132.75
PITNEY BOWES GLOBAL FINANCIAL SERVICES LLC  150.90
PLATT ELECTRIC SUPPLY CO  121.41
POTELEC, INC  11,232.50
PUBLIC UTILITY RISK MANAGEMENT SERVICES  10,748.20
PUD #1 OF WHATCOM COUNTY  722.00
PUGET SOUND ENERGY, INC  4,917.29
REGENCE BLUE SHIELD  39,482.01
REISNER DISTRIBUTION, INC  525.94
RICOH USA  277.18
SHRED-IT USA  40.92
SSC - SANITARY SERVICE COMPANY  513.28
TEAMSTER LOCAL #231  515.00
UNITED WAY OF WHATCOM COUNTY  420.00
UTILITIES UNDERGROUND LOCATION  14.19
VERIZON WIRELESS  1,665.38
WA ST DEPT TRANSP-NW REGION  505.67
WASHINGTON DENTAL SERVICE  2,465.75
WASHINGTON TEAMSTERS WELFARE  12,029.15
WHATCOM JANITORIAL  1,250.00
ZEE MEDICAL SERVICE  413.87
ZIPLY FIBER  1,392.78
GRAND TOTAL  184,335.96

ACTION: Commissioner Murphy motioned to approve the consent agenda of December 8, 2020. Commissioner Deshmane second the motion. Motion passed unanimously

4. Old Business
a. Resolution 777 – Amend the Policy for Employee Compensation for Administrative Employees
Note: This agenda item was tabled at the last Commission Meeting. Commissioner Murphy has since discussed his concerns with General Manager Jilk and would now like to proceed with acting on the resolution.

Background: This is a recommendation for the Commission to adopt a resolution amending the District’s Policy for Employee Compensation for Administrative Employees (Exhibit A). This policy provides guidelines for establishing a methodology for updating and setting salary ranges for all non-bargaining unit employee positions, establishing employee positions and job descriptions for all positions, and information on additional benefits and compensation as offered by the District. Resolution No. 777 will update the following sections of the Policy for Employee Compensation for Administrative Employees:

1) Position Titles and Yearly Salary Ranges List.
   For 2021, we are recommending ten salary range adjustments based on this year’s review for the following positions:
Jilk is recommending a change in the title for one existing position, Administrative Assistant to now be titled Executive Assistant. This recommended change is a result of the review of the responsibilities this position carries.

This is a recommendation for Commission approval of the recommended salary ranges for 2021. A set of proposed salary ranges with the existing ranges is listed as Exhibit B in Resolution No. 777. The General Manager establishes individual salaries as he/she implements the Policy for Employee Compensation for Administrative Employees established and approved by the Commission.

2) **Deferred Compensation Program**

For 2021, no recommendation is being made to change in the District’s contribution for retirement set at 8.7%.

3) **Separation of Employment** Revised to include the following underlined text in item two (2):

2) Sick Leave Benefits: Any accrued sick leave benefits will be cashed out at the following schedule based on years of service:

- Greater than 20 years – at fifty percent (50%) of the unused balance at time of termination
- Sixteen to 20 years – at forty percent (40%) of the unused balance at time of termination
- Less than 16 years – currently at twenty-five percent (25%) of the unused balance at time of termination.

No change for this one.

Fiscal Impact: All actions taken by the General Manager to implement the Policy for Employee Compensation for Administrative Employees will be within the annual budget as approved by the Commission.

**ACTION:** Commissioner Deshmane motioned to APPROVE RESOLUTION NO. 777– AMEND THE POLICY FOR EMPLOYEE COMPENSATION FOR ADMINISTRATIVE EMPLOYEES. Commissioner Murphy second the motion. Motion passed unanimously.

5. **New Business**

a. **TEFRA Hearing**

Commissioner McClure opened the public TEFRA hearing for comment at 8:07 a.m., for the purpose of considering the issuance of its Limited Tax General Obligation Refunding Bonds, 2021B (Private Activity - Non-AMT) (the “2020B Bonds”) in the amount of not to exceed $14,100,000. No comments made.

Commissioner McClure closed the TEFRA hearing and re-opened the regular meeting at 8:09 a.m.

b. **Approve Resolution No. 779 – Bond Sale**

Background: In 2010, Limited Tax General Obligation (LTGO) bonds were issued to refinance some 1999 bonds (Series A) and to pay for the rebuild of water treatment plant 2 (Series B) for a
total of $23,640,000. The remaining 2010B bonds have an interest rate of over 5%.

In December of 2020, the outstanding 2010 Series B bonds became eligible for refinancing. A current bond issue is estimated to have an interest rate of somewhere between 1.5% - 2%. The exact interest rate and amounts will not be known until the bonds go to market. Principal amounts will differ due to inclusion of issuance costs, bond reserves and market demand. The reduction in interest rate will provide significant savings in the District’s debt service. The current principal outstanding on the 2010 Series B bonds is $13,750,000.

The District is also budgeted to begin construction on rebuilding the Refinery Substation. A new issue will be added to these bonds of $5,500,000 in order to finance the construction.

The resolution also includes these provisions:
- Agreement that the District is willing to issue a tax levy if funds fall short of paying the debt service;
- The aggregate principal amount of the bonds will not exceed $19,700,000;
- The General Manager and Director of Finance are named as the Designated District Representatives to approve final terms within the resolution guidelines, and execution of all documents and actions necessary to sell and deliver the bonds;
- The temporary authorization as Designated District Representatives shall expire December 31, 2021.

The current schedule has the bonds going to market January 28, 2021. They are scheduled to close and the District should receive the bond proceeds February 10, 2021.

Fiscal Impact: The 2021 bond issue is included in the 2021 budget as a reduction in debt service and issue of new money to finance the construction of the Refinery Substation.

Scott Bauer of Northwest Municipal Advisors gave a brief update on the Bond Market:

**Current Bond Market**

- Interest rates have fallen since November 2018, the most recent peak
- The market was volatile in late March and early April due to uncertainty of the impacts of COVID-19
- Interest rates hit historical lows in August and have come up slightly since then

![Graphs showing bond market trends](image-url)
Outstanding Debt

<table>
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<th>LTGO Bonds</th>
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<th>Callable Par</th>
<th>Final Mat.</th>
<th>Coupon Range</th>
<th>Call Date</th>
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<td>$13,750,000</td>
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<td>12/1/20</td>
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<td>1,550,000</td>
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<td>12/1/24</td>
<td>2.75%</td>
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<td>LTGO Bonds, 2013</td>
<td>4,230,000</td>
<td>3,650,000</td>
<td>12/1/32</td>
<td>3.00%</td>
<td>6/1/23</td>
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<td>LTGO Ref. Bond, 2016</td>
<td>1,020,339</td>
<td>1,020,339</td>
<td>12/1/27</td>
<td>2.09%</td>
<td>Any Time</td>
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Total LTGO Bonds Debt: $20,550,339

- Estimated all-in interest cost of new debt = 1.00% (based on current interest rates)
- Estimated net present value savings are estimated at $3.1 million or 22.8% of the refunded bonds’ principal amount
- Estimated average annual savings = $330,000

• Provide $5.5 million for assuring and improving electric service reliability and adding capacity at the substation currently serving Phillips 66
  - Final maturity = December 1, 2040
  - Estimated all-in interest cost = 2.20%
  - Estimated average annual debt service $342,000

• Sale is scheduled for January 28, 2021
• Funds would be available on February 10

**ACTION:** Commissioner Deshmane motioned to approve RESOLUTION NO. 779, A RESOLUTION OF THE COMMISSION OF THE PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF TWO SERIES OF LIMITED TAX GENERAL OBLIGATION AND REFUNDING BONDS OF THE DISTRICT IN THE PRINCIPAL AMOUNTS OF NOT TO EXCEED $5,600,000, AND $14,100,000, RESPECTIVELY, FOR THE PURPOSES OF PROVIDING FUNDS FOR CERTAIN ACQUISITIONS AND IMPROVEMENTS TO DISTRICT FACILITIES AND REFUNDING CERTAIN OUTSTANDING LIMITED TAX GENERAL OBLIGATION BONDS OF THE DISTRICT; AUTHORIZING A DESIGNATED DISTRICT REPRESENTATIVE TO APPROVE FINAL TERMS AND CONDITIONS AND THE SALE OF THE BONDS, EXECUTION OF ALL
c. **Approve Resolution No. 780**

The District’s bond counsel, K&L Gates recommended the adoption of an update to the Post Issuance Compliance Policies for both Governmental and Private Activity bonds. While these policies are not mandatory, the most recent IRS forms now include questions inquiring whether any written procedures have been adopted to ensure compliance with federal tax law following the issuance of bonds and during the life of the bond.

The main difference from the policy passed in 2013 is under the section of “Additional Filings”. This is a list of events besides annual financial information where a notice is required to be posted on the Electronic Municipal Marketplace Access system (“EMMA”).

There is no fiscal impact. This is adoption of policy only.

**ACTION:** Commissioner Murphy motioned to approve RESOLUTION 780 FOR POST ISSUANCE COMPLIANCE POLICIES FOR BOTH GOVERNMENTAL AND PRIVATE ACTIVITY BONDS. Commissioner Deshmane second the motion. Motion passed unanimously.

d. **Approval of 2021 Budget and Rates, Resolution Nos. 781, 782 and 783**

Following the presentations to the Commission, customers and subsequently the public hearing on the draft 2021 budget, Jilk is recommending the Commission adopt the 2021 Operating and Capital Budget and Rates for Water and Electric Services.

To do this, a series of resolutions are passed for the budget of the upcoming year and also the appropriate rates and charges for each utility. The budget resolutions are based on the information presented at the November 24 Commission Meeting and no other changes have been made.

The resolutions being presented for approval for the 2021 calendar year are:

- Resolution No. 781 - Adopting the District’s Operating and Capital Budget
- Resolution No. 782 - Adopting the Industrial Water Utility Water Rates and Grandview Water Rates
- Resolution No. 783 - Adopting the Electric Utility Rates

**ACTION Item #1:** Commissioner Deshmane motioned to APPROVE RESOLUTION NO. 781 – A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY (“DISTRICT”), ADOPTING THE DISTRICT BUDGET FOR CALENDAR YEAR 2021. Commissioner Murphy second the motion. Motion passed unanimously.

**ACTION Item #2:** Commissioner Deshmane motioned to APPROVE RESOLUTION NO. 782 – A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY (“DISTRICT”), ADOPTING INDUSTRIAL WATER UTILITY WATER RATES AND GRANDVIEW UTILITY SERVICE RATES FOR 2021. Commissioner Murphy second the motion. Motion passed unanimously.

**ACTION Item #3:** Commissioner Deshmane motioned to APPROVE RESOLUTION NO. 783 – A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY (“DISTRICT”) ADOPTING RATES AND CHARGES,
e) **Approve Industrial Water Chemicals Contract for 2021**

Background – The bid for the PAC Chemical Supply for calendar year 2020 was awarded to Waterhouse Environmental Services Corp. The contract contains an option for extending the term for up to two additional one-year amendments, subject to agreement of the parties. The additional one-year amendments, if executed, provide the opportunity for adjusting the unit pricing up or down to best reflect the then current market conditions. The 2020 Pricing and Estimate as well as the 2021 pricing are as follows:

**Waterhouse Environmental Services Corporation**

**2020 Current Price:**
- Polyaluminum Chloride Coagulant $0.405 per lb

**2020 Engineer’s Estimate:**
- Polyaluminum Chloride Coagulant $0.420 per lb

**2021 Price:**
- Chloride Coagulant $0.432 per lb

Unit Prices include Washington State Sales Tax and Shipping; including all costs associated with the delivery of the material including, but not limited to, labor, taxes, insurance, fuel and/or fuel surcharge. Staff recommends awarding the 2021 Contract for chemical supply to Waterhouse Environmental Services Corporation.

Fiscal Impact – Funding for the PAC Chemical Supply is included in the 2021 Budget and reflects this potential increase as actual costs always vary because of fluctuating river conditions.

**ACTION:** Commissioner Deshmane motioned to AWARD THE POLYALUMINUM CHLORIDE (PAC) CHEMICAL SUPPLY CONTRACT FOR 2021, TO WATERHOUSE ENVIRONMENTAL SERVICES CORPORATION AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT. Commissioner Murphy second the motion. Motion passed unanimously.

f) **Approve Sponsorship of Northwest Washington Fair’s Farming for Life Exhibit**

Background: The Northwest Washington Fair Foundation has constructed a new exhibition building at the Northwest Washington Fairgrounds. This building will serve several different purposes, places for exhibits, community gatherings, Washington State University education opportunities, research kitchen facilities, and a major “Farming for Life” exhibit that will be the platform of how agriculture is so important to our local and regional culture and how we are all connected to agriculture. A key element of the exhibit will be how water is intertwined with and is so much a part of agriculture. Because the District has played a major role in supporting agriculture and has played such a key role in water resource management in the county over the years, the District has an interest in supporting the development and continuing “telling the story” of water and agriculture.

Jilk said the funding for the sponsorship is in the 2021 Budget. Deshmane said that he has discussed the content of the exhibit with Brad Rader who is spearheading the project. The content and nature of the design is yet to be decided upon; however, providing a type of digital format/kiosk or traveling medium that can be used in other environments such as classrooms, not just at the exhibit building.
has been suggested. Deshmane added it is a great way to communicate the story of water and agriculture, and the role of the District.

There is no impact to the 2021 PUD budget, as it allows for this sponsorship.

**ACTION:** Commissioner Deshmane motioned to SUPPORT THE EXHIBIT OF FARMING FOR LIFE EXHIBIT AT NORTHWEST WASHINGTON FAIR IN THE AMOUNT OF $50,000 IN 2021, WITH THE REQUEST THAT THE EXHIBIT INCLUDE A FOCUS ON WATER USE AND CONSERVATION MEASURES IN AGRICULTURE AND THAT THE CONTENT IS DEVELOPED TO BE SHARED IN A BROAD, DIGITAL FORMAT. COMMISSIONER MURPHY DID NOT SECOND; COMMISSIONER MCCLURE SECOND THE MOTION. NO FINAL VOTE TAKEN.

Commissioner Murphy does not support the funding at this time; he is cautious about how young people are educated. He feels the use of the exhibit would be a one-time visit, and not enough learning involved. He is a believer and supporter in farming, but to spend $50,000 at this time he does not support. He would entertain revisiting this in 2021. McClure responded that there are various ways to educate people – general awareness and ongoing education for deeper awareness. He added there is deeper education involved in the fair through 4-H and other programs. One of McClure’s main concerns is the threat to farming – through land use changes and others. He sees the exhibit as a method for people to visit the exhibit at all times of the year, not just during the fair. These kinds of exhibits have a great deal of value to draw people in, and to help them understand the food doesn’t just come from the grocery store. Jilk added that water really impacts all of us, and the exhibit should be viewed as a keystone on bringing connections such as the Conservation District, Whatcom Watershed Information Network and others, together of all opportunities in the county in terms of education on farming and water resources.

At this time, Commissioner Deshmane suggested that this be tabled. He believes it should be passed unanimously, as all three Commissioners support agriculture, and recommends that Commissioner Murphy follow up with staff and Rader for more information and crafting better language for the sponsorship. Commissioner McClure recommended to table until the next meeting on December 15, 2020.

**ACTION:** Commissioner Deshmane withdrew the motion to support the exhibit.

e) Approval of Resolution No. 784 – Appreciation of Pat Pollock, BP Cherry Point Representative

The District’s customer representative from BP Cherry Point, Pat Pollock, is retiring at the end of December after representing the PUD’s refinery customer for BP Cherry Point and water customer, Alcoa/Intalco. Pollock served for three years at Alcoa and 15 years at BP Cherry Point. Jilk and the Commissioners thanked Pollock for his outstanding service to the District and presented Resolution No. 784 honoring Pollock upon his retirement. Resolution No. 784 expressed the Commissioners’ sincere appreciation for his valued relationship to the District since 2003. Pollock served the District “…most capably with the interests of the PUD always foremost, and gave generously of his time and talents in performing the duties of his job as company liaison and the District’s Contract Administrator Extraordinaire…”

A framed copy of the signed resolution will be presented to Pollock. All congratulated and applauded Pat’s accomplishments and service. Pollock thanked the Commissioners and staff for the recognition.

**ACTION:** Commissioner Deshmane motioned to approve Resolution No. 784 honoring Pat Pollock upon his retirement after a total of 18 years serving as “Contract Administrator Extraordinaire” to the District. Commissioner Murphy second the motion. Motion passed unanimously.
6. **General Manager’s Report**  
The District has been working with the Department of Ecology regarding a $710,000 grant for the California Creek project, trying to get language changed in the grant contract prior to Commission approval. Legal Counsel and Jilk have been working with Ecology to approve the changes. Ecology estimated they would not get the response back to us by the last meeting of the year on Dec. 15, and as such, an extension has been granted by Ecology into early 2021.

7. **Commissioner Reports**  
Deshmane said there is an Expression of Interest on a solar generation project to generate 75 mW continuously. Deshmane would like to ask staff to respond to the interest (nonbinding) in purchasing power from someone other than Bonneville. Energy Northwest is leasing the land and a stipulation of the Expression of Interest is the available energy be offered to Energy Northwest’s member utilities who will have a first right of refusal to participate in the project.

**Key Project Facts:**  
Offeror: Tucci Energy Services Inc. LLC, a Washington State Woman Owned Company  
Energy Type: Solar Photovoltaic  
Generating Capacity: Up to 100 MW  
Cost of Power: Estimated to be under $40/MW  
Renewable Energy Credits: REC’s/MWh TBD  
Location: Richland, WA  
Site Size: 300 acres  

**Project Schedule:**  
Development and Finance: Currently underway  
Construction Start: Q2 2022  
Commercial Operation: Q1 2024  

Jilk said that unless there are any objections from the Commission, staff will move forward to submit the nonbinding Expression of Interest and update the Commission as the project evolves.

8. **Public Comment**  
None made.

9. **Executive Session**  
At 9:52 a.m. Commission President Jeff McClure requested Executive Session (No. 1) pursuant to RCW 42.30.110(1) (g) to discuss the General Manager’s performance evaluation. The estimated time for Executive Session was thirty minutes. The Commission President indicated that no action is anticipated be taken after the adjournment of the Executive Session.

- The Commission held Executive Session on a separate Zoom webinar platform for privacy, security matters and Open Public Meeting Act requirements.

**Executive Session Adjourn**  
There being no further business for Executive Session, the Commission rejoined the Special Commission Meeting webinar platform at 10:32 a.m.

10. **Adjourn**  
There being no further business for the meeting, Commissioner Murphy adjourned the regular meeting at 10:36 a.m.
1. Call to Order | Pledge of Allegiance
The special 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 Jeff McClure. Said meeting was open to the public and notice thereof had been given as required by law. Those present via Zoom teleconference included Commissioner Mike Murphy, Commissioner Jeff McClure, Commissioner Atul Deshmane, and Legal Counsel Richard Davis. Staff attending via teleconference: Steve Jilk, General Manager; Ann Grimm, Administrative Assistant; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Annette Smith, Director of Finance; Brian Walters, Assistant General Manager; Duane Holden, Director of Utility Operations; Paul Siegmund, Manager of Automation and Technology; Aaron Peterson, IT/SCADA Technician; Mike Macomber, IT/SCADA Technician; Jon Littlefield, Electric System Supervisor; Devin Crabtree, Chief Water Operator; and, Traci Irvine Accountant I.

Public attending via teleconference:
Christine Grant, citizen
Paul and Chris Kenner, citizens
Max Perry, citizen
Dave Olson, citizen
Caryn Vande Griend, PSE
Lauren Turner, Phillips66

2. Approval of Agenda
No changes made.
 ACTION: Commissioner Murphy motioned to APPROVE THE AGENDA OF DECEMBER 15, 2020. Commissioner Deshmane second the motion. Motion passed unanimously.

3. Approval of Consent Agenda:
a) Approval of the Meeting Minutes of the Special Meeting of December 1, 2020 as presented; and
b) Approval of the Claims of December 15, 2020:

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ON-SITE TESTING 284.74
PAYLOCITY 131.88
PAYROLL 208,713.81
PLATT ELECTRIC SUPPLY CO 75.63
PUD #1 OF WHATCOM COUNTY 1,722.00
PUGET SOUND ENERGY, INC 1,218.99
WA FEDERAL VISA CARD MEMBER SERVICES 2,633.30
WA PUBLIC UTILITY DISTRICTS ASSOCIATION 300.00
WA ST DEP 71,832.34
WESTERN CONFERENCE OF TEAMSTERS 10,146.50
GRAND TOTAL $ 1,054,860.59


4. Old Business
   a) Approval of Sponsorship of Northwest Washington Fair’s Farming for Life Exhibit

   Note: This item was tabled at the last meeting. The Northwest Washington Fair Foundation has constructed a new exhibition building at the Northwest Washington Fairgrounds. This building will serve several different purposes, places for exhibits, community gatherings, Washington State University education opportunities, research kitchen facilities, and a major “Farming for Life” exhibit that will be the platform of how agriculture is so important to our local and regional culture and how we are connected to agriculture. It can be a resource that will be used to educate all local residents and others from the region on agriculture, food production and the relationship of food production to all.

   A key element of this education experience is to show how water is so much a part of agriculture and essential to all needs in the Nooksack River basin.

   As the PUD has played such a major role in supporting agriculture and a key role in water resource management in the county over the years, the PUD has an interest in supporting the development and continuing to “tell the story” of water and agriculture.

   Providing funding as a sponsor to help develop and to maintain and expand the use of the exhibit in “telling the story” of water and agriculture is one way to support this work. The PUD sees this as another opportunity to educate county and regional communities on the value of food production and the value of water resource management.

   This is a request to approve a $50,000 sponsorship to the Farming for Life exhibit in July of 2021 and commit to $25,000 each year in 2022 and 2023, for a total commitment of $100,000.

   Fiscal Impact: The 2021 PUD budget allows for this sponsorship.

   ACTION: Commissioner Deshmane motioned to APPROVE THE BUDGETING AND EXPENDITURE FOR SPONSORSHIP OF FARMING FOR LIFE EXHIBIT AT NORTHWEST WASHINGTON FAIR FOR A TOTAL COMMITMENT AMOUNT OF $100,000; TO BE PAID ON THE FOLLOWING SCHEDULE: $50,000 IN JULY 2021; $25,000 TO BE PAID IN JULY 2022, AND $25,000 TO BE PAID IN JULY 2023, FOR THE SOLE PURPOSE OF EDUCATION RELATED WATER RESOURCE MANAGEMENT AND OTHER PURPOSES ALLOWED UNDER RCW 54.16.360 AND PRIOR TO EXPENDITURE OF THE FUNDS AN AGREEMENT TO BE EXECUTED WITH THE RECIPIENT OF THE FUNDS APPROVED BY THE GENERAL MANAGER AND

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LEGAL COUNSEL TO ASSURE USE OF THE FUNDS IN THIS MANNER. Commissioner Murphy second the motion. Motion passed unanimously.

5. New Business

a) Approve Amendment No. 1 – Becky Peterson/Geneva Consulting

Background: The Commission approved the Agreement with Becky Peterson/Geneva Consulting on December 13, 2018 to provide technical services for the District regarding Whatcom County WRIA 1 water supply planning projects. The initial term of the Agreement expires on December 31, 2020.

District staff continues to require technical services for Whatcom County WRIA 1 water supply planning projects and staff would like the term of the Agreement to be extended. Staff recommends approval of Amendment No. 1, which would extend the term of the Agreement through December 31, 2023.

Work will be performed under individual Task Orders as needed and approved by the District Commission or the General Manager. Amendment No. 1 has no fiscal impact to the District. Task Orders associated with the Agreement will have specific budgets.

ACTION: Commissioner Murphy motioned to APPROVE AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH GENEVA CONSULTING TO PROVIDE TECHNICAL SERVICES FOR THE DISTRICT REGARDING WHATCOM COUNTY WRIA 1 WATER SUPPLY PLANNING PROJECTS, AND AUTHORIZE THE GENERAL MANAGER TO SIGN THE AGREEMENT. Commissioner Deshmane second the motion. Motion passed unanimously.

b) Approve Amendment No. 1 to Task Order No. 1 – Aspect Consulting

In early 2019, the District, with the support of Watershed Management Board (WMB) members, submitted a Near Term Action (NTA) to develop a WRIA 1 Regional Water Supply Plan (RWSP) to the Puget Sound Partnership (PSP) for grant funding up to $100,000. The NTA was approved by PSP Habitat Strategic Initiative Leads for funding. The Washington Department of Fish and Wildlife (WDFW) manages the grants for the PSP Habitat Initiative. In January of 2020, the Commission approved the grant with WDFW for the $100,000.

The NTA was based on a “Phase 1” scope of work for Strategy 3 of the WRIA 1 Watershed Management Board’s 5-Year Work Plan. “Phase 1” is intended to scale the task from a WRIA 1 – wide effort to pilot areas. Phase 1 work required the use of sub-contractors for several of the NTA Tasks. On May 26, 2020, the Commission approved a Professional Service Agreement with Aspect Consulting, LLC to support the development of a Regional (WRIA 1) Water Supply Plan.

District Staff and Aspect Consulting developed the detailed task order with an original not to exceed amount of $70,044.00. Due to additional work requested by the RWSP Staff Work Group for revisions to the draft deliverables, there is an additional budget need of $16,132.00 for a total not to exceed amount of $86,176.00 for Amendment No. 1. The work performed by the consultant under the amended task order will result in a Phase 1 Report that will be used to move into the Phase 2 project, which is funded by an additional $100,000 that was awarded by WDFW through Amendment No. 1 to the WDFW Grant. The District will pass funds from the WDFW grant to sub-contractors who will perform the work. There is no fiscal impact to the District.

ACTION: Commissioner Deshmane motioned to APPROVE AMENDMENT NO. 1 TO TASK ORDER NO. 1 WITH ASPECT CONSULTING, LLC. TO SUPPORT DEVELOPMENT OF PHASE 1 OF THE WRIA 1 REGIONAL WATER SUPPLY AND MANAGEMENT PLAN NOT TO EXCEED $86,176.00 SUBJECT TO FINAL REVIEW BY GENERAL MANAGER, AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT. Commissioner Murphy second the motion. Motion passed unanimously.
c) **Approve Resolution No. 785 – Reappoint Jon Sitkin, Chmelik, Sitkin and Davis P.S.**

The District appointed Jon Sitkin and the law firm of Chmelik Sitkin & Davis P.S. as District Legal Counsel in year 2006 and reappointed the firm as District Legal Counsel in 2012, 2016, and again in 2018. Based on the District’s Purchasing Policy, it is appropriate to review professional service agreements, including legal services every two years.

As part of establishing appropriate implementation of the District’s Purchasing Policy, staff is recommending that the Commission review the appointment of Legal Counsel and recommends the reappointment of Jon Sitkin and Chmelik Sitkin & Davis P.S. law firm for an additional two-year time period, ending December 31, 2022. At that time, the Commission should review this appointment for consideration of an additional term.

The Legal Services Agreement provides for the rate to be charged by Sitkin and other Counsel at Chmelik Sitkin & Davis P.S. Chmelik Sitkin & Davis P.S. has deferred for one year its scheduled increase in the municipal rate cap due to the COVID Pandemic. This contract will fix the capped rate for two years. All costs are budgeted by the District.

**ACTION:** Commissioner Murphy motioned to ADOPT RESOLUTION NO. 785 A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY (“DISTRICT”) TO REAPPOINT JON SITKIN AND CHMELIK SITKIN & DAVIS P.S. AS DISTRICT LEGAL COUNSEL TO THE DISTRICT AND AUTHORIZE THE GENERAL MANAGER TO ENTER INTO THE LEGAL SERVICES AGREEMENT WITH CHMELIK SITKIN & DAVIS P.S. Commissioner Deshmane second the motion. Motion passed unanimously.

d) **Approval of Amendment to General Manager’s Contract**

Background: Mr. Jilk currently holds a contract for service to the District with terms and conditions and termination date of December 31, 2021. The District would like to extend the end date of the contract to June 30, 2022 and amend certain terms and conditions of employment and compensation of the contract. Commissioners were briefed with the terms and conditions to consider for the contract extension and service of Mr. Jilk to the District post June 30, 2022.

Adoption of the amended to the contract will not have fiscal impacts beyond the already approved 2021 Operating and Capital budgets, adopted on December 8, 2020.

**ACTION:** Commissioner Murphy motioned to APPROVE THE FIRST AMENDMENT TO RESTATED AND AMENDED EMPLOYMENT AGREEMENT DATED DECEMBER 15, 2020 BETWEEN THE DISTRICT AND STEPHAN JILK. Commissioner Deshmane second the motion. Motion passed unanimously.

e) **Approve Commission Meeting Schedule for 2021**

Background: To provide the general meeting schedule for Commission, District staff and public for year 2021, and to review potential meeting date changes, the Commission meeting schedule is presented for consideration.

During the year, meeting schedules may be revised to respond to individual needs and other industry training and meeting schedules as well as national holidays.

Regular review and confirmation of District meetings provides good opportunities for Commission and public interaction and communication and opportunities for managing Commission action.
The calendar for the 2021 Commission Meeting dates proposed was presented. It follows the regular meeting schedule of the second (2nd) and fourth (4th) Tuesdays and allows for consideration of any federal holidays.

This calendar also includes Washington Public Utility Districts Association (WPUDA) meetings, Washington Water Utilities Council (WWUC) meetings, County election information, and other important dates. There is no fiscal impact.

**ACTION:** Commissioner Deshmane motioned to APPROVE THE COMMISSION MEETING SCHEDULE AS PRESENTED FOR 2021. Commissioner Murphy second the motion. Motion passed unanimously.

**f) Election of Commission Officers for 2021**

Each year the Commissioner elects officers of the Commission for the upcoming calendar year. The Commission takes action on the election of officers without recommendation from staff. Commissioner McClure suggested the common progression of the officers to be current Vice President to President; current Secretary to Vice President; and incoming Commissioner as Secretary. Commissioner Murphy indicated he would prefer to remain as Vice-President for 2021 and then President in 2022.

**ACTION:** Commissioner Deshmane motioned to NOMINATE AND ELECT COMMISSIONER DESHMANE AS PRESIDENT FOR 2021; NOMINATE AND ELECT COMMISSION MURPHY AS VICE PRESIDENT FOR 2021, AND TO NOMINATE AND ELECT COMMISSIONER-ELECT CHRISTINE GRANT AS SECRETARY FOR 2021. Commissioner Murphy second the motion. Motion passed unanimously.

**6. General Manager’s Report**

Jilk thanked staff and Commissioners for another successful year despite all the challenges throughout 2020, and especially the hard work put forth during the last ten months during the pandemic. We have been able to keep our families safe and healthy, and to keep the lights on and water running which is amazing, considering our small team of employees with the large amount of work and business the office staff, electricians and water operators accomplish. Jilk thanked all for a good year and wished everyone happy holidays.

Commissioner McClure thanked Jilk and the staff as well. He noted it has been a seamless year in terms of operations. McClure can hardly imagine the difficulty of navigating all of this – the Commissioners did not see a ripple in service of service that we provide to our community.

**7. Commissioner Reports**

**Resolution No. 786 - In Honor of Commissioner McClure**

Commissioners Deshmane and Murphy announced that the District has a special resolution to present in honor of Commissioner McClure’s twelve years of service and his retirement as Commissioner. Jilk recited the resolution aloud. Commissioner McClure served the District “…most capably with the interests of the PUD always foremost, and gave generously of his time and talents in performing the duties of his job as Commissioner.” Grimm made a special delivery and presented McClure with a framed copy of the signed resolution and a commemorative plaque indicating McClure’s service to the people of Whatcom County.

McClure thanked the Commissioners and the staff for the opportunity, particularly the staff has provided such great expertise and dedication to their tasks. It has been an honor to serve the staff and the people of Whatcom County. Being a commissioner has been a tremendous learning experience and impact. He is...
proud of the work done over the past several years to broaden our initiatives, strategic goals including broadband and clean energy and continue the PUD’s support well-paying jobs.

McClure wanted to call out Steve Jilk for his dedication – their relationship extends back to when Jilk was Lynden City Administrator some years ago. Everything that Jilk has accomplished over the years, by working hard, treating people fairly and with respect. We can see this in the organization, that it is a very modern environment and with the public’s best interest in mind. McClure will miss most their weekly chats. His final small request is to receive a hat when the PUD has its new logo.

Former PUD Commissioner Paul Kenner extended his congratulations on 12 great years. Kenner thanked McClure for taking on the challenge and believed that McClure is the best commissioner the PUD has ever had.

Commissioner Murphy added how much he appreciated working with, and admired McClure’s positive and patient work ethics.

Commissioner Deshmane said the three prior Commissioners (Kenner, Murphy and McClure) set the bar high and he appreciated their support for time spent with Deshmane as a new commissioner.

ACTION: Commissioner Murphy motioned to APPROVE RESOLUTION NO.786 HONORING JEFFREY MCCLURE UPON HIS RETIREMENT AFTER 12 YEARS AS COMMISSIONER TO THE DISTRICT. Commissioner Deshmane second the motion. Motion passed unanimously.

8. **Public Comment**
None made.

9. **Executive Session**
Commission President Jeff McClure requested Executive Session (No. 1) pursuant to RCW 42.30.110(1) (i) to discuss potential litigation. The estimated time for Executive Session was thirty minutes. The Commission President indicated that no action is anticipated be taken after the adjournment of the Executive Session. Adjournment to Executive Session at 9:21 a.m.

- The Commission held Executive Session on a separate Zoom webinar platform for privacy, security matters and Open Public Meeting Act requirements.

**Executive Session Adjourn**
There being no further business for Executive Session, the Commission rejoined the Special Commission Meeting webinar platform at 10:15 a.m.

10. **Adjourn**
There being no further business for the meeting, Commissioner McClure wished everyone happy holidays and adjourned the regular meeting at 10:21 a.m.

**ACTION:** Commissioner Murphy motioned to ADJOURN THE REGULAR MEETING AT 10:21 a.m. Commissioner Deshmane second the motion. Motion passed unanimously.

Jeffrey McClure, President

Michael Murphy, Vice President

Atul Deshmane, Secretary
Memo

To: Commissioners Deshmane, Grant and Murphy
From: Brian Walters, Assistant General Manager
Date: January 12, 2021
Re: Approve Professional Consulting Services Agreement with Digital Boundary Group (DBG)

Requested Action – Approve a Professional Consulting Services Agreement (“PSA”) with Digital Boundary Group (DBG) and authorize the General Manager to execute the PSA.

Background – In December of 2020, staff contacted Digital Boundary Group (DBG) regarding performing an IT Security Assessment. The objective of the security assessment is to identify and assess any discovered threats and to recommend mitigation strategies and/or compensating controls to reduce or eliminate potential risk.

DBG is an information technology security assurance services firm providing information technology security auditing and compliance assessment services to clients. DBG performs tests as follows to meet the objectives of an IT Security Assessment; external penetration tests, electronic social engineering engagement, and remote network security assessments. Approval of the PSA with DBG will allow staff to develop a scope of work to perform the IT Security Assessment.

Fiscal Impact – Whatcom PUD’s 2021 Annual Budget includes sufficient funds to cover work to be performed by DBG under the PSA.

Recommended Action – Approve a Professional Consulting Services Agreement (“PSA”) with Digital Boundary Group (DBG) and authorize the General Manager to execute the PSA.
STANDARD AGREEMENT
FOR PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this ___ day of ___ 20___, by and between the PUBLIC UTILITY DISTRICT NO. 1 of WHATCOM COUNTY, 1705 Trigg Road Ferndale, WA 98248, hereinafter called "Whatcom PUD," Digital Boundary Group having an address of 13760 Noel Rd, Suite 370, Dallas, Texas 75240, hereinafter called "Consultant," for a project generally described as:

Consultant’s general scope of services will include the performance of tasks focused on maintaining and improving the cybersecurity of Whatcom PUD’s systems related to its electric and water operations.

WHEREAS, Whatcom PUD wishes to obtain technical consulting services related to cybersecurity for its electric and water utilities; and

WHEREAS, Consultant has expertise in providing such services and desires to perform such services for Whatcom PUD; and

WHEREAS, the selection of the consultants, and the Consultant herein, were made after the completion of a process that complied with all provisions of Federal, State, and local laws concerning selection of professional services.

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants set forth herein, the parties agree as follows:

1. **Scope of Services.** The specific assignments for the Consultant will be identified from time to time by Whatcom PUD. The Consultant will prepare and submit to Whatcom PUD a proposed Work Order which shall include the proposed scope of services and fee estimate for the proposed assignment. If acceptable, Whatcom PUD will execute the Work Order for the specific assignment. The scope of Work Orders is hereinafter referred to as “Work”. Services of the Consultant shall conform with the standard of care applicable to professionals providing similar such services in the State of Washington. All Work Orders must be approved in writing and approved in advance by the Commission and/or General Manager of Whatcom PUD. The terms and conditions of this Agreement shall apply in all Work Orders approved by the Whatcom PUD, unless a Work Order contains terms and conditions different than those provided herein. Any Work Order and this Agreement shall be interpreted to give full meaning to all provisions. In the event that any provision of this Agreement is in conflict with any provision of an approved Work Order, the more specific shall control, and if a conflict still exists, then the Work Order shall control the specific conflicting provision

2. **Term.** The term of this Agreement shall commence on execution of this Agreement until all tasks associated with the scope of services herein, as may be amended, have been completed by Consultant or December 31, 2021, whichever is sooner, unless terminated earlier as provided herein.
3. **Termination.** Whatcom PUD reserves the right to terminate this Agreement at any time by sending written notice of termination to the Consultant. The notice shall specify a termination date at least fourteen (14) calendar days after the date the notice is issued. The notice shall be effective upon the earlier of either actual receipt by the Consultant (whether by fax, mail, delivery or other method reasonably calculated to be received by the Consultant in a reasonably prompt manner) or three (3) calendar days after issuance of the notice. Upon the notice date, the Consultant shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for the Consultant’s material breach, the Consultant shall be paid or reimbursed for: (a) all hours worked and eligible expenses incurred up to the notice date, less all payments previously made; and (b) those hours worked and eligible expenses incurred after the notice date, but prior to the termination date, that were reasonably necessary to terminate the Work in an orderly manner. The notice shall be sent by the United States Mail to the Consultant’s address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by hand delivery. In addition, the notice may also be sent by any other method reasonably believed to provide the Consultant actual notice in a timely manner, such as fax. Whatcom PUD does not by this Section waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provision of this Agreement. At its sole option, Whatcom PUD may deduct from the final payment due the Consultant (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other back charges or credits.

4. **Compensation and Payment.** Whatcom PUD shall pay the Consultant only for completed Work and for services actually rendered which are described in each Work Order. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work. The Consultant shall obtain the prior written approval of Whatcom PUD for any charges for additional services by the Consultant, the additional services of others retained by the Consultant, or the furnishing of additional supplies, materials or equipment. The Consultant shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

4.1 The Consultant shall submit monthly statements, including project budget status and a narrative progress description of services rendered in a form and in such detail as requested by Whatcom PUD. Whatcom PUD shall make prompt monthly payments for work completed to the Whatcom PUD's satisfaction and billed before the first day of the month. Whatcom PUD shall review and consider for approval all bills submitted one week prior to a regularly scheduled meeting of Whatcom PUD Commissioners. After approval of the Consultant’s statement of bill, Whatcom PUD shall forward the approval to the County Treasurer for payment in the normal course of events. In no event shall Whatcom PUD be charged interest on payments due under this Agreement. Whatcom PUD shall not be obligated to pay for services deemed unsatisfactory.
5. **Compliance with Laws.** All Federal, State and local laws applicable in the rendering of the services by the Consultant shall be complied with in all respects by the Consultant, as shall all rules and regulations of Whatcom PUD and any other governmental agency. The Consultant shall register, as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to Whatcom PUD.

6. **Project Management.** Whatcom PUD's designated representative may at any time issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affects any other provision of this Agreement, the Consultant shall immediately notify the designated representative in writing and take no further action concerning those written directions until such time as the parties have executed a written change order. No additional work shall be performed or charges incurred unless and until Whatcom PUD approves in writing the change order and the increased cost thereof. Any work done in violation of this paragraph shall be at the sole expense of the Consultant.

7. **Recordation of Documents Affecting Title.** Prior to the execution or recordation of any documents affecting title to any property, the said document shall be reviewed by Whatcom PUD. Whatcom PUD shall be responsible for all costs associated with such review.

8. **Conflict of Interest.** Consultant covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by it or any of its subcontractors.

9. **Insurance.** Consultant shall procure and maintain during the term of this Agreement the following insurance:

   a. Comprehensive general liability policy covering all claims for personal injury (including death) and/or property damage arising out of Consultant's services. The limits of liability shall be not less than One Million Dollars ($1,000,000) for each occurrence and in the aggregate unless Whatcom PUD approves in writing a lesser limit.

   b. Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or on behalf of Consultant. The limits of liability shall be not less than One Million Dollars ($1,000,000) for each occurrence and in the aggregate unless Whatcom PUD approves in writing a lesser limit.

   c. Workers Compensation Insurance as required by law.

9.1 The foregoing insurance policies shall name Whatcom PUD as an additional insured. Consultant shall provide two (2) certificates of insurance and, if requested, copies of any policy to Whatcom PUD. Receipt of such certificate or policy by Whatcom PUD does not constitute approval by Whatcom PUD of the terms of such policy. Furthermore, the policy of insurance
required herein shall: (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to Whatcom PUD except upon forty-five (45) days prior written notice from the insurance company to Whatcom PUD; (iii) contain an express waiver of any right of subrogation by the insurance company against Whatcom PUD and Whatcom PUD’s elected officials, employees, or agents; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Consultant which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to Whatcom PUD and Consultant.

9.2 If Consultant fails to procure and maintain the insurance described above, Whatcom PUD shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums. Consultant shall pay to Whatcom PUD upon demand the full amount paid by Whatcom PUD, or Whatcom PUD may offset such premiums against amounts to be paid to Consultant.

10. **Indemnification.** Consultant shall indemnify and hold Whatcom PUD harmless from and against all costs and losses, and all claims, demands, suits, actions, payments and judgments, arising from personal injury or otherwise, brought or recovered against Whatcom PUD by reason of any negligent act or omission of Consultant, its directors, officers, agents or employees in the performance and execution of the Services hereunder, including any and all expenses, legal or otherwise, incurred by Whatcom PUD or its representatives in the defense of any claim or suit.

11. **Confidentiality.** Any reports, documents, questionnaires, records, information or data given to or prepared or assembled under this Agreement which Whatcom PUD requests to be kept confidential shall not be made available by the Consultant to any individual or organization without prior written approval of Whatcom PUD, except as may be ordered by a court of competent jurisdiction. The provisions of this section shall survive the expiration or earlier termination of this Agreement. No reports, records, questionnaires, software programs provided by Whatcom PUD or other documents produced in whole or in part by the Consultant under this contract shall be the subject of an application for copyright by or on behalf of the Consultant.

12. **Property of District.** All Plans, Reports, Documents, Photographs, Drawings, and Specifications that are generated by the Consultant for Whatcom PUD under this contract are and shall remain the property of Whatcom PUD whether the Project for which they are made is executed or not. The Consultant assumes no liability for any use of the Drawings and Specifications other than that originally intended for this Project. The Consultant shall retain originals during the performance of the Services and reproducible copies shall be provided as requested by Whatcom PUD. Upon completion of the work, the originals of all Plans, Drawings and Specifications shall be delivered to Whatcom PUD.

13. **Electronic Transmission.** All electronically transmitted output must be compatible with existing District software and must be accompanied by at least one (1) copy of written reports. Consultant shall check with Whatcom PUD for software application and system compatibility.
14. **Contamination.** For the purpose of this clause, contamination conditions shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant, contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. Consultant will promptly notify Whatcom PUD of contamination conditions, if identified.

15. **No Employment Relation Created.** Consultant is an independent contractor, who will provide services to Whatcom PUD. The Parties are not “partners” and this Agreement does not create a partnership, joint venture relationship or an employer-employee relationship. The relationship between Whatcom PUD and the Consultant is not and shall not be construed to be an employment relationship under any circumstance, and shall be construed only to be an independent contractor relationship with Whatcom PUD.

16. **Industrial Insurance Act Defense Waiver.** The Consultant expressly waives any claim of defense against Whatcom PUD as may be provided by the Industrial Insurance Act, RCW 51.04.010 *et seq.* for any claim asserted by any person (or relative or estate thereof) for injury or death sustained during the course of the Contract work.

17. **Subconsultants.** Contractor shall notify Whatcom PUD in writing of all subconsultants hired or utilized by Consultant. At the time of project completion, the Consultant agrees to certify to Whatcom PUD that all subconsultants have been paid in full. Consultant shall be solely responsible for the performance of any sub-consultant. All such subconsultants shall possess all licenses and insurance as required by the laws of the State of Washington.

18. **Discrimination.** In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran. The Consultant shall take affirmative action to ensure that the employees are treated during employment without regard to, their race, color, religion, sex, national origin, age, marital status, or being handicapped, or disadvantaged person, or disabled or Vietnam era veteran.

19. **Understanding of Agreement.** Each party acknowledges that such party has read this Agreement and understands its contents, that such party has had the opportunity to have this Agreement reviewed by an attorney of such party’s choice, and that such party either has consulted with an attorney or voluntarily has chosen not to consult with an attorney before signing this Agreement.

20. **Litigation/Arbitration.** In the event either party herein finds it necessary to bring an action against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs and attorneys’ fees incurred by the other party, and in the event any judgment is secured by such prevailing party all such costs and attorneys’ fees of collection shall be included in any such judgment. In the event of any dispute arising between the parties to this Agreement, any such
dispute shall be submitted to binding arbitration as provided herein. The parties shall select an
independent and unbiased arbitrator who is not affiliated directly or indirectly with either party
within ten (10) days after any party demands arbitration. If the parties fail to select or cannot
agree upon an arbitrator within this time, then they shall make application to the Superior Court
of Whatcom County, pursuant to RCW 7.04 et seq., for an order appointing an arbitrator. Such
application may be made at any time after the ten (10) day period has expired. Upon application
to the court for an arbitrator, the Court shall select an arbitrator who shall render his/her decision
no later than sixty (60) days after his/her appointment. If the arbitrator requests a hearing prior to
rendering his/her decision, such hearing shall be held in Whatcom County, Washington within
thirty (30) days of the arbitrator’s appointment. The arbitrator’s decision shall be binding on both
parties. Each party shall bear its own expenses associated with the arbitration but shall share
equally the costs of the arbitrator. RCW Chapter 7.04 and Rules 5.2 through 5.4 of the
Mandatory Arbitration Rules for Superior Court (“MAR”) shall govern the arbitration. In the
event of any inconsistencies between the Binding Arbitration Clause, RCW Chapter 7.04, and
MAR 5.2 through 5.4, the terms of the Binding Arbitration Clause shall take precedence over
RCW Chapter 7.04 and MAR 5.2 through 5.4; and RCW Chapter 7.04 shall take precedence over
MAR 5.2 through 5.

21. Notices. All notices, demands, requests, consents and approvals which may or are
required to be given by any party to any other party hereunder shall be in writing and shall be
deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally
recognized overnight delivery service, or if mailed or deposited in the United States mail and sent
by registered or certified mail, return receipt requested, postage prepaid to:

District: Stephan Jilk, General Manager
Public Utility District No. 1 of Whatcom County
PO Box 2308
Ferndale, WA 98248

Consultant: Joel Shapiro
Digital Boundary Group
13760 Noel Rd, Suite 370
Dallas, Texas 75240

or to such other address as the foregoing parties hereto may from time-to-time designate in
writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or
refusal to accept delivery. Facsimile transmission of any signed original document and
retransmission of any signed facsimile transmission shall be the same as delivery of an original
document.

22. Amendment. No modification, termination or amendment of this Agreement may be
made except by written agreement signed by all parties, except as provided herein.

23. Waiver. No failure by any of the foregoing parties to insist upon the strict
performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any
right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or
any other covenant, agreement, term or condition. Any party hereto, by notice and only by notice as provided herein, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

24. **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

25. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

26. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

27. **Neutral Authorship.** Each of the provisions of this Agreement has been reviewed and negotiated and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

28. **Governing Law.** This Agreement and the right of the parties hereto shall be governed by and construed in accordance with the laws of the State of Washington.

29. **Time of Performance.** Time is specifically declared to be of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

30. **Entire Agreement.** The entire agreement between the parties hereto is contained in this Agreement and the exhibits hereto, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof. The Consultant specifically understands that no District employees other than the project manager or his/her supervisors are authorized to direct the work of the Consultant and/or amend this Agreement.
IN WITNESS WHEREOF, the parties hereto execute this Agreement.

DISTRICT:

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

By: ______________________________
Title: General Manager

Date signed: ______________________

CONSULTANT:

Digital Boundary Group
By: ______________________________
Title: ______________________________
Firm's EIN: _________________________

Date signed: ______________________
Memo

To:       Commissioners Deshmane, Grant and Murphy
From:     Stephan Jilk
Date:     January 12, 2021
Re:       Select District Representatives to Agencies for 2021

Requested Action:  SELECT DISTRICT REPRESENTATIVES TO THE FOLLOWING AGENCIES:
• Washington Public Utility Districts Association (WPUDA) – Delegates for Association Committees
• Whatcom County Economic Development Investment Board (EDI)
• Whatcom Council of Governments (WCOG)
• Public Utility Risk Management Services (PURMS - District insurance cooperative)
• WRIA 1 Watershed Management Board and WRIA 1 Planning Unit (Primary and Alternate)
• Energy Northwest (Primary and Alternate)

Background: Each year the Commissioner acts to approve Commission and staff representatives to agencies that the District is a member.

The following agencies should have representatives designated by the Commission to speak on behalf of the District as appropriate:

• Washington Public Utility Districts Association: The current WPUDA Committees and District designees are:

<table>
<thead>
<tr>
<th>Committee</th>
<th>Primary Representative</th>
<th>Alternate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Directors</td>
<td>Mike Murphy</td>
<td>Atul Deshmane</td>
</tr>
<tr>
<td>Managers Committee</td>
<td>Stephan Jilk</td>
<td>Brian Walters</td>
</tr>
<tr>
<td>Government Relations Committee</td>
<td>Mike Murphy</td>
<td>Atul Deshmane</td>
</tr>
<tr>
<td>Communications Committee</td>
<td>Atul Deshmane</td>
<td>Stephan Jilk</td>
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<tr>
<td>Energy Committee</td>
<td>Atul Deshmane</td>
<td>Brian Walters</td>
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<tr>
<td>Water Committee</td>
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<tr>
<td>Telecom Committee*</td>
<td>Mike Murphy</td>
<td>Stephan Jilk</td>
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</table>

*Currently, there is no District designee to this WPUDA committee.
• **Whatcom County Economic Development Investment Board:** Commissioner McClure represented the District on this Board in 2020;

• **Whatcom County Council of Governments (WCCOG):** Commissioner McClure represented the District and General Manager Jilk is the alternate (Associate Membership) in 2020.

• **Public Utility Risk Management Services (PURMS):** This is the District’s insurance pool coalition. We are required to have a District designated “voting” representative. Commissioner Deshmane is the current designated representative; alternates are General Manager Jilk and Director of Finance Annette Smith.

• **Watershed Resource Inventory Area No. 1 (WRIA1)** – Appoint WRIA 1 Watershed Management Board Representative and alternate; and appoint WRIA 1 Planning Unit representative and alternate. Current representatives:

<table>
<thead>
<tr>
<th>WRIA 1</th>
<th>Primary Representative</th>
<th>Alternate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Watershed Mgmt. Board</td>
<td>Atul Deshmane</td>
<td>Stephan Jilk</td>
</tr>
<tr>
<td>Planning Unit</td>
<td>Stephan Jilk</td>
<td>Rebecca Schlotterback</td>
</tr>
</tbody>
</table>

• **Energy Northwest** - Appoint Energy Northwest Representative and alternate. Currently Commissioner Deshmane is the designated representative and Brian Walters is the alternate.

**Fiscal Impact:** None.

**Recommended Action:** SELECT DISTRICT REPRESENTATIVES TO THE FOLLOWING AGENCIES:

• WASHINGTON PUBLIC UTILITY DISTRICTS ASSOCIATION COMMITTEES;
• WHATCOM COUNTY EDI BOARD;
• WHATCOM COUNTY COUNCIL OF GOVERNMENTS;
• PUBLIC UTILITY RISK MANAGEMENT SERVICES;
• WRIA1 WATERSHED MANAGEMENT BOARD AND PLANNING UNIT; AND
• ENERGY NORTHWEST