

## **REVISED DRAFT**

### **PUBLIC UTILITY DISTRICT No. 1** *of Whatcom County*

**Agenda for the**  
**Regular Commission Meeting**  
**July 27, 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 Special Meeting of June 30, 2021
  - b) Approval of the Meeting Minutes of the Special Meeting of July 6, 2021
  - c) Approval of the Meeting Minutes of the Regular Meeting of July 13, 2021
  - d) Approval of the Meeting Minutes of the Special Meeting of July 20, 2021
  - e) Approval of Claims for July 27, 2021
4. Public Comment
5. Old Business
  - a) Strategic Planning Update on Initiatives
  - b) General Manager Appointment Process Update
  - c) Update on Tucci Energy Project
  - d) Approve Interlocal Agreement with Northwest Washington Fair – *Farming For Life Exhibit*
  - e) Approve Rescind of Purchase of Transformers: SPX Corporation for Refinery Substation
  - f) Approve Purchase of Power Transformers: WEG Transformers for Refinery Substation
  - g) Broadband Program Update
6. New Business
  - a) PUD Water System Plan Update
  - b) Approval of Whatcom Assistance Program: Small Grants Agreement with Lummi Indian Business Council
  - c) Approval of Whatcom Assistance Program: Small Grants Agreement with Evergreen Land Trust
  - d) Approval of Whatcom Assistance Program: Small Grants Agreement with WSU
  - e) Award of Bid: Substation Equipment Metal Clad Switchgear
  - f) Approve Resolution No. 795: Waive Competitive Bid Requirements – Purchase of Metal Clad Switchgear
  - g) Award of Bid: Substation Equipment – Capacitor Banks Equipment Purchase
  - h) Award of Bid: Water Treatment Plant 2 (East) Pond Cleaning
  - i) Approval of Amendment to Res. No. 768/Section 7: Commissioner Per Diem Compensation Policy
7. General Manager Report
8. Commissioner Reports
9. Public Comment
10. Adjourn

Until further notice: In-person attendance is not available at this time. All Commissioners will participate by teleconference or via the Zoom platform.

The public meeting can be accessed by internet: <https://us02web.zoom.us/j/83045593811>

Or by telephone: Dial 1 (253) 215 8782 or 1 (346) 248 7799

Webinar ID: 830 4559 3811

# **D R A F T**

## **MINUTES OF THE SPECIAL**

### **MEETING OF THE COMMISSION**

**June 30, 2021**

#### **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 3:08 p.m. by Commissioner Atul Deshmane. Said meeting was open to the public and notice thereof had been given as required by law. Those present via Zoom and teleconference included Commissioner Mike Murphy, Commissioner Christine Grant, Commissioner Atul Deshmane, and Legal Counsel Jon Sitkin. Staff attending via teleconference/Zoom: Steve Jilk, General Manager; Ann Grimm, Executive Assistant; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Annette Smith, Director of Finance; Brian Walters, Assistant General Manager; Paul Siegmund, Manager of Automation and Technology; Aaron Peterson, IT/SCADA Technician; Alec Strand; Project Manager; and, Traci Irvine Accountant I.

#### **Public attending via teleconference:**

Gina Stark, Port of Bellingham  
Scott Wallace, Mt. Baker Foundation  
Lauren Turner, Phillips 66  
RB Tewksbury, Citizen

Ken Bell, Port of Bellingham  
Debbie Ahl, Mt. Baker Foundation  
Mary Rivkin, Citizen

#### **2. Work Session on Broadband Development**

Deshmane announced the agenda was to discuss broadband collaboration with the Port of Bellingham. No public comment will be taken. The timeframe is limited due to a meeting scheduled to begin with Port staff at 4:00 p.m.

The Commission discussed different aspects of the Port and the PUD working on Broadband services development in the County, the Interlocal Agreement with the Port of Bellingham and the newly established Broadband Steering Committee with representatives of the PUD and the Port of Bellingham.

A meeting of the Broadband Steering Committee will occur today at 4:00 PM.

Deshmane had no other items and asked if there are other topics to discuss today. Sitkin replied that as "broadband program discussion" is the sole item on the agenda, no other topics/action could be discussed or made.

No other comments were made.

#### **3. Adjourn**

There being no further business for the meeting, Commissioner Deshmane adjourned the special meeting at 3:42 p.m.

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Atul Deshmane, President

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Michael Murphy, Vice President

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Christine Grant, Secretary

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## MINUTES OF THE SPECIAL MEETING OF THE COMMISSION

July 6, 2021

### 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 9:01 a.m. by Commissioner Atul Deshmane. Said meeting was open to the public and notice thereof had been given as required by law. Those present via Zoom and teleconference included Commissioner Mike Murphy, Commissioner Christine Grant, Commissioner Atul Deshmane, and Legal Counsel Jon Sitkin. Staff attending via teleconference/Zoom: Steve Jilk, General Manager; Ann Grimm, Executive Assistant; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Annette Smith, Director of Finance; Brian Walters, Assistant General Manager; Paul Siegmund, Manager of Automation and Technology; Aaron Peterson, IT/SCADA Technician; Duane Holden, Director of Utility Operations; and, Traci Irvine Accountant I.

#### **Public attending via teleconference/Zoom:**

Jack Wellman, Puget Sound Energy      Carryn Vande Griend, Puget Sound Energy  
Lauren Turner, Phillips 66              RB Tewksbury, Citizen

### 2. Work Session on Strategic Plan Update

Deshmane welcomed all and announced the special meeting agenda: To discuss the general manager's appointment/recruitment profile, job description and reviewing initiatives and goals of the current Strategic Plan. Because this is a work session, no public comments or action will be taken.

Jim Darling of Leeward Strategies facilitated today's discussion. Highlights included:

#### **Strategic Assessment 2021**

*Goal* – Successfully navigate the transition to a new General Manager

*Achieving Alignment:* Governance and Management (the key to success)

*The Promise of Strategic Alignment:* Developing true alignment on multi-year priorities and effectively embracing (understanding what it means in terms of resources and commitment) them, links the present to the future.

#### *Governance and Management*

The intent of the reviewing the **Initiatives 2021** look at the past, historic mission and to the future of the PUD. This is a re-commitment to past and future work without going into a full-depth strategic planning effort.

#### *The Commission and Commissioner – Role(s) in the Organization*

- Set the Vision;
- Adopt Policies/Procedures;
- Seek policies, financial and technical recommendations from the General Manager;
- Allocate resources;
- Represent the PUD in a variety of forums;
- Embrace and protect the organization's culture (set the tone).

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## *The Commissioner – Profile*

- Select Commission officers: President and Secretary;
- Adopt rules governing the transaction of district business;
- Approve the strategic direction of the PUD;
- Select and oversee the General Manager, including periodic performance evaluations;
- Adopt an annual budget and approve property tax levy, if any;
- Receive and respond to public input;
- Approve capital projects; equipment acquisition, borrowings, customer utility rates; agreements and contracts;
- Represent the PUD in the industry and community in concert with the General Manager.

## *Practical advice for the Commission:*

Follow through on all commitments.

Own the Commission's priorities established as a body of the whole.

Communicate effectively both internally and externally.

Understand the issues and seek input from within and without the PUD.

Stick to governance, let the management team manage.

## *General Manager Profile*

The GM executes the direction of the Commission when they act as 'a body of the whole', makes policy, financial, and technical recommendations to the Commission, represents the PUD in a variety of forums, oversees staff, operational systems, and facilities, and administer contracts and agreements, etc.

## **Initiatives 2021**

- Captured the ones that have support
- Need to affirm that support and sense of urgency
- Gauge the capacity of PUD to pursue (People-Financial)
- Assign initiative lead

The initiatives were reviewed and timeframes were discussed on moving forward, whether it be ongoing, immediate, or early, mid or late 2022 as outlined for the future. (Note there is no particular order.)

1. Re-affirm the PUD's commitment to its industrial customer base.
2. Explore new energy technologies-Explore hosting an alternative energy conference.
3. Re-evaluate the PUD's role in the local water rights effort.
4. Re-affirm the PUD's commitment to provide technical support to water associations.
5. Pursue a pilot project (with Ecology and other partners) to demonstrate the feasibility of providing piped water or other water sources to the agricultural community;
6. Explore the PUD's capacity and ability to advance 'green' industry at Cherry Point;
7. Adopt and support a vision of making broadband available to every underserved area of Whatcom County, agree on go forward strategy;
8. Position the PUD to be a reliable community resource for water, power and broadband connectivity issues and education.

## **Other recommendations:**

1. Schedule routine Commission updates by staff on key topics;
2. "PUD Community Contribution Assessment 2022";  
*Undertake a baseline study to determine the PUD's contribution to the local community, environment and economy.*
3. Update Strategic Plan 2025 in 2022.



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## **General Manager Profile**

The second part of the work session discussed and defined new parameters for the General Manager's job description/profile to be used for the recruitment process. Highlights included:

*Background & Experience*

*Skills*

*Selection Process:*

- Publish *Initiatives 2021* by August 1;
- Need to begin recruitment by August 1;
- To be completed by Dec 31 (agree on a successful candidate);
- Early 2022 start date for new GM;
- Include a panel or reception with staff and individual candidates.

Discussion of a compensation package is forthcoming.

## **Next Steps:**

Darling will summarize the *Initiatives 2021* for review at the next Commission meeting and the GM Job Description Profile should be ready at the July 27 Commission meeting.

## **3. Adjourn**

There being no further business for the meeting, Commissioner Deshmane adjourned the special meeting at 1:14 p.m.

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Atul Deshmane, President

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Michael Murphy, Vice President

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Christine Grant, Secretary

**Commission Clerk Note:** Video recordings of the Whatcom PUD Commission Meetings are available online at the following link on the PUD's Website: <https://www.pudwhatcom.org/the-commission/2021-agendas-packets-meeting-minutes-recordings/>

# DRAFT

## MINUTES OF THE REGULAR MEETING OF THE COMMISSION

July 13, 2021

### 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 8:01 a.m. by Commissioner Atul Deshmane. 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 Christine Grant, Commissioner Atul Deshmane, and Legal Counsel Jon Sitkin. Staff attending via teleconference: Steve Jilk, General Manager; Ann Grimm, Executive 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; Alec Strand, Project Manager; 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/Zoom:

Dave Olson, Citizen

Lauren Turner, Phillips 66

Nash

Gina Stark, Port of Bellingham

Carryn Vande Griend, Puget Sound Energy

### 2. Approval of Agenda

Deshmane requested to table the approval of the Special Meeting Minutes of June 30, 2021, as he did not have a chance to review them.

**ACTION:** Commissioner Deshmane motioned TO TABLE THE APPROVAL OF THE SPECIAL MEETING MINUTES OF JUNE 30, 2021. Commissioner Grant second the motion. Motion passed unanimously.

### 3. Approval of Consent Agenda

Deshmane requested remove Agenda Item No. 3c (Minutes of the Special Meeting of June 30) and an amendment to the Regular Meeting Minutes of June 22, 2021: To include the statement in which he said he would contact Darling before the July 6 meeting. The minutes were revised as such: Deshmane has addition input for Darling on the meeting and *will contact him beforehand...*

**ACTION No. 1:** Commissioner Grant motioned to REMOVE THE MINUTES OF THE SPECIAL MEETING OF JUNE 30, 2021 FROM THE CONSENT AGENDA. Commissioner Murphy second the motion. Motion passed unanimously.

**ACTION No. 2:** Commissioner Murphy motioned to APPROVE THE MINUTES OF THE REGULAR MEETING OF JUNE 22, 2021, AS AMENDED. Commissioner Grant second the motion. Motion passed unanimously.

**ACTION No. 3:** Commissioner Murphy motioned to APPROVE THE CLAIMS OF JULY 13, 2021. Commissioner Grant second the motion. Motion passed unanimously.

Claims of July 13, 2021:

VENDOR NAME	AMOUNT
BALANCING SERVICE COMPANY, INC	1,388.35

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BECKWITH & KUFFEL INC.	16,359.25
BRIM TRACTOR COMPANY	1,161.64
CESCO NEW CONCEPT CHEMICAL PRODUCTS	157.08
CHMELIK SITKIN & DAVIS	8,826.62
COMCAST - NWRC	367.75
CORNERSTONE MANAGEMENT, INC.	3,141.05
DIGITAL BOUNDARY GROUP, INC.	15,077.14
EATON CORPORATION	583,322.50
FASTENAL	13.47
FEDERAL EXPRESS	27.64
FERNDALE ACE HARDWARE	27.99
FERNDALE CITY OF	194.57
GATEWAY CONTROLS	5,207.82
GENEVA CONSULTING	3,952.00
HD FOWLER CO, INC	569.03
HEALTH PROMOTIONS NORTHWEST	90.00
INDUSTRIAL SUPPLY, INC	102.04
K ENGINEERS, INC.	337.50
KAMAN FLUID POWER LLC	16.95
KCDA PURCHASING COOPERATIVE	967.24
LEEWARD STRATEGIES LLC	9,555.00
LITHTEX NW LLC	278.85
MASSMUTUAL RETIREMENT SVCS LLC	11,999.99
MILLS ELECTRIC	160,340.37
NORTHWEST CASCADE, INC.	118.50
NORTHWEST FIBER DBA ZIPLY FIBER	1,400.13
NORTHWEST MOWING & GARDENING	540.26
NP INFORMATION SYSTEMS (3-D CORP)	252.18
P&P EXCAVATING, LLC	20,698.65
PACIFIC SURVEY & ENGINEERING	1,682.50
PLATT ELECTRIC SUPPLY CO	2,572.26
PROBUILD - OSO LUMBER	22.50
PUGET SOUND ENERGY, INC	8,802.38
RAGAN COMMUNICATIONS	44.99
REGENCE BLUE SHIELD	41,002.80
REISNER DISTRIBUTION, INC	770.90
RICOH USA	171.53
SSC - SANITARY SERVICE COMPANY	533.80
TEAMSTER LOCAL #231	533.00
UNITED WAY OF WHATCOM COUNTY	495.00

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UTILITIES UNDERGROUND LOCATION	24.51
VALVOLINE	356.99
VERIZON WIRELESS	1,966.51
WA ST DEPT OF ECOLOGY HAZ FEE	56.00
WA ST DEPT TRANSP-NW REGION	467.42
WASHINGTON DENTAL SERVICE	2,779.10
WASHINGTON TEAMSTERS WELFARE	12,029.15
WATERHOUSE ENVIRONMENTAL SERVICES CORP	18,887.04
WHATCOM JANITORIAL	1,018.75
WILSON ENGINEERING, LLC	3,255.00
<b>GRAND TOTAL</b>	<b>\$943,963.69</b>

#### 4. Public Comment No. 1

Jamie Douglas commented about the digital divide and how necessary it is that the PUD have access and secure funding from available federal legislation. He supports partnering with the Port and using NoaNet's expertise to move forward. Douglas said the goal is to provide affordable fiber to everyone in Whatcom County. Open access is also important, and he expressed his appreciation to the Commission for the efforts in this manner.

Rick Maricle inquired about the last work session (July 6) and was disappointed that there was no public comment taken on the agenda, he views this as a step back. In past work sessions, the public has been effectively involved PUD has provided /allowed input for the public the PUD loses by closing comments by the public and should always allow it.

#### 5. Old Business

##### a) Strategic Planning Update on Initiatives

##### b) General Manager Appointment Process Update

Jim Darling presented information regarding the update and proposed schedule:

- *GM Selection Process*
- *Initiatives 2021*
- *Special Efforts in FY 2022*

Commissioners discussed timing and perhaps another work session is needed to finalize the initiatives and general manager job description.

**ACTION:** Commissioner Grant motioned to HOLD A SPECIAL MEETING ON JULY 20, 2021 AT 8:00 A.M. TO CONTINUE THE DISTRICT'S STRATEGIC PLANNING EFFORT. Commissioner Murphy second the motion. Motion passed unanimously.

- **General Manager Profile** - The parameters introduced at the July 6 meeting for the General Manager's job description/profile were reviewed once again. These will be incorporated into the job description/profile that Prothman will create for marketing the position.

The discussion will be continued on July 20, 2021.

**ACTION:** No other action taken. Information only.

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## **c) Approval of Purchase of Transformers for Refinery Substation**

Background – The District has advertised twice for responsive bids for the purchase of transformers for the Refinery Substation. Based on review of the bids, it was determined there were no responsive bids, and therefore staff recommended that the Commission reject all bids. The Commission took action rejecting all bids for the same bid products at its regularly scheduled meeting on May 27 and June 8, 2021, respectively.

In the opinion of the District’s legal counsel, the receipt of bids under two separate competitive solicitations for the purchase of transformers, and the rejection of all bids as non-responsive by the Commission on both occasions was the equivalent of receiving no bids. Further, that “Special Market” conditions existed enabling the District to waive competitive bid requirements and negotiate a purchase agreement with one or more of the transformer suppliers.

Subsequently, at the same Commission meeting (June 8, 2021), the Commission approved Resolution 793, which waived the competitive bid requirements for the supply and purchase of the power transformers. The waiver was based on:

- 1) No responsive bids received, therefore “no bids” were received from two competitive bid solicitations;
- 2) Special market conditions exist prompting bidders to submit conditioned bids enabling exceedance of the bid price. Therefore, no firm bids recovered.

Following the June 8 Commission meeting, District staff and the District’s Engineer BKI, informed bidders of the rejection of all bids, resulting in no bid award. After interviews with the bidders involved, the District entered into purchase negotiations with one of the bidders, SPX Corporation.

A summary of purchase price amounts follows:

*Engineer’s Estimate:*      \$2,800,000.00 (w/o taxes)

SPX Original Bid:          \$2,056,896.00 (w/o taxes)

SPX Bid + 6.5%:          \$2,190,594.00 (w/o taxes)

Potential Price Increase:    \$133,698.00

Timing is critical and the lag in production of parts is creating delays. As such, staff recommends entering into a purchase agreement with SPX Corporation for two power transformers for a purchase price not to exceed \$2,190,594.00. Further, staff recommends that execution of the equipment purchase by the General Manager not proceed until final legal review of the purchase documents.

This Project is funded under the District’s approved 2021 Budget, as one of the major Capital Improvement Projects (CIP E-27). There is no fiscal impact.

**ACTION:** Commissioner Grant motioned to APPROVE PURCHASE OF TWO POWER TRANSFORMERS FROM SPX CORPORATION FOR A COST NOT TO EXCEED \$2,190,594.00 AND AUTHORIZE THE DISTRICT’S GENERAL MANAGER TO EXECUTE THE PURCHASE. Commissioner Murphy second the motion. Motion passed unanimously.

## **6. New Business**

### **a) Approval of Interlocal Agreement with Port of Bellingham**

Background: The Port of Bellingham (Port) has been working on the development of a publicly owned fiber optic backbone network in Whatcom County. The PUD has identified in its 2021 Strategic Plan, an initiative to also develop a fiber optic network and support the development of publicly owned broadband services in Whatcom County.

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Staff from both agencies have developed an Interlocal Agreement that recognizes the agencies' authority to do so and identifies a process to organize the effort in a joint manner, identifies methods of communications between the two organizations, and identifies means of decision making in moving the program forward. The Port Commission will consider adopting the same Interlocal Agreement at an upcoming Port Commission meeting. Adoption of the Interlocal Agreement will not impact the District's 2021 budget.

**ACTION:** Commissioner Murphy motioned to APPROVE PORT OF BELLINGHAM AND PUBLIC UTILITY DISTRICT NO.1 OF WHATCOM COUNTY FIBER OPTIC/BROADBAND INTERLOCAL AGREEMENT. Commissioner Grant second the motion. Motion passed unanimously.

## **b) Approval of Whatcom Assistance Program: Small Grants Agreement with Nooksack Indian Tribe**

Background: On September 22, 2020, the Commission approved a grant agreement between the District and Washington State Department of Fish and Wildlife (WDFW) to develop a WRIA 1 Coordinated and Integrated Outreach Education Program. The grant funding is \$200,000 and the agreement term is October 15, 2020 to December 15, 2022. The District is managing the grant on behalf of the WRIA 1 Watershed Management Board (WMB).

Tasks of the WRIA 1 Coordinated and Integrated Outreach and Education Program include a Communication Strategy: Develop and implement a coordinated and integrated outreach and communication strategy that addresses Whatcom ecosystem recovery plan elements, including water supply, water quality, floodplains, Chinook, and streamflow.

This grant allows for the use of a portion of the funds to provide small project grants to eligible organizations to conduct outreach/education. Maximum amount of the small grants is \$10,000. Each.

This is the second small grant to be approved under this current program.

The Nooksack Tribal Council approved it on July 6, 2021, and District staff recommends approval of the NIT agreement today. There is no fiscal impact to the District, as the District will pass funds from the WDFW grant to the Nooksack Indian Tribe. The funds will be disbursed quarterly based on approval by WDFW and the District of quarterly reports and invoices provided by the Nooksack Indian Tribe.

**ACTION:** Commissioner Murphy motioned to APPROVE THE WHATCOM ASSISTANCE PROGRAM SMALL GRANT AGREEMENT WITH THE NOOKSACK INDIAN TRIBE IN THE AMOUNT NOT TO EXCEED \$10,000.00 AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT. Commissioner Grant second the motion. Motion passed unanimously.

## **c) Approve Amendment No. 4 to Work Order No. 4 – BKI, Inc.**

Work Order No. 4 (WO4) between the District and BKI was executed on October 15, 2018. The services to be provided and those currently in progress cover the permitting and design phases for a new substation to be constructed on PUD property at the Water Treatment Plant No. 1 site in Ferndale. The new substation will replace the existing substation currently providing power to the treatment plant.

This amendment's scope of services are for project management support during construction of the Pump No.1 Substation project.

The total cost not to exceed for the additional scope of services to be provided by BKI under Amendment No. 4 to Work Order No. 4 is \$141,220.00. It includes labor, materials, and expenses and applicable taxes. BKI shall not exceed this total cost, without prior approval of Whatcom PUD's Project Manager.

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Amendment No. 4 to Work Order No. 4 will increase the overall budget to \$959,780.00. Approval of the amendment has no financial impact and is funded in the District's approved 2021 budget.

**ACTION:** Commissioner Murphy motioned to APPROVE AMENDMENT NO. 4 TO WORK ORDER NO. 4 WITH BROWN AND KYSAR, INC. FOR ENGINEERING SERVICES AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER TO EXECUTE AMENDMENT NO. 4. Commissioner Grant second the motion. Motion passed unanimously.

## **d) Approve Resolution No. 794 – Cancellation of Warrant**

The District issued a request for a Warrant on the basis of an invoice received from Digital Boundary Group and now needs to be cancelled. The Commission authorized the issue of Warrant NO. 1125786, dated May 5, 2021. On July 1, 2021, the District was notified that Digital has not received the warrant and the check is still outstanding. The mailing address was also verified.

As such, the District notified the County that the Warrant was never received or lost in the U.S. Mail and has asked the County to cancel and disregard the Warrant. The District has requested that the County cancel Warrant No. 1125786 in the amount of \$15,077.14. A new warrant will be issued on the next Claims Request. There is no fiscal impact.

**ACTION:** Commissioner Murphy motioned to APPROVE RESOLUTION NO. 794 AUTHORIZING CANCELLATION OF WARRANT NEVER RECEIVED. Commissioner Grant second the motion. Motion passed unanimously.

## **7. General Manager's Report**

- Jilk has provided a memo to Commissioners to identify specific actions/plans with the District's Water System Plan approval process.
- Met with new water legal counsel and they would like to review the draft Water System Plan. The timeline and meetings needed to address specific actions will be presented at the next meeting on July 27.
- Update on drought conditions – Jilk expects to see a drought declaration in Whatcom County very soon because of water supply and the early heatwave.

## **8. Commissioner Reports**

Murphy:

- Has been discussing the water situation with several farmers and water associations. The ground is so dry and many wells are running low or are already dry. Water conservation is important now more than ever.

Grant:

- Meeting with County Executive Sidhu and Jilk to discuss Cherry Point and different approaches to planning, and will report at next meeting. The Center for Sustainable Infrastructure is preparing a presentation about their work around the state on infrastructure/economic development for an upcoming Commission meeting.

Deshmane:

- Was attending Watershed Improvement District meetings; however, most are not gathering for the summer due to farming activities.
- Planning Commission – An item on the last Planning Commission's meeting agenda was in regards to adopting new regulations and code amendments on battery-energy storage systems under 5 megawatts. Deshmane spoke with Walters at the PUD but it could potentially be a topic for the PUD.
- Attended City of Bellingham Broadband Advisory Group – Focused on presentations from the City of Anacortes and the State Broadband Office.



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- Water Resources Advisory Committee (Governor's Office) – Developing water banking programs across the state, and Whatcom was missing from the list of counties which will be the focus of pilot programs.

## 9. Public Comment No. 2

Dave Olson (Water Systems Services and Cornerstone Management) is assisting the District with the Water System Plan and technical support to assist small water associations and systems (less than 1,000 connections). There is great concern and evidence that things are changing. He gave the example of a local water system in which the early heatwave in June experienced a 50 to 75% more water demand from customer behavior that required emergency no-outdoor watering due to their maximum supply they are able to take under their water rights. The education of how water will be used in the future by individuals will be a big part of the future, the role of the PUD and how the PUD can assist with advice or other means.

## 10. Executive Session

Commission President Deshmane requested an Executive Session pursuant to RCW 42.30.110(1) (i) to discuss potential litigation. The estimated time for Executive Session was forty minutes. The Commission President indicated that no action was anticipated be taken after the adjournment of the Executive Session. Following a five-minute recess, the Commission adjourned to Executive Session at 10:25 a.m.

- The Commission held Executive Session on a separate Zoom webinar platform for privacy, security matters and Open Public Meeting Act requirements.
- At 11:02 a.m., an additional five minutes was requested.
- At 11:19 a.m., an additional five minutes was requested.

### Executive Session Adjourn

There being no further business for Executive Session, the Commission rejoined the Special Commission Meeting webinar platform at 11:20 a.m.

## 11. Adjourn

There being no further business for the meeting, Commissioner Deshmane adjourned the regular meeting at 11:22 a.m.

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Atul Deshmane, President

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Michael Murphy, Vice President

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Christine Grant, Secretary

**Commission Clerk Note:** Video recordings of the Whatcom PUD Commission Meetings are available online at the following link on the PUD's Website: <https://www.pudwhatcom.org/the-commission/2021-agendas-packets-meeting-minutes-recordings/>

**AGENDA ITEM # 3d**  
**July 27, 2021**

**D R A F T**

**MINUTES OF THE SPECIAL  
MEETING OF THE COMMISSION**

**July 20, 2021**

**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 Atul Deshmane. Said meeting was open to the public and notice thereof had been given as required by law. Those present via Zoom and teleconference included Commissioner Mike Murphy, Commissioner Christine Grant, Commissioner Atul Deshmane, and Legal Counsel Jon Sitkin. Staff attending via teleconference/Zoom: Steve Jilk, General Manager; Ann Grimm, Executive Assistant; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Annette Smith, Director of Finance; Brian Walters, Assistant General Manager; Aaron Peterson, IT/SCADA Technician; Mike Macomber, IT/SCADA Technician; Duane Holden, Director of Utility Operations; Alec Strand, Project Manager; and, Traci Irvine Accountant I.

**Public attending via teleconference/Zoom:**

Jim Darling, Leeward Strategies  
Jack Wellman, Puget Sound Energy  
Lauren Turner, Phillips 66  
Rick Maricle, Citizen

**2. Public Comment No. 1**

No comments made.

**3. Continuation of Work Session on Strategic Initiatives 2021 Review and Prioritization**

a) Deshmane welcomed all and announced the special meeting agenda: To continue discussion from the Special Meeting of July 6, 2021, on the strategic initiatives review and to review the General Manager's Job Description.

Jim Darling of Leeward Strategies facilitated today's discussion. Highlights included:

**Strategic Assessment 2021**

*Goal* – Successfully navigate the transition to a new General Manager

*The Transition:*

- New GM on board in early 2022.
- GM Recruitment Process (Prothman) to begin in a few days.  
Preparation includes job profile, job description, initiatives 2021 and compensation package.
- Ongoing Initiatives
  - Broadband Vision and Partnership with Port
  - Customer Service (industrial customer base)
  - Technical Support (water associations)
  - Local Water Resources (regional issues)
  - PUD as a Go-To resource for utility issues
- FY 2022 and Beyond Initiatives
  - Clean and Renewable Energy
  - Water Supply (non-stream delivery)
  - Attracting "green industry" to Cherry Point
- Routine Staff Updates

# DRAFT

- 2022 Draft Budget preparation and adoption
- Develop Strategies for Initiatives (ongoing)
- Strategic Plan Update (mid-year 2022)
- PUD Community Impact Analysis

## **Balancing Resources**

<b><i>Ongoing: 2021 – 2022 and Beyond</i></b>	<b><i>2022 Forward</i></b>
<i>Broadband Vision:</i> Advance the community wide vision in making broadband available to underserved areas of Whatcom County	<i>Clean and Renewable Energy:</i> Develop a plan and policies in 2022 to define the PUD's role in advancing clean and renewable, local energy
<i>Customer Service:</i> Continue the PUD's commitment to customer services in the support of the industries that rely on PUD power and water	<i>Water Supply:</i> Explore a pilot project with Ecology funding and other partners, to demonstrate the feasibility of providing water supply to those in need.
<i>Technical Support:</i> RE-affirm the PUD's commitment to provide technical support to water associations	<i>Green Industry – Cherry Point:</i> Explore an Interlocal agreement with the Port and County to analyze and advance 'green' industry at Cherry Point.
<i>Local Water Resources:</i> Continue the PUD's support and assistance in regional efforts to protect and manage local water resources	<i>Strategic Plan Update:</i> Update the Strategic Plan 2025 with new GM
<i>PUD as a Resource:</i> Identify how the PUD can support education and understanding of utility issues.	<i>PUD Community Impact Analysis:</i> Undertake a community impact analysis to quantify and qualify the PUD's historic and ongoing impact on the Greater Whatcom area.

<b>Initiative or Project</b>	<b>Lead</b>	<b>Launch</b>	<b>Est. Budget Implication FY 2022</b>
<i>Broadband Vision</i>	Contract Staff and Assistant GM	2021	\$150,000 Consultant/staff to implement work with Port
<i>Customer Service</i>	GM	2021	Staff time
<i>Technical Support</i>	Contract Service Representative and Water Resource Staff Lead	2021	\$50,000 – Existing contract extension
<i>Local Water Resources</i>	Water Resource Staff – TBD	2021	\$85,000 Additional staff resources by contract
<i>PUD as a Resource</i>	GM	2021	\$50,000
<i>Commission Update</i>	GM	2021	Staff time
<i>Clean &amp; Renewable Energy</i>	Asst. GM and Contract Services	2022	\$75,000
<i>Water Supply</i>	GM and Water Resource Staff	2022	\$75,000 Grant Match
<i>Green Industry – Cherry Point</i>	Asst. GM and Contract Services	2022	\$100,000 Feasibility and Market Analysis
<i>Strategic Plan Update</i>	GM	2022	\$45,000
<i>Impact Study</i>	GM	2022	\$50,000

# DRAFT

## **b) General Manager Profile and Job Description**

The profile explains what the Commission is looking for in a new General Manager including background, education, experience, skills and critical skill set. A draft of the job description was sent to Prothman to assist in final development.

### **4. Public Comment No. 2**

Rick Maricle commented on the strategic goals for next year –specifically (1) On “green energy” at Cherry Point – the Lummi and one of the major political parties is promoting the ultimate use for Cherry Point is to return it to its natural state, as part of a plan to support herring fisheries. The location of the PUD’s support might need to be somewhere else. (2) Regarding renewable energy, customers have loads that are different from the supply from renewable energy. Make sure the supply is shaped properly and there isn’t hidden carbon supply during off time generation; (3) Adjudication on water supply – the PUD needs to be involved in this process with a view towards other, undefined uses and that the PUD’s water rights will cover these.

### **5. Next Steps:**

Darling will work with Sitkin and Prothman on a breakdown of details of the selection process (timing/logistics, etc.); a recommendation of how to engage staff in the selection process; and, based on the profile what the salary range/compensation package will look like. Darling will work on language regarding climate change/resilience/adaptation for the opening statement of *Initiatives 2021*; and, some wordsmithing on the skill set. All should be ready for the July 27 meeting.

### **6. Adjourn**

There being no further business for the meeting, Commissioner Deshmane adjourned the special meeting at 9:53 a.m.

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Atul Deshmane, President

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Michael Murphy, Vice President

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Christine Grant, Secretary

**Commission Clerk Note:** Video recordings of the Whatcom PUD Commission Meetings are available online at the following link on the PUD’s Website: <https://www.pudwhatcom.org/the-commission/2021-agendas-packets-meeting-minutes-recordings/>

PUBLIC UTILITY DISTRICT NO. 1  
*of Whatcom County*

1705 Trigg Road • Ferndale, WA 98248  
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# Memo

**To:** Commissioners Deshmane, Grant and Murphy

**From:** Stephan Jilk, General Manager

**Date:** July 23, 2021

**Re:** Approve Agreement with Northwest Washington Fair – *Farming for Life* Exhibit

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This is a request to approve the agreement with the Northwest Washington Fair (NWWF) to provide funding in support of the NWWF *Farming for Life* exhibit.

The NWWF requested the PUD provide financial support to the NWWF for the NWWF *Farming for Life* exhibit.

In 2020, the Commission approved the allocation for funding over a three-year period, 2021, 2022, and 2023, towards the exhibit. PUD staff and NWWF staff developed facets of the exhibit to be specific to the recognition of water as a key element in agriculture and food production.

Working with the exhibit development consultant, the NWWF developed the integration of water resources, uses and challenges into the exhibit.

PUD staff has developed an agreement with the NWWF, which identifies the work that reflects the issues of water, as a resource is key to the history and future of food production in Whatcom County. This is a request for the Commission to approve that agreement.

**Requested Action:** APPROVE THE PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY AND NORTHWEST WASHINGTON FAIR AGREEMENT FOR THE FARMING FOR LIFE EXHIBIT AND AUTHORIZE THE GENERAL MANAGER TO SIGN.

**PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY AND NORTHWEST WASHINGTON FAIR  
AGREEMENT FOR THE FARMING FOR LIFE EXHIBIT**

This Agreement, by and between the **PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, WASHINGTON** ("District") and the **NORTHWEST WASHINGTON FAIR**, a Washington non-profit corporation ("FAIR") is dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**WHEREAS**, Fair's purpose is to provide education to the community in the areas of agriculture and related topics, and,

**WHEREAS**, pursuant to RCW 54.16.030, the PUD has authority to own, operate and maintain water systems and provide water for all purposes including irrigation use and municipal and industrial purposes, and,

**WHEREAS**, in furtherance of its authority set forth in Title 54 of the Revised Code of Washington, the PUD supports the stewardship of water resources in Whatcom County, and,

**WHEREAS**, the PUD, seeks opportunities with other public agencies to provide outreach and education to the region on the use of and management of water resources, and,

**WHEREAS**, the Fair has developed a multimedia exhibit titled "***Farming For Life***" that provides educational opportunities for the community and the region to understand the history of agriculture and food production in Whatcom County, and,

**WHEREAS**, the Fair and the PUD have worked to develop and integrate into the Farming For Life exhibit, the value of and the challenges around the use of water in agriculture, food production and the relationship of water to land use, specifically related to agriculture in Whatcom County, and,

**WHEREAS**, the PUD recognizes this exhibit as a unique opportunity to utilize funding from private and public sources and leverage the PUD's financial resource in developing these educational and outreach programs around water resource management.

NOW THEREFORE the Parties do agree as follows:

1. **FAIR's Obligation to provide the Farming For Life Exhibit.** The FAIR, in consideration of the sum to be paid by the District and of the terms and conditions herein contained, hereby agrees, at its expense, to do all the work and furnish all the materials, tools, labor, taxes, fees, and all facilities, equipment material and appurtenances for the successful completion and display of the Farming for Life Exhibit during the Northwest Washington Fair at the Whatcom County Fairgrounds in Lynden WA during the summers of 2021, 2022 and 2023, including the following:
  - a. complete and maintain the Farming For Life Exhibit (the "Exhibit") and integrate into the Exhibit the theme of The River Runs Through It to identify

- how water is so critical for farming and food production in Whatcom County through the term of this agreement.
- b. utilize the Exhibit to identify the challenges, using the best methods they can, in managing and utilizing water as a scarce resource, and,
    - c. plan for the Exhibit to be updated and potentially expanded to utilize it to be a “community outreach” educational tool, and
  2. **PUD Payments.** In exchange for the FAIR’s performance of its obligations under Section 1 above, the PUD shall pay to the FAIR the following sums due no later than the last day of August in the year set forth below agrees to undertake and make the following payments:
    - a. Year 2021 - \$50,000.00
    - b. Year 2022 - \$25,000.00
    - c. Year 2023 - \$25,000.00
  3. **Contact Persons.**
    - d. **District Representative.** The District hereby appoints its General Manager as the District’s representative for the purpose of administering the provisions of this Agreement on behalf of the District.
    - e. **FAIR Representative.** The FAIR hereby appoints its Fair Manager as the FAIR’s representative for the purpose of administering the provisions of this Agreement on behalf of the FAIR.
  4. **Duration and Termination.** This Agreement shall be in effect from the date it is fully executed by both parties through December 31, 2023, except that it may be extended pursuant to a modification entered into by the parties; and provided that should additional time for auditing this project in accordance with law be required, the Agreement shall be deemed automatically extended for these purposes until such time as the said audit shall be completed; and provided further that any provisions of this Agreement that contemplate continuing obligations on a party will survive the expiration or termination of this Agreement. The District expressly reserves the right, in its sole discretion, to terminate this Agreement for nonperformance or for reduction in funding.
  5. **Release and Indemnify.** To the extent permitted by law, each Party agrees to release, defend, indemnify, and hold harmless the other Party, its officers, agents, employees, and representatives (Fair/PUD) from all claims, actions, suits losses, harm liabilities, damages, costs and expenses, including but not limited to, reasonable attorney’s fees, arising out of the negligent acts or omissions arising in connection with performance of this Agreement. Where negligence by both Parties is concurrent and contributes to a claim, the Parties shall be responsible and liable in proportion to the degree of their own negligence. Nothing in this Agreement shall be construed to preclude either Party from pursuing any remedy against a third Party.
  6. **Public Records Act.** All records received by the Fair or the PUD pursuant to this Agreement shall be a public record and therefore subject to the Public Records Act.
  7. **Entire Agreement.** This Agreement contains all the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.
  8. **Compliance with Laws and Standards.** This Agreement is subject to the rules,



regulations, orders, and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over this Agreement, and/or the Parties, or either of them.

9. **Subcontracting and Assignment.** Neither party shall assign or delegate any or all interests in this Agreement without first obtaining the written consent of the other party. If such consent is provided, all terms and conditions of this Agreement shall apply to any subcontract or assignment related to this Agreement.
10. **Choice of Law, Dispute Resolution, and Venue.** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. 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 either party may apply to the Superior Court of Whatcom County pursuant to RCW 7.04A et seq. for an order appointing an arbitrator. Such application may be made at any time after the ten-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 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 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. The arbitration provisions set forth herein, RCW Chapter 7.04A, and Rules 5.2 through 5.4 of the Mandatory Arbitration Rules for Superior Court ("MAR") shall govern the arbitration.
11. **Changes and Additions.** No Change or addition to this Agreement shall be valid or binding upon either party unless such change or addition shall be writing and executed by both parties.
12. **Status of FAIR.** Neither FAIR nor personnel employed by the FAIR nor FAIR volunteers shall acquire any rights or status in the District's employment, nor shall they be deemed employees or agents of the District for any purpose other than as specifically specified herein. FAIR shall be deemed an independent contractor and shall be responsible in full for payment of its employees, including worker's compensation, insurance, payroll deductions, and all related costs.
13. **Accounting and Audit.** The FAIR agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles and to retain the same for a period of three years after termination of this Agreement. The financial records shall be made available to representatives of the District or any other governmental agency with jurisdiction for audit, at such reasonable times and places as the District shall designate.

**IN WITNESS WHEREOF:**

**DISTRICT:** P.U.D. NO. 1 OF WHATCOM COUNTY

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Name: Stephan Jilk

Its: General Manager

**FAIR:** Northwest Washington Fair

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Name: Chris Pickering

Its : Manager

-NEW-  
Old Business  
AGENDA ITEM # 5e  
July 27, 2021

PUBLIC UTILITY DISTRICT No.1  
*of Whatcom County*

1705 Trigg Road • Ferndale, WA 98248  
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# Memo

**To:** Commissioners Deshmane, Grant, and Murphy  
**From:** Stephan Jilk – General Manager  
**Date:** July 27, 2021  
**Re:** Approve Rescinding the Commission's Previous Approval to Purchase from the SPX Corporation Two Power Transformers for the Refinery Substation

---

**Requested Action** – APPROVE RESCINDING THE COMMISSION'S PREVIOUS APPROVAL TO PURCHASE FROM THE SPX CORPORATION TWO POWER TRANSFORMERS FOR THE REFINERY SUBSTATION.

**Background** – On July 13, 2021 the District Commission approved the purchase of two power transformers for the Refinery substation to be supplied by SPX Corporation c/o Gore Electric (SPX). Upon issuing the Purchase Order signed by the District's General Manager to SPX, the supplier responded with a request to the District to add SPX's proposed transformer shipping date to the purchase order language. As proposed, the shipping date would not meet the District's critical deadline for delivery of the transformers for the Refinery substation project. District staff attempted to get SPX to commit to an earlier delivery date, but was unsuccessful.

Given the above circumstances, District staff conferred with the District's Engineer, BKI, and identified another supplier for the power transformers that could meet the deadline required for delivery of the transformers. As a result, staff is recommending that the Commission reject its July 13 approval of the purchase of the transformers from SPX Corporation.

The current negotiations for the purchase of power transformers has been enabled via Resolution 793, approved by Commissioners during the Commission's June 8 regular meeting.

District staff recommends rescinding the approval for the purchase of two power transformers from SPX Corporation. This action will enable staff to negotiate the purchase of transformers from another supplier.

**Fiscal Impact** – Rejection of the purchase of the power transformers from SPX Corporation does not have fiscal impact, as funding is still available for the purchase under the approved 2021 Budget.

**Recommended Action** – APPROVE RESCINDING THE COMMISSION'S PREVIOUS APPROVAL TO PURCHASE FROM THE SPX CORPORATION TWO POWER TRANSFORMERS FOR THE REFINERY SUBSTATION.

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# Memo

**To:** Commissioners Deshmane, Grant, and Murphy  
**From:** Brian Walters – Assistant General Manager  
**Date:** July 27, 2021  
**Re:** Approve Purchase of Two Power Transformers for Refinery Substation from WEG Transformers USA

---

**Requested Action** – APPROVE PURCHASE OF TWO POWER TRANSFORMERS FOR THE REFINERY SUBSTATION FROM WEG TRANSFORMERS FOR A COST NOT TO EXCEED AMOUNT OF \$2,458,986 (W/O TAX) AND AUTHORIZE THE DISTRICT’S GENERAL MANAGER TO EXECUTE THE PURCHASE PENDING FINAL STAFF, ENGINEERING AND LEGAL REVIEW.

**Background** – Based on previous District legal counsel’s opinion, “Special Market” conditions exist, which enables the District to waive competitive bid requirements and negotiate a purchase agreement with one or more of the suppliers seeking to supply power transformers for the District’s Refinery substation.

On June 8, 2021 at the regularly scheduled Commission meeting, Commissioners approved Resolution 793, which waived the competitive bid requirements for the supply and purchase of the power transformers. The waiver was based on:

1. No responsive bids received, therefore “no bids” were received from two competitive bid solicitations;
2. Special market conditions exist prompting bidders to submit conditioned bids enabling exceedance of the bid price. Therefore, no firm bids recovered.

**Transformer Purchase Negotiations** - Following the June 8 Commission meeting, District staff and the District’s Engineer contacted transformer suppliers for the purpose of negotiating a purchase that meet District criteria with respect to price, equipment specifications, and delivery dates.

At the Commission’s July 13, 2021 meeting, District staff recommended the approval of a purchase of two power transformers from the SPX Corporation. The Commission accepted the recommendation and approved the purchase. The District’s General Manager then executed a Purchase Order, which SPX subsequently rejected, unless the District specified delivery dates for the transformers provided to the District by SPX. The District then rejected the dates as being unacceptable. Following this, the District withdrew the Purchase Order.

Following the withdrawal of the purchase of SPX transformers, District staff immediately moved into negotiations with another transformer supplier, WEG Transformers USA. It has been determined that WEG can meet the District's requirements with respect to price, equipment specifications, and delivery dates.

**Staff Recommendation** - Should the Commission at today's meeting rescind the purchase of the power transformers from SPX Corporation, then District staff recommends the purchase of transformers to be supplied by WEG Transformers USA. Under the proposal put forth by WEG, the two power transformers will be built and delivered for a firm cost not to exceed price of **\$2,458,986 (w/o tax)**. This amount is below the Engineer's original cost estimate of **\$2,800,000 (w/o tax)**. Further, the delivery dates for the transformers committed to by WEG meets the District's critical path timeline.

As part of the staff's recommendation, a final review by legal counsel, District staff, and Engineer will be conducted before the purchase is executed by the General Manager and the Purchase Order is issued.

**Fiscal Impact** - This equipment purchase is funded under the District's approved 2021 Budget, as part of the Refinery substation project (CIP E-27). As the purchase amount is lower than the Engineer's estimate, there is no fiscal impact.

**Recommended Action** - APPROVE PURCHASE OF TWO POWER TRANSFORMERS FOR THE REFINERY SUBSTATION FROM WEG TRANSFORMERS FOR A COST NOT TO EXCEED AMOUNT OF \$2,458,986 (W/O TAX) AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER TO EXECUTE THE PURCHASE PENDING FINAL STAFF, ENGINEERING AND LEGAL REVIEW.

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# Memo

**To:** Commissioners Deshmane, Grant, and Murphy  
**From:** Stephan Jilk  
**Date:** July 21, 2021  
**Re:** Approve Whatcom Assistance Program Small Grant Agreement with Lummi Indian Business Council

**Requested Action** – APPROVE WHATCOM ASSISTANCE PROGRAM SMALL GRANT AGREEMENT WITH THE LUMMI INDIAN BUSINESS COUNCIL IN THE AMOUNT NOT TO EXCEED \$10,000.00 AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT.

**Background** – On September 22, 2020, the Commission approved a grant agreement between the District and Washington State Department of Fish and Wildlife (WDFW) to develop a WRIA 1 Coordinated and Integrated Outreach Education Program. The grant funding is \$200,000 and the agreement term is October 15, 2020 to December 15, 2022. The District is managing the grant on behalf of the WRIA 1 Watershed Management Board (WMB) which includes the District, the City of Bellingham, all small cities in Whatcom County, Whatcom County Government, the Lummi Nation, the Nooksack Tribe and the Washington State Department of Fish and Wildlife (WDFW). The WMB acts as the WRIA 1 Local Integrating Organization (LIO) and is responsible for integrating and coordinating local activities related to the Puget Sound Partnership's (PSP) Puget Sound Action Agenda.

Inherent in the WRIA 1 structure is engagement of many of the partners that will be involved with, developing and implementing the communication strategy. In addition to the WMB, the structure includes work groups, staff teams, and a management team with representatives from the seven cities within Whatcom County, Whatcom County administration and departments of planning and public works, PUD No. 1, the Nooksack Tribe and Lummi Nation, state agencies, and agriculture. The WMB is also the Lead Entity for salmon recovery in WRIA 1 and in addition to the previous listed representative entities the technical staff team includes the land trust, regional fisheries enhancement group, conservation district, and U.S. Forest Service.

Tasks of the WRIA 1 Coordinated and Integrated Outreach and Education Program include:

- **Communication Strategy:** Develop and implement a coordinated and integrated outreach and communication strategy that addresses Whatcom ecosystem recovery plan elements including water supply, water quality, floodplains, Chinook, and streamflow. Information and events that are outcomes of an integrated and coordinated outreach and communication strategy will improve the community's understanding of key topics and issues in WRIA 1 and practices that influence the status and condition of local ecosystem components. In addition, the integrated outreach and communication strategy will be designed to help communicate progress and status of other

local near term actions to increase community awareness of actions underway.

- Support the Whatcom Watershed Information: In addition to developing a communication strategy that addresses plan elements, approaches to implementing actions will include leveraging existing outreach efforts, collaborating with and supporting Whatcom Watershed Information Network (WWIN) Speakers Series, Whatcom Water Week and Steering Committee.

Whatcom Assistance Program: The Whatcom Assistance Program is based on a small grants program piloted in FFY 2014-2015 using Whatcom LJO Coordination Grant funds. The program was very successful but did not continue because LJO Coordination Grant funds could no longer be used for that purpose. The purpose of the program was to provide individuals, non-profits, committees, and other entities access to small grants (e.g up to \$10,000) to implement on the ground activities or actions that provided outreach or engagement of different audiences on key topics.

On April 30, 2021, the District sent out a second Request for Applications (RFA) for the Whatcom Assistance Program Small Grants (Program). There was a total of \$35,000 available to award for the Program and applicants could request up to \$10,000 for their project. Five applications were received on the due date of May 28, 2021. The applications were reviewed by six reviewers which included various staff who work for members of the Watershed Management Board and some of those reviewers are also members of the WWIN Steering Committee. The reviewers used a scoring criteria, and based on the outcome of the scoring, three applicants were approved for funding, the Evergreen Land Trust, the Lummi Business Council and Washington State University. The Total request for funding was \$29,973.00. The Lummi Business Council requested and was awarded \$10,000. District staff with assistance from District legal counsel, developed the Whatcom Assistance Program Small Grant Agreement.

**Fiscal Impact** – No fiscal impact to the District. The District will pass funds from the WDFW grant to the Lummi Indian Business Council. The funds will be disbursed quarterly based on approval by WDFW and the District of quarterly reports and invoices provided by Lummi Indian Business Council.

**Recommended Action** – APPROVE WHATCOM ASSISTANCE PROGRAM SMALL GRANT AGREEMENT WITH THE LUMMI INDIAN BUSINESS COUNCIL IN THE AMOUNT NOT TO EXCEED \$10,000.00 AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT.



**WHATCOM ASSISTANCE PROGRAM  
SMALL GRANT AGREEMENT**

**LUMMI INDIAN BUSINESS COUNCIL — SOUTH FORK EDFRO PHASE 3 COMMUNITY OUTREACH AND  
ENGAGEMENT**

This Agreement, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, WASHINGTON** ("Grantor") and **LUMMI INDIAN BUSINESS COUNCIL** ("Grantee") do agree as follows:

1. **Grantee's Obligation to Perform Scope of Work.** The Grantee, in consideration of the sum to be paid by the Grantor and of the terms and conditions herein contained, hereby agrees, at its expense, to do all the work and furnish all the materials, tools, labor, taxes, fees, and all appliances, machinery, and appurtenances for the successful completion of the **SOUTH FORK EDFRO PHASE 3 COMMUNITY OUTREACH AND ENGAGEMENT**, the details of which are set forth in Exhibit A ("Scope of Work") attached hereto.
2. **Documents that Comprise this Agreement.** The Scope of Work, the Request for Applications dated 2/26/2021 ("RFA"), and the grant application submitted by Grantee ("Grant Application") are hereby incorporated into this agreement as terms and conditions as if the same were fully set forth herein. Together such documents are hereinafter referenced as the "Agreement". Any inconsistencies between documents identified in this paragraph as comprising the Agreement shall be resolved in accordance with the following descending order of precedence: (1) this signed agreement document; (2) the Scope of Work; (3) the RFA; and (4) the Grant Application.
3. **Grantor Representative.** The Grantor hereby appoints Rebecca Schlotterback as the Grantor's representative for the purpose of administering the provisions of this Agreement on behalf of the Grantor, including the Grantor's right to receive and act on all reports and documents related to this Agreement, to request and receive additional information from the Grantee, to assess the general performance of the Grantee under this Agreement, to determine if the contracted services are being performed in accordance with Federal, State, and local laws, and to administer any other right granted to the Grantor in this Agreement.
4. **Grantee Representative.** The Grantor hereby appoints \_\_\_\_\_ as the Grantee's representative for the purpose of administering the provisions of this Agreement on behalf of the Grantee.
5. **Duration and Termination.** This Agreement shall be in effect from the date it is fully executed by both parties through October 10, 2022, except that it may be extended pursuant to a modification entered into by the parties; and provided that should additional time for auditing this project in accordance with law be required, the Agreement shall be deemed automatically extended for these purposes until such time as the said audit shall be completed; and provided further that any provisions of this Agreement that contemplate continuing obligations on a party will survive the expiration or termination of this Agreement. The Grantor expressly reserves the right, in its sole discretion, to terminate this Agreement for nonperformance or for reduction in funding.

6. **Entire Agreement.** This Agreement contains all the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.
7. **Compliance with Laws and Standards.** The Grantee agrees to comply with all applicable Federal, State, and local laws and standards (including those of Grantor), including requirements related to licensing, certification, operation of facilities and programs, and accreditation and licensing of individuals.
8. **Subcontracting and Assignment.** Neither party shall assign or delegate any or all interests in this Agreement without first obtaining the written consent of the other party. If such consent is provided, all terms and conditions of this Agreement shall apply to any subcontract or assignment related to this Agreement.
9. **Choice of Law, Dispute Resolution, and Venue.** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. 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 either party may apply to the Superior Court of Whatcom County pursuant to RCW 7.04A et seq. for an order appointing an arbitrator. Such application may be made at any time after the ten-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 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 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. The arbitration provisions set forth herein, RCW Chapter 7.04A, and Rules 5.2 through 5.4 of the Mandatory Arbitration Rules for Superior Court ("MAR") shall govern the arbitration.
10. **Failure to Enforce Not a Waiver.** The failure of the Grantor to insist upon strict performance of any of the terms or conditions of this Agreement shall not be construed to be a waiver such terms of conditions.
11. **Severability.** It is understood and agreed by the parties hereto that if any part of this agreement is determined to be illegal, the validity of the remaining portions shall be construed as if the agreement did not contain the particular illegal part.
12. **Changes and Additions.** No Change or addition to this Agreement shall be valid or binding upon either party unless such change or addition shall be writing and executed by both parties.
13. **Reimbursement and Changes to Work.** Payments to the Grantee shall be made on a reimbursement basis only. The Grantor shall reimburse Grantee for completion of all work in each task, subject to the requirements and limitations set forth in this Agreement. All additions and deletions to the Scope of Work are subject to written authorization by the

Grantor. Grantee shall accept as full payment hereunder the amounts computed as determined by the Grantor based on this Agreement. Work in addition to or different from that provided for in the Scope of Work shall be allowed only by prior authorization in writing by the Grantor.

14. **Deadlines.** The Grantee agrees to complete the work for each task within the time set forth in the Scope of Work. The deadline for each task in the Scope of Work shall be computed based on the number of consecutive calendar days from the date this Agreement is fully executed by both parties.
15. **Eligible Costs.** Eligible costs for reimbursement to the Grantee include only the following: labor and supervisory staff hours; subcontract costs, materials, supplies, printing, equipment and permit fees. Grant funds may be used for financial incentive programs including rebates. Grantee shall not require that a specific brand or item be used in order to be eligible for a rebate. If grant funds are used for installation of a product, by rebate or otherwise, then Grantee shall ensure that such work complies with applicable prevailing wage rates, rules, and laws.
16. **Source of Funds, Approval Requirement, Quarterly Payment, and Maximum Amount of Reimbursement.** Reimbursement to the Grantee by the Grantor will be from funds provided through the WRIA 1 Coordinated and Integrated Outreach and Education Program Grant ("Outreach Grant"). The funding source for the Outreach Grant is the EPA National Estuary Program with the funds administered by WA Department of Fish and Wildlife ("WDFW") as the Puget Sound Habitat Strategic Co-Lead. Payment to Grantee under this Agreement is contingent on Grantor receiving such funds. Reimbursement will be paid to the Grantee on a quarterly basis upon invoices sent to the Grantor. Grantee shall attach a supporting report (form to be provided by Grantor) to each invoice detailing the tasks performed. Payment of each invoice is subject to approval of the invoice and report by WDFW and the Grantor. The total reimbursement amount to be paid to the Grantee shall not exceed **Ten Thousand dollars (\$10,000.00)**
17. **Status of Grantee.** Neither Grantee nor personnel employed by the Grantee shall acquire any rights or status in the Grantor's employment, nor shall they be deemed employees or agents of the Grantor for any purpose other than as specifically specified herein. Grantee shall be deemed an independent contractor and shall be responsible in full for payment of its employees, including worker's compensation, insurance, payroll deductions, and all related costs.
18. **Indemnification and Insurance.** The Grantee agrees to defend the Grantor, hold it harmless, and indemnify it as to all claims, suits, costs, fees and liability arising out of the acts or work of the Grantee, its employees, subcontractors, or agents (including field work) pursuant to this Agreement, where such liability is incurred as a result of the actions or omissions of such parties. Grantee will obtain and maintain in force at least the following minimum insurance coverages covering all activity under this Agreement, and as to which the Grantor shall be named as additional insured (with any endorsement required by the policy):

A. Workers Compensation	Statutory Amount
B. Professional Liability	\$1,000,000
C. Automobile Liability	\$1,000,000
D. Broad Form Comprehensive Liability	\$1,000,000/occurrence

Grantor may, in its sole discretion, waive all or a portion of the insurance requirements set forth in this paragraph based upon its review of the Scope of Work.

19. **Accounting and Audit.** The Grantor agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles and to retain the same for a period of three years after termination of this Agreement. The financial records shall be made available to representatives of the Grantor or any other governmental agency with jurisdiction for audit, at such reasonable times and places as the Grantor shall designate.

**IN WITNESS WHEREOF:**

**GRANTOR:** P.U.D. NO. 1 OF WHATCOM COUNTY

By \_\_\_\_\_ Date \_\_\_\_\_  
Stephan Jilk, General Manager

**GRANTEE:** LUMMI INDIAN BUSINESS COUNCIL

By: \_\_\_\_\_ Date \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# Memo

**To:** Commissioners Deshmane, Grant, and Murphy  
**From:** Stephan Jilk  
**Date:** July 21, 2021  
**Re:** Approve the Whatcom Assistance Program Small Grant Agreement with the Evergreen Land Trust Association

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**Requested Action** – APPROVE THE WHATCOM ASSISTANCE PROGRAM SMALL GRANT AGREEMENT WITH THE EVERGREEN LAND TRUST ASSOCIATION THE AMOUNT NOT TO EXCEED \$10,000.00 AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT.

**Background** – On September 22, 2020, the Commission approved a grant agreement between the District and Washington State Department of Fish and Wildlife (WDFW) to develop a WRIA 1 Coordinated and Integrated Outreach Education Program. The grant funding is \$200,000 and the agreement term is October 15, 2020 to December 15, 2022. The District is managing the grant on behalf of the WRIA 1 Watershed Management Board (WMB) which includes the District, the City of Bellingham, all small cities in Whatcom County, Whatcom County Government, the Lummi Nation, the Nooksack Tribe and the Washington State Department of Fish and Wildlife (WDFW). The WMB acts as the WRIA 1 Local Integrating Organization (LIO) and is responsible for integrating and coordinating local activities related to the Puget Sound Partnership's (PSP) Puget Sound Action Agenda.

Inherent in the WRIA 1 structure is engagement of many of the partners that will be involved with, developing and implementing the communication strategy. In addition to the WMB, the structure includes work groups, staff teams, and a management team with representatives from the seven cities within Whatcom County, Whatcom County administration and departments of planning and public works, PUD No. 1, the Nooksack Tribe and Lummi Nation, state agencies, and agriculture. The WMB is also the Lead Entity for salmon recovery in WRIA 1 and in addition to the previous listed representative entities the technical staff team includes the land trust, regional fisheries enhancement group, conservation district, and U.S. Forest Service.

Tasks of the WRIA 1 Coordinated and Integrated Outreach and Education Program include:

- **Communication Strategy:** Develop and implement a coordinated and integrated outreach and communication strategy that addresses Whatcom ecosystem recovery plan elements including water supply, water quality, floodplains, Chinook, and streamflow. Information and events that are outcomes of an integrated and coordinated outreach and communication strategy will improve the community's understanding of key topics and issues in WRIA 1 and practices that influence the status and condition of local ecosystem components. In addition, the integrated outreach and communication strategy will be designed to help communicate progress and status of other

local near term actions to increase community awareness of actions underway.

- Support the Whatcom Watershed Information: In addition to developing a communication strategy that addresses plan elements, approaches to implementing actions will include leveraging existing outreach efforts, collaborating with and supporting Whatcom Watershed Information Network (WWIN) Speakers Series, Whatcom Water Week and Steering Committee.

Whatcom Assistance Program: The Whatcom Assistance Program is based on a small grants program piloted in FFY 2014-2015 using Whatcom LIO Coordination Grant funds. The program was very successful but did not continue because LIO Coordination Grant funds could no longer be used for that purpose. The purpose of the program was to provide individuals, non-profits, committees, and other entities access to small grants (e.g up to \$10,000) to implement on the ground activities or actions that provided outreach or engagement of different audiences on key topics.

On April 30, 2021, the District sent out a second Request for Applications (RFA) for the Whatcom Assistance Program Small Grants (Program). There was a total of \$35,000 available to award for the Program and applicants could request up to \$10,000 for their project. Five applications were received on the due date of May 28, 2021. The applications were reviewed by six reviewers which included various staff who work for members of the Watershed Management Board and some of those reviewers are also members of the WWIN Steering Committee. The reviewers used a scoring criteria, and based on the outcome of the scoring, three applicants were approved for funding, the Evergreen Land Trust, the Lummi Business Council and Washington State University. The Total request for funding was \$29, 973.00. The Evergreen Land Trust requested and was awarded \$10,000. District staff with assistance from District legal counsel, developed the Whatcom Assistance Program Small Grant Agreement.

**Fiscal Impact** – No fiscal impact to the District. The District will pass funds from the WDFW grant to the Evergreen Land Trust Association. The funds will be disbursed quarterly based on approval by WDFW and the District of quarterly reports and invoices provided by Evergreen Land Trust Association.

**Recommended Action** – APPROVE THE WHATCOM ASSISTANCE PROGRAM SMALL GRANT AGREEMENT WITH THE EVERGREEN LAND TRUST ASSOCIATION IN THE AMOUNT NOT TO EXCEED \$10,000.00 AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT.

**WHATCOM ASSISTANCE PROGRAM  
SMALL GRANT AGREEMENT**

THE EVERGREEN LAND TRUST ASSOCIATION – SOUTH FORK NOOKSACK RIVER WATERSHED COMMUNITY ENGAGEMENT  
ON STREAM FLOWS AND FORESTS

This Agreement, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, WASHINGTON** (“Grantor”) and **THE EVERGREEN LAND TRUST ASSOCIATION** (“Grantee”) do agree as follows:

1. **Grantee’s Obligation to Perform Scope of Work.** The Grantee, in consideration of the sum to be paid by the Grantor and of the terms and conditions herein contained, hereby agrees, at its expense, to do all the work and furnish all the materials, tools, labor, taxes, fees, and all appliances, machinery, and appurtenances for the successful completion of the **South Fork Nooksack River Watershed Community Engagement On Stream Flows and Forests**, the details of which are set forth in Exhibit A (“Scope of Work”) attached hereto.
2. **Documents that Comprise this Agreement.** The Scope of Work, the Request for Applications dated 2/26/2021 (“RFA”), and the grant application submitted by Grantee (“Grant Application”) are hereby incorporated into this agreement as terms and conditions as if the same were fully set forth herein. Together such documents are hereinafter referenced as the “Agreement”. Any inconsistencies between documents identified in this paragraph as comprising the Agreement shall be resolved in accordance with the following descending order of precedence: (1) this signed agreement document; (2) the Scope of Work; (3) the RFA; and (4) the Grant Application.
3. **Grantor Representative.** The Grantor hereby appoints Rebecca Schlotterback as the Grantor’s representative for the purpose of administering the provisions of this Agreement on behalf of the Grantor, including the Grantor’s right to receive and act on all reports and documents related to this Agreement, to request and receive additional information from the Grantee, to assess the general performance of the Grantee under this Agreement, to determine if the contracted services are being performed in accordance with Federal, State, and local laws, and to administer any other right granted to the Grantor in this Agreement.
4. **Grantee Representative.** The Grantor hereby appoints \_\_\_\_\_ as the Grantee’s representative for the purpose of administering the provisions of this Agreement on behalf of the Grantee.
5. **Duration and Termination.** This Agreement shall be in effect from the date it is fully executed by both parties through October 10, 2022, except that it may be extended pursuant to a modification entered into by the parties; and provided that should additional time for auditing this project in accordance with law be required, the Agreement shall be deemed automatically extended for these purposes until such time as the said audit shall be completed; and provided further that any provisions of this Agreement that contemplate continuing obligations on a party will survive the expiration or termination of this Agreement. The Grantor expressly reserves the right, in its sole discretion, to terminate this Agreement for nonperformance or for reduction in funding.



6. **Entire Agreement.** This Agreement contains all the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.
7. **Compliance with Laws and Standards.** The Grantee agrees to comply with all applicable Federal, State, and local laws and standards (including those of Grantor), including requirements related to licensing, certification, operation of facilities and programs, and accreditation and licensing of individuals.
8. **Subcontracting and Assignment.** Neither party shall assign or delegate any or all interests in this Agreement without first obtaining the written consent of the other party. If such consent is provided, all terms and conditions of this Agreement shall apply to any subcontract or assignment related to this Agreement.
9. **Choice of Law, Dispute Resolution, and Venue.** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. 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 either party may apply to the Superior Court of Whatcom County pursuant to RCW 7.04A et seq. for an order appointing an arbitrator. Such application may be made at any time after the ten-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 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 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. The arbitration provisions set forth herein, RCW Chapter 7.04A, and Rules 5.2 through 5.4 of the Mandatory Arbitration Rules for Superior Court ("MAR") shall govern the arbitration.
10. **Failure to Enforce Not a Waiver.** The failure of the Grantor to insist upon strict performance of any of the terms or conditions of this Agreement shall not be construed to be a waiver such terms of conditions.
11. **Severability.** It is understood and agreed by the parties hereto that if any part of this agreement is determined to be illegal, the validity of the remaining portions shall be construed as if the agreement did not contain the particular illegal part.
12. **Changes and Additions.** No Change or addition to this Agreement shall be valid or binding upon either party unless such change or addition shall be writing and executed by both parties.
13. **Reimbursement and Changes to Work.** Payments to the Grantee shall be made on a reimbursement basis only. The Grantor shall reimburse Grantee for completion of all work in each task, subject to the requirements and limitations set forth in this Agreement. All additions and deletions to the Scope of Work are subject to written authorization by the

Grantor. Grantee shall accept as full payment hereunder the amounts computed as determined by the Grantor based on this Agreement. Work in addition to or different from that provided for in the Scope of Work shall be allowed only by prior authorization in writing by the Grantor.

14. **Deadlines.** The Grantee agrees to complete the work for each task within the time set forth in the Scope of Work. The deadline for each task in the Scope of Work shall be computed based on the number of consecutive calendar days from the date this Agreement is fully executed by both parties.
15. **Eligible Costs.** Eligible costs for reimbursement to the Grantee include only the following: labor and supervisory staff hours; subcontract costs, materials, supplies, printing, equipment and permit fees. Grant funds may be used for financial incentive programs including rebates. Grantee shall not require that a specific brand or item be used in order to be eligible for a rebate. If grant funds are used for installation of a product, by rebate or otherwise, then Grantee shall ensure that such work complies with applicable prevailing wage rates, rules, and laws.
16. **Source of Funds, Approval Requirement, Quarterly Payment, and Maximum Amount of Reimbursement.** Reimbursement to the Grantee by the Grantor will be from funds provided through the WRIA 1 Coordinated and Integrated Outreach and Education Program Grant ("Outreach Grant"). The funding source for the Outreach Grant is the EPA National Estuary Program with the funds administered by WA Department of Fish and Wildlife ("WDFW") as the Puget Sound Habitat Strategic Co-Lead. Payment to Grantee under this Agreement is contingent on Grantor receiving such funds. Reimbursement will be paid to the Grantee on a quarterly basis upon invoices sent to the Grantor. Grantee shall attach a supporting report (form to be provided by Grantor) to each invoice detailing the tasks performed. Payment of each invoice is subject to approval of the invoice and report by WDFW and the Grantor. The total reimbursement amount to be paid to the Grantee shall not exceed **Ten Thousand dollars (\$10,000.00)**
17. **Status of Grantee.** Neither Grantee nor personnel employed by the Grantee shall acquire any rights or status in the Grantor's employment, nor shall they be deemed employees or agents of the Grantor for any purpose other than as specifically specified herein. Grantee shall be deemed an independent contractor and shall be responsible in full for payment of its employees, including worker's compensation, insurance, payroll deductions, and all related costs.
18. **Indemnification and Insurance.** The Grantee agrees to defend the Grantor, hold it harmless, and indemnify it as to all claims, suits, costs, fees and liability arising out of the acts or work of the Grantee, its employees, subcontractors, or agents (including field work) pursuant to this Agreement, where such liability is incurred as a result of the actions or omissions of such parties. Grantee will obtain and maintain in force at least the following minimum insurance coverages covering all activity under this Agreement, and as to which the Grantor shall be named as additional insured (with any endorsement required by the policy):

A. Workers Compensation	Statutory Amount
B. Professional Liability	\$1,000,000
C. Automobile Liability	\$1,000,000
D. Broad Form Comprehensive Liability	\$1,000,000/occurrence

Grantor may, in its sole discretion, waive all or a portion of the insurance requirements set forth in this paragraph based upon its review of the Scope of Work.

19. **Accounting and Audit.** The Grantor agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles and to retain the same for a period of three years after termination of this Agreement. The financial records shall be made available to representatives of the Grantor or any other governmental agency with jurisdiction for audit, at such reasonable times and places as the Grantor shall designate.

**IN WITNESS WHEREOF:**

**GRANTOR:** P.U.D. NO. 1 OF WHATCOM COUNTY

By \_\_\_\_\_ Date \_\_\_\_\_  
Stephan Jilk, General Manager

**GRANTEE:** THE EVERGREEN LAND TRUST ASSOCIATION

By: \_\_\_\_\_ Date \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PUBLIC UTILITY DISTRICT No.1  
*of Whatcom County*

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

# Memo

**To:** Commissioners Deshmane, Grant, and Murphy

**From:** Stephan Jilk

**Date:** July 21, 2021

**Re:** Approve the Whatcom Assistance Program Small Grant Agreement with Washington State University

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**Requested Action** – APPROVE THE WHATCOM ASSISTANCE PROGRAM SMALL GRANT AGREEMENT WITH WASHINGTON STATE UNIVERSITY IN THE AMOUNT NOT TO EXCEED \$9,973.00 AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT.

**Background** – On September 22, 2020, the Commission approved a grant agreement between the District and Washington State Department of Fish and Wildlife (WDFW) to develop a WRIA 1 Coordinated and Integrated Outreach Education Program. The grant funding is \$200,000 and the agreement term is October 15, 2020 to December 15, 2022. The District is managing the grant on behalf of the WRIA 1 Watershed Management Board (WMB) which includes the District, the City of Bellingham, all small cities in Whatcom County, Whatcom County Government, the Lummi Nation, the Nooksack Tribe and the Washington State Department of Fish and Wildlife (WDFW). The WMB acts as the WRIA 1 Local Integrating Organization (LIO) and is responsible for integrating and coordinating local activities related to the Puget Sound Partnership's (PSP) Puget Sound Action Agenda.

Inherent in the WRIA 1 structure is engagement of many of the partners that will be involved with, developing and implementing the communication strategy. In addition to the WMB, the structure includes work groups, staff teams, and a management team with representatives from the seven cities within Whatcom County, Whatcom County administration and departments of planning and public works, PUD No. 1, the Nooksack Tribe and Lummi Nation, state agencies, and agriculture. The WMB is also the Lead Entity for salmon recovery in WRIA 1 and in addition to the previous listed representative entities the technical staff team includes the land trust, regional fisheries enhancement group, conservation district, and U.S. Forest Service.

Tasks of the WRIA 1 Coordinated and Integrated Outreach and Education Program include:

- **Communication Strategy:** Develop and implement a coordinated and integrated outreach and communication strategy that addresses Whatcom ecosystem recovery plan elements including water supply, water quality, floodplains, Chinook, and streamflow. Information and events that are outcomes of an integrated and coordinated outreach and communication strategy will improve the community's understanding of key topics and issues in WRIA 1 and practices that influence the status and condition of local ecosystem components. In addition, the integrated outreach and

communication strategy will be designed to help communicate progress and status of other local near term actions to increase community awareness of actions underway.

- Support the Whatcom Watershed Information: In addition to developing a communication strategy that addresses plan elements, approaches to implementing actions will include leveraging existing outreach efforts, collaborating with and supporting Whatcom Watershed Information Network (WWIN) Speakers Series, Whatcom Water Week and Steering Committee.

Whatcom Assistance Program: The Whatcom Assistance Program is based on a small grants program piloted in FFY 2014-2015 using Whatcom LIO Coordination Grant funds. The program was very successful but did not continue because LIO Coordination Grant funds could no longer be used for that purpose. The purpose of the program was to provide individuals, non-profits, committees, and other entities access to small grants (e.g up to \$10,000) to implement on the ground activities or actions that provided outreach or engagement of different audiences on key topics.

On April 30, 2021, the District sent out a second Request for Applications (RFA) for the Whatcom Assistance Program Small Grants (Program). There was a total of \$35,000 available to award for the Program and applicants could request up to \$10,000 for their project. Five applications were received on the due date of May 28, 2021. The applications were reviewed by six reviewers which included various staff who work for members of the Watershed Management Board and some of those reviewers are also members of the WWIN Steering Committee. The reviewers used a scoring criteria, and based on the outcome of the scoring, three applicants were approved for funding, the Evergreen Land Trust, the Lummi Business Council and Washington State University. The Total request for funding was \$29,973.00. Washington State University requested and was awarded \$9,973.00. District staff with assistance from District legal counsel, developed the Whatcom Assistance Program Small Grant Agreement.

**Fiscal Impact** – No fiscal impact to the District. The District will pass funds from the WDFW grant to the Washington State University. The funds will be disbursed quarterly based on approval by WDFW and the District of quarterly reports and invoices provided by Washington State University.

**Recommended Action** – APPROVE THE WHATCOM ASSISTANCE PROGRAM SMALL GRANT AGREEMENT WITH WASHINGTON STATE UNIVERSITY IN THE AMOUNT NOT TO EXCEED \$9,973.00 AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT.

**WHATCOM ASSISTANCE PROGRAM  
SMALL GRANT AGREEMENT**

WASHINGTON STATE UNIVERSITY -

This Agreement, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, WASHINGTON** ("Grantor") and **WASHINGTON STATE UNIVERSITY** ("Grantee") do agree as follows:

1. **Grantee's Obligation to Perform Scope of Work.** The Grantee, in consideration of the sum to be paid by the Grantor and of the terms and conditions herein contained, hereby agrees, at its expense, to do all the work and furnish all the materials, tools, labor, taxes, fees, and all appliances, machinery, and appurtenances for the successful completion of the **Whatcom County Extension Gardening Green Short Course**, the details of which are set forth in Exhibit A ("Scope of Work") attached hereto.
2. **Documents that Comprise this Agreement.** The Scope of Work, the Request for Applications dated 2/26/2021 ("RFA"), and the grant application submitted by Grantee ("Grant Application") are hereby incorporated into this agreement as terms and conditions as if the same were fully set forth herein. Together such documents are hereinafter referenced as the "Agreement". Any inconsistencies between documents identified in this paragraph as comprising the Agreement shall be resolved in accordance with the following descending order of precedence: (1) this signed agreement document; (2) the Scope of Work; (3) the RFA; and (4) the Grant Application.
3. **Grantor Representative.** The Grantor hereby appoints Rebecca Schlotterback as the Grantor's representative for the purpose of administering the provisions of this Agreement on behalf of the Grantor, including the Grantor's right to receive and act on all reports and documents related to this Agreement, to request and receive additional information from the Grantee, to assess the general performance of the Grantee under this Agreement, to determine if the contracted services are being performed in accordance with Federal, State, and local laws, and to administer any other right granted to the Grantor in this Agreement.
4. **Grantee Representative.** The Grantor hereby appoints Dan Nordquist as the Grantee's representative for the purpose of administering the provisions of this Agreement on behalf of the Grantee.
5. **Duration and Termination.** This Agreement shall be in effect from the date it is fully executed by both parties through October 10, 2022, except that it may be extended pursuant to a modification entered into by the parties; and provided that should additional time for auditing this project in accordance with law be required, the Agreement shall be deemed automatically extended for these purposes until such time as the said audit shall be completed; and provided further that any provisions of this Agreement that contemplate continuing obligations on a party will survive the expiration or termination of this Agreement. The Grantor expressly reserves the right, in its sole discretion, to terminate this Agreement for nonperformance or for reduction in funding. This Agreement may be terminated for convenience by either party hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination ("Termination for

Convenience"). By such termination, neither party may nullify obligations already incurred prior to the date of termination. In the event of Termination for Convenience of this Agreement by Grantor, Grantee shall cease incurring costs and obligations to the extent practicable following receipt of the termination notice, and Grantor shall pay all reasonable costs and non-cancelable obligations incurred by WSU as of the date of termination, so long as such payment is consistent with all grant requirements.

6. **Entire Agreement.** This Agreement contains all the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.
7. **Compliance with Laws and Standards.** The Grantee agrees to comply with all applicable Federal, State, and local laws, and standards, including requirements related to licensing, certification, operation of facilities and programs, and accreditation and licensing of individuals.
8. **Subcontracting and Assignment.** Neither party shall assign or delegate any or all interests in this Agreement without first obtaining the written consent of the other party. If such consent is provided, all terms and conditions of this Agreement shall apply to any subcontract or assignment related to this Agreement.
9. **Choice of Law, Dispute Resolution, and Venue.** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. 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 either party may apply to the Superior Court of Whatcom County pursuant to RCW 7.04A et seq. for an order appointing an arbitrator. Such application may be made at any time after the ten-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 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 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. The arbitration provisions set forth herein, RCW Chapter 7.04A, and Rules 5.2 through 5.4 of the Mandatory Arbitration Rules for Superior Court ("MAR") shall govern the arbitration.
10. **Failure to Enforce Not a Waiver.** The failure of the Grantor to insist upon strict performance of any of the terms or conditions of this Agreement shall not be construed to be a waiver such terms of conditions.
11. **Severability.** It is understood and agreed by the parties hereto that if any part of this agreement is determined to be illegal, the validity of the remaining portions shall be construed as if the agreement did not contain the particular illegal part.
12. **Changes and Additions.** No Change or addition to this Agreement shall be valid or

binding upon either party unless such change or addition shall be writing and executed by both parties.

13. **Reimbursement and Changes to Work.** Payments to the Grantee shall be made on a reimbursement basis only. The Grantor shall reimburse Grantee for completion of all work in each task, subject to the requirements and limitations set forth in this Agreement. All additions and deletions to the Scope of Work are subject to written authorization by the Grantor. Grantee shall accept as full payment hereunder the amounts computed as determined by the Grantor based on this Agreement. Work in addition to or different from that provided for in the Scope of Work shall be allowed only by prior authorization in writing by the Grantor.
14. **Deadlines.** The Grantee agrees to complete the work for each task within the time set forth in the Scope of Work. The deadline for each task in the Scope of Work shall be computed based on the number of consecutive calendar days from the date this Agreement is fully executed by both parties.
15. **Eligible Costs.** Eligible costs for reimbursement to the Grantee include only the following: labor and supervisory staff hours; subcontract costs, materials, supplies, printing, equipment and permit fees. Grant funds may be used for financial incentive programs including rebates. Grantee shall not require that a specific brand or item be used in order to be eligible for a rebate. If grant funds are used for installation of a product, by rebate or otherwise, then Grantee shall ensure that such work complies with applicable prevailing wage rates, rules, and laws.
16. **Source of Funds, Approval Requirement, Quarterly Payment, and Maximum Amount of Reimbursement.** Reimbursement to the Grantee by the Grantor will be from funds provided through the WRIA 1 Coordinated and Integrated Outreach and Education Program Grant ("Outreach Grant"). The funding source for the Outreach Grant is the EPA National Estuary Program with the funds administered by WA Department of Fish and Wildlife ("WDFW") as the Puget Sound Habitat Strategic Co-Lead. Payment to Grantee under this Agreement is contingent on Grantor receiving such funds. Reimbursement will be paid to the Grantee on a quarterly basis upon invoices sent to the Grantor. Grantee shall attach a supporting report (form to be provided by Grantor) to each invoice detailing the tasks performed. Payment of each invoice is subject to approval of the invoice and report by WDFW and the Grantor. The total reimbursement amount to be paid to the Grantee shall not exceed **Nine Thousand Nine Hundred Seventy Three dollars (\$9,973.00).**
17. **Status of Grantee.** Neither Grantee nor personnel employed by the Grantee shall acquire any rights or status in the Grantor's employment, nor shall they be deemed employees or agents of the Grantor for any purpose other than as specifically specified herein. Grantee shall be deemed an independent contractor and shall be responsible in full for payment of its employees, including worker's compensation, insurance, payroll deductions, and all related costs.
18. **Responsibility and Insurance.** As an independent contractor, Grantee shall be fully responsible for its acts and omissions and those of its employees and agents. Grantee will obtain and maintain in force at least the following minimum insurance coverages covering all activity under this Agreement, and as to which the Grantor shall be named as additional insured (with any endorsement required by the policy):



A. Workers Compensation	Statutory Amount
B. Professional Liability	\$1,000,000
C. Automobile Liability	\$1,000,000
D. Broad Form Comprehensive Liability	\$1,000,000/occurrence

Grantor may, in its sole discretion, waive all or a portion of the insurance requirements set forth in this paragraph based upon its review of the Scope of Work or based on written confirmation from the Grantee that coverage is provided by alternate methods or programs of insurance.

19. **Accounting and Audit.** The Grantor agrees to keep records of all financial matters pertaining to this Agreement in accordance with generally accepted accounting principles and to retain the same for a period of three years after termination of this Agreement. The financial records shall be made available to representatives of the Grantor or any other governmental agency with jurisdiction for audit, at such reasonable times and places as the Grantor shall designate.

**IN WITNESS WHEREOF:**

**GRANTOR: P.U.D. NO. 1 OF WHATCOM COUNTY**

By \_\_\_\_\_ Date \_\_\_\_\_  
Stephan Jilk, General Manager

**GRANTEE: WASHINGTON STATE UNIVERSITY**

By: \_\_\_\_\_ Date \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# Memo

**To:** Commissioners Deshmane, Grant, and Murphy

**From:** Stephan Jilk

**Date:** July 27, 2021

**Re:** Reject All Bids for the Supply and Delivery of 115kV Electric Substation Equipment - Metal Clad Switchgear

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**Requested Action** – REJECT ALL BIDS FOR THE SUPPLY AND DELIVERY OF 115kV electric substation equipment-metal clad switchgear.

**Background** – The District owns and operates the Refinery Substation serving the Phillips 66 Refinery. Refinery staff expect the need for increased electrical load in the near future and in order to accommodate the increase in electrical load the substation serving the refinery will require improvements to increase the capacity to handle future electric demand.

District staff, with support of its electrical engineering consultants and refinery staff have discussed conceptual design, scope and potential costs of substation improvements. Some of the major equipment required has a very long lead-time from placement of the order to delivery of the equipment. The timeline may be longer than 52 weeks. Final substation site design is dependent on the major electrical equipment being selected in order to complete the final project specifications. Therefore, purchase of the equipment must precede completion of the final site design, as the specifications of the equipment selected will drive the design.

On July 20, 2021, the District received and publicly read aloud two (2) bids submitted for this project. The Engineer's Estimate for the project is \$1,345,500 (tax not included). The two Bids are listed below:

<b><u>Construction Bids</u></b>	<b><u>Bid no tax</u></b>
Myers	\$1,610,633.00
SPS	\$1,517,795.00

The Myers Bid does not meet the specifications due to Myers's stated conditions regarding the Bid. The switchgear proposed did not meet design criteria, as it would not physically fit in the substation yard. Further, the Myers Bid price exceeds the Engineer's estimate by more than 15%. Therefore, District staff has determined that the Bid from Myers is non-responsive.

The SPS Bid does not meet the specifications with regard to the District's requirement for equipment delivery. SPS did not include delivery and off-loading of the equipment in its Bid proposal. Discussions with SPS failed to resolve this issue. Although the SPS Bid price is within the 15% over the Engineer's estimate, District staff has determined the Bid from SPS to be non-responsive.

**Staff Recommendation** - Staff recommends that the Commission reject all Bids submitted for the metal clad switchgear for the Refinery substation project.

**Fiscal Impact** – The rejection of the metal clad switchgear equipment purchase has no fiscal impact on the District. Staff will continue efforts to acquire the switchgear, which is part of the Refinery substation project (CIP E-27).

**Recommended Action** – REJECT ALL BIDS FOR THE SUPPLY AND DELIVERY OF 115kV electric substation equipment-metal clad switchgear.

# Memo

**To:** Commissioners Deshmane, Grant, and Murphy  
**From:** Stephan Jilk – General Manager  
**Date:** July 27, 2021  
**Re:** Approve Resolution No. 795 – Waive Competitive Bid Requirements for the Purchase of Metal Clad Switchgear

---

**Requested Action** – APPROVE RESOLUTION NO. 795 TO WAIVE COMPETITIVE BID REQUIREMENTS FOR THE PURCHASE OF METAL CLAD SWITCHGEAR FOR REFIENRY SUBSTATION.

**Background** – Based on previous District legal counsel’s opinion, “Special Market” conditions exist, which enables the District to waive competitive bid requirements and negotiate a purchase agreement with one or more of the suppliers seeking to supply power transformers for the District’s Refinery substation.

On June 8, 2021 at the regularly scheduled Commission meeting, Commissioners approved Resolution 793, which waived the competitive bid requirements for the supply and purchase of the power transformers. The waiver was based on:

1. No responsive bids received, therefore “no bids” were received from two competitive bid solicitations;
2. Special market conditions exist prompting bidders to submit conditioned bids enabling exceedance of the bid price. Therefore, no firm bids recovered.

A similar situation now exists with regard to the procurement of metal clad switchgear equipment for the Refinery substation project. Bids were received on July 20, 2021. Subsequent review by District staff revealed that both bids were non-responsive and therefore, no bids were received. On July 27, 2021 during its regularly scheduled meeting, the District’s Commission at the recommendation of staff rejected all bids for the metal clad switchgear.

As such, the District is not permitted to accept a non-responsive bid and therefore the District has received no bid on which it can award a contract.

RCW 54.040.080 provides that the Commission may procure materials in the open market if it receives no bid. The fact that the District has received no responsive bid is equivalent to receiving no bid. RCW 54.040.3070(6) provides that the Commission can waive competitive bidding requirements per RCW 39.04.280 if an exception contained within RCW 39.04.280 applies to the purchase.

**Staff Recommendation** - Should the Commission at today's meeting approve Resolution No.795, then upon such approval, staff will enter into direct negotiation with one or more suppliers of the required metal clad switchgear for the purpose of procuring such equipment in a timely manner so as to meet the critical deadline for having the Refinery substation project completed.

**Fiscal Impact** - Approval of Resolution No. 795 by the Commission will have no fiscal impact on the District.

**Recommended Action** - APPROVE RESOLUTION NO. 795 TO WAIVE COMPETITIVE BID REQUIREMENTS FOR THE PURCHASE OF METAL CLAD SWITCHGEAR FOR REFIENRY SUBSTATION.

**RESOLUTION NO. 795**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF  
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY  
WAIVING COMPETITIVE BID REQUIREMENTS FOR THE PURCHASE OF METAL  
CLAD SWITCHGEAR**

**WHEREAS**, Whatcom County Public Utility District No. 1 (the “District”) issued a call for bids for two transformers (“Transformers”) on July 20, 2021, and received two bids, all of which were declared by the Commission to be nonresponsive;

**WHEREAS**, the District is not permitted to accept a non-responsive bid and thus, despite the invitation, has received no bid on which it can award a contract;

**WHEREAS**, the District’s Refinery substation project has a critical timeline requiring timely procurement of required equipment that must be secured months ahead of the project;

**WHEREAS**, the metal clad switchgear is among the equipment required for the Refinery substation project;

**WHEREAS**, RCW 54.040.080 provides that the Commission may procure materials in the open market if it receives no bid. The fact that the District has received no responsive bid is equivalent to receiving no bid;

**WHEREAS**, RCW 54.04.070(6) provides that the Commission can waive competitive bidding requirements per RCW 39.04.280 if an exemption contained within RCW 39.04.280 applies to the purchase; and

**WHEREAS**, the lack of any responsive bids to the District’s invitation to bid constitutes a special market condition under RCW 39.04.280(1)(b), which permits the Commission to waive competitive bid requirements.

**THEREFORE, IT IS HEREBY RESOLVED** by the Commission of Whatcom County Public Utility District No. 1 that the competitive bidding requirements of RCW 54.04.070 are hereby waived for the purchase of the Metal Clad Switchgear because the Commission has received no bid on which it can award a contract and because of the special market conditions described above.

**ADOPTED** by the Board of Commissioners of Whatcom County Public Utility District No. 1 of at a regular meeting thereof held this 27<sup>th</sup> day of July 2021.

**Public Utility District No. 1 of Whatcom County**

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Atul Deshmane, President/Commissioner

---

Michael Murphy, Vice President/Commissioner

---

Christine Grant, Secretary/Commissioner

# Memo

**To:** Commissioners Deshmane, Grant, and Murphy  
**From:** Stephan Jilk  
**Date:** July 27, 2021  
**Re:** Award Bid to Anixter Inc. for the Supply and Delivery of 115kV Electric Substation Equipment - 13.8kV Rack Type 3-Step Capacitor Bank

---

**Requested Action** – AWARD BID TO ANIXTER FOR THE SUPPLY AND DELIVERY OF 115KV ELECTRIC SUBSTATION EQUIPMENT-13.8KV RACK TYPE 3-STEP CAPACITOR BANK AND AUTHORIZE THE DISTRICT’S GENERAL MANAGER TO EXECUTE THE CONTRACT PENDING FINAL ENGINEERING AND LEGAL REVIEW.

**Background** – The District owns and operates the Refinery Substation serving the Phillips 66 Refinery. Refinery staff expect the need for increased electrical load in the near future and in order to accommodate the increase in electrical load the substation serving the refinery will require improvements to increase the capacity to handle future electric demand.

District staff, with support of its electrical engineering consultants and refinery staff have discussed conceptual design, scope and potential costs of substation improvements. Some of the major equipment required has a very long lead time from placement of the order to delivery of the equipment. The timeline may be longer than 52 weeks. Final substation site design is dependent on the major electrical equipment being selected in order to complete the final project specifications. Therefore, purchase of the equipment must precede completion of the final site design, as the specifications of the equipment selected will drive the design.

On July 20, 2021, the District received and publicly read aloud one (1) Bid submitted for this project. The Engineer’s Estimate for the project, is \$460,000.00 (tax not included). The Bid follows:

<b><u>Construction Bid</u></b>	<b><u>Bid Price (w/o tax)</u></b>
<b>ANIXTER INC.</b>	<b>\$340,860.00</b>

Staff recommends that the Commission approve the Award of Bid to Anixter, pending final engineering and legal review of the Bid proposal.

**Fiscal Impact** – This equipment purchase is part of the Refinery substation project, which is included in the approved 2021 Budget, as capital project line item (CIP E-27). As the Bid price is under the District Engineer's estimate there is no fiscal impact.

**Recommended Action** – AWARD BID TO ANIXTER FOR THE SUPPLY AND DELIVERY OF 115KV ELECTRIC SUBSTATION EQUIPMENT-13.8KV RACK TYPE 3-STEP CAPACITOR BANK IN AN AMOUNT NOT TO EXCEED \$340,860.00 AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER TO EXECUTE THE CONTRACT PENDING FINAL ENGINEERING AND LEGAL REVIEW.



PUBLIC UTILITY DISTRICT No.1  
*of Whatcom County*

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

# Memo

**To:** Commissioners Deshmane, Grant, and Murphy

**From:** Stephan Jilk, General Manager

**Date:** July 27, 2021

**Re:** Award Bid to P & P Excavating LLC for the 2021 Plant No. 2 East Settling Pond Cleaning Project (CIP-RW M2)

---

**Requested Action** – AWARD BID TO P & P EXCAVATING LLC IN THE AMOUNT NOT TO EXCEED \$105,424.02 INCLUDING TAX FOR THE 2021 PLANT NO. 2 EAST SETTLING POND CLEANING PROJECT (CIP-RW M2) AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER TO EXECUTE THE CONTRACT.

**Background** – The District has developed a Capital Improvement Project list for work to be completed in 2021. On this list is the cleaning and excavation of the District's Plant No. 2 East Settling Pond (RW-M-2). Due to the significant amount of sediment the clarification process produces, we rotate through the settling ponds cleaning and excavating one (1) of the four (4) ponds on an annual basis.

On July 20, 2021, the District received and publicly read aloud two (2) bids submitted for this project. Engineers Estimate for project is \$165,000.00 not including tax. Totals do not include tax. The results are as follows:

Contractor	Bid	Bid plus Tax
Len Honcoop Gravel, Inc.	\$173,000.00	\$173,000.00
<b>P &amp; P Excavating LLC</b>	<b>\$97,165.00</b>	<b>\$105,424.02</b>

Staff recommends awarding the Bid to P & P Excavating, which submitted the lowest priced responsive Bid. P & P Excavating's bid price of \$97,165.00 is below the Engineer's Estimate of \$165,000 (tax not included).

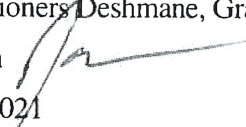
**Fiscal Impact** – This Project is funded for 2021, as part of the approved Capital Improvement Projects (CIP-RW M2) Budget. There is no fiscal impact.

**Recommended Action** – AWARD BID TO P & P EXCAVATING LLC IN THE AMOUNT NOT TO EXCEED \$105,424.02 INCLUDING TAX FOR THE 2021 PLANT NO. 2 EAST SETTLING POND CLEANING PROJECT (CIP-RW M2) AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER TO EXECUTE THE CONTRACT.

PUBLIC UTILITY DISTRICT NO. 1  
*of Whatcom County*

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

# Memo

To: Commissioners Deshmane, Grant, and Murphy  
From: Jon Sitkin   
Date: July 21, 2021  
Re: Amendment to Commissioner Per Diem Compensation Policy- Section 7 of Resolution 768

---

**Requested Action:**

Amend the Commission Per Diem Compensation Policy in Section 7 of Resolution 768, *The Policy on Governance and Management*, adopted in January 2020 (the "Policy"). The Policy revisions are attached in strikethrough and underlines.

**Background:**

In Section 7 of the Policy, concerning payment of per diem, the common, external groups (WPUDA, Energy NW, etc.) are on a pre-approved list of eligible per diem meetings. There are procedures for other meetings to be approved. For per diem claims for meetings outside of the pre-approved meetings, Staff is required to make judgment calls as to whether the meeting was for the benefit of the District. In this context, and pursuant to RCW 54.12.080, it is the Commission that is to determine what meetings are "for the benefit of the District" and thus what meetings/activities are eligible for Commissioner per diem compensation. Staff cannot make the determination of what commission activities are for the performance of the Commission duties or are for the benefit of the District. This determination lies solely in the judgment of the Commission as a Board.

The goal of the revisions to the Policy is to allow the Commission to approve those meetings/activities that are eligible for per diem in advance and prior to such meetings/activities occurring. Gaining approval after a meeting/activity has occurred bypasses this process.

In reviewing potential solutions, there are two options offered below for Commission consideration. Both may have nuanced changes. We are recommending Option A.

- A. Limit per diem to only those meetings established in the Policy. The Commission may review this Policy at any time. Staff review is limited to the pre-approved list and avoids Staff being required to make these judgement calls. This must be done by the Commission by establishing a pre-approved list as set in the Draft Policy;

OR

- B. Broaden the scope of meetings/activities available for per diem compensation. The Commission may have a broader list than those attached in the Draft Policy. However, this will require regular Commission review on the Commission agenda. One approach would be to have each Commissioner's per diem request as part of the regular agenda or as part of the consent agenda. If on the consent agenda, a Commissioner would have to request to have the item removed from the consent agenda to discuss any submitted requests.

The Draft Policy revisions attached hereto also set forth the current daily and annual per diem limit set by statute and the State Office of Financial Management.

**Fiscal Impact:**

None anticipated. Commissioner Per Diem compensation is part of the annual budget approved by the Commission.

**Recommended Action:**

Approval of the revisions to Policy 768, Section 7.

**PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY  
RESOLUTION NO. \_\_\_\_\_**

A Resolution of the Board of Commissioners of Public Utility District No. 1 of Whatcom County (the "District") Establishing an Approval Process for Payment of Per Diem Compensation

**WHEREAS**, the legislature established the salaries and per diem compensation to be paid to commissioners in RCW 54.12.080; and

**WHEREAS**, the Washington Office of Financial Management ("OFM") adjusts the salary and per diem rate every five (5) years to account for inflation by issuing a notice ("Notice"), as required under RCW 54.12.08; and

**WHEREAS**, OFM issued a Notice of Public Utility District Commission Dollar Threshold Adjustment published in the Washington State Register and effective July 1, 2018; and

**WHEREAS**, the current Notice established a new dollar per diem threshold of one hundred and twenty-eight dollars (\$128) per day with a new annual per diem compensation limit of seventeen thousand nine hundred and twenty dollars (\$17,920); and

**WHEREAS**, RCW 54.12.080 states that the per diem compensation paid during any one year to a commissioner shall not exceed the limit established by OFM; and

**WHEREAS**, the Commission wishes to amend Resolution 768, section 7 related to authorized per diem and the process for approval of per diem compensation as set forth below; and

**WHEREAS**, the Commission finds that the meetings and events listed in Exhibit A sections A-G are for the benefit of the District and attendance by a Commissioner at these meetings or events are for a District purpose and/or are necessary for the performance of the Commissioner's official duties.

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

The Commission adopts the Commissioner Per Diem Compensation Policy set forth in Exhibit A attached hereto.

**ADOPTED** by the Board of Commissioners of Public Utility District No. 1 of Whatcom County at a regular meeting thereof held this \_\_\_ day of \_\_\_\_, 2021.

**ATTEST:**

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

\_\_\_\_\_  
Secretary/Commissioner

\_\_\_\_\_  
President/Commissioner

\_\_\_\_\_  
Commissioner

## EXHIBIT A

### Commissioner Per Diem Compensation Policy

**PURPOSE:** To establish the guidelines for Whatcom County Public Utility District No. 1 (the "District") under which per diem compensation will be paid for performance of services or duties on behalf of the District.

RCW 54.12.080 authorizes payment to each Commissioner for each day or portion of a day in attendance at an official meeting of the District commission or in performance of other official services or duties on behalf of the District.

It is a function of the Board of Commissioners ("Board") to identify and approve services that Commissioners are authorized to perform on behalf of the District and receive compensation. The Board accomplishes this by establishing a list of the pre-approved meetings that are determined to be for the benefit of the District as required by RCW 54.12.080.

Commissioners of the District shall be entitled to receive the per diem compensation as outlined in RCW 54.12.080 for the following activities in the amount established in RCW 54.12.080:

- A. Attendance at all regular and special meetings of the Board.
- B. Attendance at the Washington Public Utility District Association annual conference and seminars, and committee meetings thereof.
- C. Attendance at meetings for which a Commissioner has been appointed by the Board as the representative or alternate representative for and by the District.
- D. Attendance at a regular or special meeting of the following meetings approved by the Board in advance:
  - 1. WRIA 1 Planning Unit
  - 2. WRIA 1 Watershed Management Board/WRIA 1 Salmon Recovery Board
  - 3. WRIA 1 Management Team meetings
  - 4. Bertrand Watershed Improvement District
  - 5. North Lynden Watershed Improvement District
  - 6. Laurel Watershed Improvement District
  - 7. South Lynden Watershed Improvement District
  - 8. Sumas Watershed Improvement District
  - 9. Drayton Watershed Improvement District
  - 10. Ag Water Board
  - 11. Whatcom County Council Surface Water Work Sessions

E. Up to one Attendance at a scheduled in person meeting per week with the General Manager specifically to prepare for a Board meeting or a scheduled meeting for which a Commissioner is appointed representative or appointed alternate.

F. Travel time when a separate day of travel is required because of the location and scheduling of the activity.

G. A Commissioner may request approval by the Commission of additional meetings that may be eligible for per diem if such request is made to the Commission in advance at a regularly scheduled Commission meeting. Such additional meeting shall be eligible for per diem if approved in advance by a majority of the Board.

~~H. Compensation for attendance at other meetings or functions not specifically addressed above shall be first approved by the Board. Where prior approval is not possible due to time constraints, the Board President, or Vice President if the Board President seeks approval under this section, may give tentative approval pending final approval by the full Board at its next regular meeting.~~

H. Per diem compensation paid during any one year to a Commissioner shall not exceed the limit established by OFM based on the Notice in effect at the time of approval.

I. Per diem requests shall be submitted to the General Manager and/or Finance Director on forms approved by the General Manager, but shall at a minimum include the date, location, entity/committee or board meeting for which the request is submitted. Any request for Per Diem must be submitted by the 16<sup>th</sup> day of the month for the preceding month. Any per diem requests submitted after that date shall be denied.

J. The role of the District staff is to confirm that the meeting for which a per diem request is submitted by a Commissioner is limited to whether the meeting or event is listed on the preapproved list under Sections A-G, above.

**RESOLUTION No. 768**

**A RESOLUTION OF THE COMMISSION OF  
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY,  
ADOPTING A POLICY ON GOVERNANCE AND MANAGEMENT**

**WHEREAS**, the Board of Commissioners of Public Utility District No. 1 of Whatcom County (Commission) values the responsibilities and authorities granted it through the legislature in the form of laws codified in large part under Title 54 RCW; and

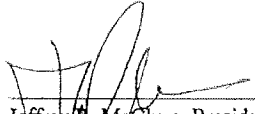
**WHEREAS**, Commission recognizes the responsibilities placed upon it by the citizens of Whatcom County in guiding the District through the use of established policies, values and vision for the betterment of its customers and the community in which it services; and


**WHEREAS**, the Commission understands that effective board governance can be accomplished through strategic leadership, collaborative decision-making, and the recognition of appropriate board-staff relationships; and


**WHEREAS** annually, the Governance and Management Policy will be reviewed to ensure appropriate laws, fiduciary responsibilities, Commission and staff-delegated authorities are now in alignment with Commission expectations and business needs.

**NOW, THEREFORE BE IT RESOLVED**, that the Commission of Public Utility District No. 1 of Whatcom County adopts the Policy on Governance and Management attached hereto as Exhibit A as part of this resolution.

**ADOPTED** by the Commission of Public Utility District No. 1 of Whatcom County at a regular open meeting held this 28<sup>th</sup> day of January 2020.

  
\_\_\_\_\_  
Jeffrey B. McClure, President

  
\_\_\_\_\_  
Michael J. Murphy, Vice-President

  
\_\_\_\_\_  
ATTEST: Atul Deshmane, Secretary

# Policy on Governance and Management

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

RESOLUTION No. 768  
EXHIBIT A



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## **Section 1. INTRODUCTION**

### **1.1 Public Utility Districts Authorized.**

During the heart of the great depression, the people of this state facilitated rural utility service through the creation of Public Utility Districts (commonly known as PUDs). At the general election in 1930, the people passed their first-ever voter approved initiative to the legislature. That initiative approved the creation of PUDs, and was then legislatively documented as Chapter 1, Laws of 1931, and later codified in the Revised Code of Washington (RCW) as Title 54.

Public Utility Districts are nonprofit, locally regulated municipal corporations that are created by a vote of the people. RCW 54.04.020; 54.12.010. Unlike private utilities, public utility districts are run by an elected, nonpartisan board of Commissioners who are directly accountable to the voters. Under state law, the purpose of PUDs is “to conserve the water and power resources of the State of Washington for the benefit of the people thereof, and to supply public utility service, including water and electricity for all uses.” Section 1, Chapter 1, Laws of 1931.

### **1.2 PUD No. 1 of Whatcom County.**

Public Utility District No. 1 of Whatcom County (District) was created by a vote of the people of Whatcom County in 1936. The original desire of the citizens was to take over the Puget Sound Power and Light operations in Whatcom County and replace the investor-owned utility with a publicly owned electric utility. For a number of reasons this did not happen with the foremost being the start of World War II. By the time the war ended, no one was up to the legal fight that was likely to ensue if the process went forward.

When a petroleum company came to Whatcom County looking for a refinery site in 1952, Puget Sound Power & Light was unable to supply the energy or obtain additional energy in the market at the time. Through an arrangement with other PUDs in Washington State, PUD #1 of Whatcom County was able to obtain the energy that permitted the building of the refinery at Cherry Point. In the process, the PUD gained an electric customer and became a functional utility in 1953.

Currently, the PUD supplies one electrical customer and the PUD’s two water intake plants an average of 27 MWh of energy purchased from Bonneville Power Administration (BPA). The electricity flows over 15 miles of transmission/distribution lines and through three substations. The PUD’s electric system peak usage is 29.6 MWs.

The PUD first provided water service in the early 1960’s. Today, the PUD operates two water systems that provide industrial grade (non-potable) water to the Cherry Point Industrial Area businesses and provide irrigation water to approximately 50 customers and fire protection to the Grandview Industrial Park service area. The source of this water is from the Nooksack River. Another water system from groundwater provides potable water for a large light-industrial park at Grandview/Interstate 5. The PUD treats/delivers approximately 5.4 billion gallons of water per year.

### 1.3 PUD Management.

Title 54 RCW governs the operation of public utility districts and dictates the relative roles of a district's commission and its district manager. The powers of the district are exercised through the elected board of the commissioners.

#### **RCW 54.12.010: Exercise of power by commissioners—Number—Districts—Terms—Vacancies—Adjustment of boundaries.**

*A public utility district that is created as provided in RCW 54.08.010 shall be a municipal corporation of the state of Washington, and the name of such public utility district shall be Public Utility District No. . . . of . . . . County.*

*The powers of the public utility district shall be exercised through a commission consisting of three members in three commissioner districts, and five members in five commissioner districts.*

*(1) If the public utility district is countywide and the county has three county legislative authority districts, then, at the first election of commissioners and until any change is made in the boundaries of public utility district commissioner districts, one public utility district commissioner shall be chosen from each of the three county legislative authority districts.*

*(2) If the public utility district comprises only a portion of the county, with boundaries established in accordance with chapter 54.08 RCW, or if the public utility district is countywide and the county does not have three county legislative authority districts, three public utility district commissioner districts, numbered consecutively, each with approximately equal population and following precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, subject to appropriate change by the county legislative authority if and when it changes the boundaries of the proposed public utility district. One commissioner shall be elected as a commissioner of each of the public utility district commissioner districts.*

*(3) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district. Only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire public utility district may vote at a general election to elect a person as a commissioner of the commissioner district.*

*(4) The term of office of each public utility district commissioner other than the commissioners at large shall be six years, and the term of each commissioner at large shall be four years. Each term shall be computed in accordance with RCW 29A.60.280 following the commissioner's election. All public utility district commissioners shall hold office until their successors shall have been elected and have qualified and assume office in accordance with RCW 29A.60.280.*

*(5) A vacancy in the office of public utility district commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the public utility district commission for a period of sixty days unless excused by the public utility district commission. Vacancies on a board of public utility district commissioners shall be filled as provided in chapter 42.12 RCW.*

*(6) The boundaries of the public utility district commissioner districts may be changed only by the public utility district commission or by a court order issued pursuant to RCW 29A.92.110, and shall be examined every ten years to determine substantial equality of population in accordance with chapter 29A.76 RCW. Except as provided in this section, RCW 29A.92.110, RCW 54.04.039, or in the case of an intervening census, the boundaries shall not be changed more often than once in four years. Boundaries may only be changed when all members of the commission are present. Whenever territory is added to a public utility district under RCW 54.04.035, or added or withdrawn under RCW 54.04.039, the boundaries of the public utility commissioner districts shall be changed to include the additional or exclude the withdrawn territory. Unless the boundaries are changed pursuant to RCW 54.04.039, the proposed change of the boundaries of the public utility district commissioner district must be made by resolution and after public hearing. Notice of the time of the public hearing shall be published for two weeks before the hearing. Upon a referendum petition signed by ten percent of the qualified voters of the public utility district being filed with the county auditor, the county legislative authority shall submit the proposed change of boundaries to the voters of the public utility district for their approval or rejection. The petition must be filed within ninety days after the adoption of resolution of the proposed action. The validity of the petition is governed by the provisions of chapter 54.08 RCW.*

#### **1.4 Purpose for Governance and Management Policy.**

The purpose of this Policy is to assure that the District's service to the residents and businesses in Whatcom County are consistent with law and sound management principles.

## Section 2. THE DISTRICT COMMISSION AND GENERAL MANAGER

### 2.1 Commission.

The Whatcom PUD is a countywide district. The District is governed by a three-member Commission. RCW 54.12.010 ("The powers of the PUD shall be exercised through a Commission consisting of three members in three commissioner districts.")<sup>1</sup> As such, other than to vote on matters that come before the Board of Commissioners, no individual commissioner has any particular authority unless so empowered by the Board of Commissioners. One public utility district commissioner shall be chosen from each of the three county legislative authority districts.

The term of office for each Commissioner is six years. Each term shall be computed in accordance with RCW 29A.20.040. All public utility district commissioners shall hold office until their successors shall have been elected and have qualified and assume office in accordance with RCW 29A.20.040. A vacancy in the office of public utility district commissioner shall occur as provided in chapter 54.12 RCW. Vacancies on a board of public utility district commissioners shall be filled as provided in chapter 42.12 RCW.

The boundaries of the public utility district commissioner districts are established pursuant to RCW 54.12.010 (1) and may be changed only by the public utility district commission. The boundaries of the public utility district commissioner districts shall be examined every ten years to determine substantial equality of population in accordance with chapter 29A.76 RCW.<sup>2</sup>

### 2.2 Commission's Purpose.

The District Commission's purpose is to:

- 2.2.1 Identify and define the purpose, values and vision of the District and communicate them in the form of policies.
- 2.2.2 Adopt strategic plans, comprehensive plans, facility plans, budgets, rates, and charges for the District's utility services.
- 2.2.3 Hire, evaluate and terminate the General Manager.
- 2.2.4 Ensure accountability for financial oversight by a Commission-delegated member's participation in the year-end financial exit audit performed by the State Auditor.

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<sup>1</sup> See also *Steinbock v. Ferry County PUD No. 1*, 165 Wn. App. 479,491 (2011).

<sup>2</sup> See also RCW 54.12.010(6).

## **2.3 Commission Leadership.**

The Commission's governance primarily focuses on:

- 2.3.1 Strategic leadership more than administrative detail.
- 2.3.2 Encouragement of diversity in viewpoints.
- 2.3.3 Recognition of Commission and General Manager Roles.
- 2.3.4 Collaborative decision-making.
- 2.3.5 A focus on the future, with recognition of the District's history.
- 2.3.6 Being proactive rather than reactive.
- 2.3.7 Undertake and implement the District's Strategic Plan's programs, projects and initiatives as a mechanism to assure organizational consensus and commitment to the District's priorities, and to balance the needs/wants of the community.

Specifically, the Commission will direct and evaluate the organization through the careful establishment of written policies reflecting the Commission's values and vision. The Commission's major policy focus will be on the District's long-term impacts outside the organization, not on the administrative or programmatic means of achieving those effects.

## **2.4 General Manager.**

**Manager – Appointment – Compensation – Duties. RCW 54.16.100.**

The commission, by resolution introduced at a regular meeting and adopted at a subsequent regular meeting, shall appoint and may remove at will a District manager, and shall, by resolution, fix his or her compensation.

The manager shall be the chief administrative officer of the District, in control of all administrative functions and shall be responsible to the commission for the efficient administration of the affairs of the District placed in his or her charge. The manager shall be an experienced executive with administrative ability. In the absence or temporary disability of the manager, the manager shall, with the approval of the president of the commission, designate some competent person as acting manager. This designation to be confirmed by the Commission at the next regular commission meeting.

The manager may attend all meetings of the commission and its committees, and take part in the discussion of any matters pertaining to the duties of his or her department, but shall have no vote.

The manager shall carry out the orders of the commission, and see that the laws pertaining to matters within the functions of the District are enforced; keep the commission fully advised as to the financial

condition and needs of the District; prepare an annual estimate for the ensuing fiscal year of the probable expenses of the District, and recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made during the ensuing fiscal year, with an estimate of the costs of the development work, extensions, and additions; certify to the commission all bills, allowances, and payrolls, including claims due contractors of public works; recommend to the commission compensation of the employees of his or her office, and a scale of compensation to be paid for the different classes of service required by the District; hire and discharge employees under his or her direction; and perform such other duties as may be imposed upon the manager by resolution of the commission.

It is unlawful for the manager to make any contribution of money in aid of or in opposition to the election of any candidate for public utility commissioner or to advocate or oppose any such election.

The Commission from time to time may delegate additional authority to the General Manager pursuant to a resolution passed by the commission.

At the District, the "Manager" has the title of "General Manager".

## **2.5 General Manager as Chief Administrative Officer.**

- 2.5.1 **General.** By law, the General Manager is the chief administrative officer of the District. The Commission will instruct the General Manager through written policies, normally in the form of resolutions, motions or minute entries, that define the goals and objectives the District is to achieve, and describe the authority of the General Manager.

## **2.6 General Manager Authority.**

- 2.6.1 The General Manager is authorized make all decisions, take all actions, establish all practices and develop all activities to achieve the goals set forth by the Commission, in establishing policies for the District.
- 2.6.2 The General Manager must bring to the Commission's attention circumstances that affect the goals established by the Commission and may request the Commission to take appropriate actions.
- 2.6.3 The Commission may change its direction to the General Manager at any time, thereby expanding or limiting the authority of the General Manager (except where specifically provided by law).



### **Section 3. MEETINGS AND AGENDA**

#### **3.1 Open Public Meeting Act.**

The Commission acts only through open meetings in compliance with the state Open Public Meeting Act, Chapter 42.30 RCW. All meetings are either regular or special. Regular meetings are fixed as to date, time and place by the Commission and posted on the District's web page at [www.pudwhatcom.org](http://www.pudwhatcom.org).

Special Meetings will be noticed in accordance with RCW 42.30.080. The notice of a special meeting shall specify the time and place of the special meeting and the business to be transacted. This notice may take the place of an agenda for special meetings.

In the event of a natural disaster, attack or notice of imminent attack, where it becomes imprudent, inexpedient or impossible to conduct the affairs of the District at the regular or usual place, the Commission may meet at any place within or without its territorial limits on the call of the Commission President or any two members of the Commission. After any emergency relocation, the affairs of the District shall be conducted at such emergency temporary location for the duration of the emergency. RCW 42.14.075.

#### **3.2 Commission's Actions.**

All proceedings of the Commission are by motion or resolution, recorded in the Commission's minute books. Those minute books are public records available to the public. RCW 54.12.090.

#### **3.3 Commission Agenda.**

The agenda for a Commission meeting identifies in general terms the topics that may be considered by the Commission. The Agenda is typically developed and managed as follows:

- 3.3.1 The Agenda will consist of:
  - 1. Call to Order | Pledge of Allegiance
  - 2. Approval of Agenda
  - 3. Public Comment
  - 4. Consent Agenda
    - a. Approval of Claims
    - b. Approval of Minutes
    - c. Other
  - 5. Old Business
  - 6. New Business
  - 7. General Manager Report
  - 8. Commissioner Reports
  - 9. Adjourn

- 3.3.2 The General Manager shall prepare and issue an agenda for each regular Commission Meeting in collaboration with the Board President in advance of the meeting.
  - 3.3.3 Additional agenda items may be added by a Commissioner after the publication of the agenda.
  - 3.3.4 Items may be placed on either the Action Agenda section or on the Consent Agenda. An item placed on the Consent Agenda may be moved to the Action Agenda section at the request of any Commissioner member during a Commission Meeting and prior to the motion to approve the Consent Agenda. The moved item will be placed on the Action Agenda section for further discussion.
- 3.4 Commissioner Attendance at Meetings.**
- 3.4.1 Commissioners will inform the President, General Manager or Assistant to the General Manager if they are unable to attend any Board meeting.
  - 3.4.2 The minutes will show the Commissioner as having an absence with notice.
  - 3.4.3 The Board may allow teleconferencing to substitute for actual in-person attendance at meetings.
  - 3.4.4 Board members on teleconference shall be deemed present at the Board Meeting.
- 3.5 Media Representation at Board Meetings.**

All meetings of the Board are public meetings open to all members of the public, including the media, without any conditions upon attending. RCW 42.30.040.

- 3.5.1 Videotaping, photographs, and/or audio recordings of the open portions of such meetings are all allowed by any person, unless such activity interferes with the orderly conduct of the meeting, pursuant to RCW 42.30.050. The President shall oversee the orderly conduct of the meeting.

**Section 4. COMMISSION OFFICERS**

**4.1 Commission President.**

The President of the Commission shall:

- 4.1.1 Ensure that the Commission jointly and consistently adheres to its own rules and policies, and those imposed upon it by the laws of the State of Washington.
- 4.1.2 Ensure that the deliberation is fair, open and thorough, but also timely, orderly, cordial, professional and kept to the point. The President of the Commission shall preside over and facilitate all Commission Meetings in accordance with this Policy.
- 4.1.3 Schedule and coordinate evaluations of the General Manager.
- 4.1.4 Preside over and facilitate Commission meetings.
- 4.1.5 Have no authority to supervise or administratively direct the General Manager.
- 4.1.6 Assume responsibility of the Commission that is not specifically assigned to another commission member.
- 4.1.7 Be authorized to delegate his or her authority, but remains accountable for its use.
- 4.1.8 Call Special Meetings of the Commission in the event of a business need as provided for in RCW 42.30.080.

**4.2 Commission Vice-President.**

The Vice-President of the Commission shall:

- 4.2.1 Perform such duties of the President as delegated by the President.
- 4.2.2 Have all the power and duties as the President in the absence or inability of the President to act.
- 4.2.3 Have all the authority and duties of the Secretary in the absence or inability of the Secretary to act, when not acting as the President.

**4.3 Commission Secretary.**

The Secretary of the Commission shall:

- 4.3.1 Attest all contracts, bonds, deeds, leases and other instruments and documents duly authorized by the Commission unless otherwise delegated by the Commission.
- 4.3.2 Perform all duties incident to the office of Secretary as may from time to time be required by law or assigned to such office by motion, rule or resolution of the Commission.
- 4.3.3 Have all the authority and duties of the President in the absence or inability of both the President and Vice-President to act.

**Section 5. BOARD REPRESENTATION**

**5.1** The Commission as a body speaks for the District. If a Commissioner appears on behalf of the District before the public or any member of the public, another governmental agency, a community organization, or through the media for the purpose of commenting on an issue, the Commissioner needs to state the majority position of the Board, if any, on such issue. The General Manager may speak on behalf of the District based on direction received from the Commission or in the absence of the Commission, the Commission chair. An individual Commissioner may speak on behalf of the District based on action taken by or direction received from the Board of Commissioners.

**5.1.2** Personal opinions and comments which differ from the Board majority may be expressed if the Commissioner clarifies that his/her statements do not represent the District's position.

**5.2** The Board of Commissioners, acting in their official capacity as an elected body, shall not take an official stand or position related to the support or opposition of any candidate(s) running for political office.

**5.2.1** This does not preclude individual Commissioners from exercising their individual right to support or oppose a candidate.

**Section 6. CONFIDENTIALITY**

**6.1** Commissioners should keep confidential all written materials and verbal information provided to them during Executive Sessions. Some of the reasons for this include, to ensure that the District's position is not compromised, and to ensure a confidence in a free exchange of Commissioner views in an Executive Session, among other reasons.

**6.1.1** Confidentiality also includes information provided to Commissioners outside of Executive Sessions when the information is considered to be exempt from disclosure under the Revised Code of Washington, which includes without limitation all attorney-client privileged communications.

**6.2** If the Board, in Executive Session, has provided direction or consensus to the General Manager or Legal Counsel on proposed terms and conditions for any type of issue, all contact to parties outside the District on said terms and conditions should be done by the General Manager, the General Manager's designated staff representative or the District's Legal Counsel.

**6.2.1** Commissioners may not use District information, particularly confidential information, for individual gain or to promote the interest of any individual, group, or entity. Commissioners have the duty to protect the confidentiality of privileged and private District records and information. The unauthorized disclosure of confidential records or information is a violation of this responsibility. The Board, not an individual Commissioner, has the authority to disclose information or records of the District. This restriction also applies when the District is involved in any type of contract negotiations, disciplinary procedures, or other District business.

## **Section 7. COMMISSIONER COMPENSATION – PER DIEM**

This section establishes guidelines for the District under which per diem compensation will be paid for performance or services or duties on behalf of the District, and, to allow for educational opportunities for Commissioner to inform themselves and the full Board on issues related to District business.

RCW 54.12.080 authorizes payment, at the rate established by law, to each Commissioner for each day or portion of a day in attendance at an official meeting of the District Commission or in performance of other official services or duties on behalf of the District.

It is a function of the Board of Commissioners to identify and approve services that Commissioners are authorized to perform on behalf of the District and receive compensation, and to allow for educational opportunities for Commissioners to inform themselves and the full Board of issues related to District business.

**7.1** Commissioners of the District shall be entitled to receive the per diem compensation as outlined in RCW 54.12.080 for the following activities:

- 7.1.1 Attendance at all regular and special meetings of the Board.
- 7.1.2 Attendance at the Washington Public Utility Districts Association (WPUDA) regularly scheduled annual, quarterly and special meetings, conferences and seminars, and committee meetings thereof.
- 7.1.3 Attendance at meetings for which a Commissioner has been appointed by the Board as the Representative or Alternate Representative for and by the District, such as Energy Northwest, Whatcom County Council of Governments, and Whatcom County EDI Board.
- 7.1.4 Attendance at regular or special meetings of WRIA 1 Watershed Management Board and Committees thereof including:
  - Planning Unit
  - Watershed Management Board/WRIA 1 Salmon Recovery Board
  - Management Team Meetings
- 7.1.5 Attendance at regular or special meetings of the Ag Water Board and Watershed Improvement Districts thereof including:
  - Bertrand Watershed Improvement District
  - North Lynden Watershed Improvement District
  - Laurel Watershed Improvement District
  - South Lynden Watershed Improvement District
  - Sumas Watershed Improvement District
  - Drayton Watershed Improvement District

- 7.1.6 Attendance at regular or special meetings of the following agencies/entities:
    - Whatcom County Council Meetings and Committee Meetings
    - Port of Bellingham Commission Meetings
    - Partnership for a Sustainable Economy (Small Cities Partnership)
    - Bellingham/Whatcom Chamber of Commerce
  - 7.1.7 Attendance at other meetings of agencies or individual organizations including but not limited to seminars and conferences not specifically called out above by an individual Commissioner will be considered only if the Commission has identified a specific purpose for such attendance as it relates to his/her performance of official business and/or duties on behalf of the District.
  - 7.1.8 Attendance at a scheduled in-person meeting with the General Manager specifically to prepare for a scheduled Board Meeting or for a meeting in which a Commissioner is appointed representative or appointed alternate.
  - 7.1.9 Travel time when a separate day of travel is required because of the location and scheduling of the meeting or activity.
- 7.2 Compensation for attendance at other meetings or functions not specifically addressed above may be provided if approved in advance by the Commission, or the following conditions are satisfied:
- 7.2.1 At a regular Commission Meeting or at the next regular Commission Meeting, a Commissioner will provide notice to the Board of his/her planned meeting attendance at meetings and the purpose of such attendance occurring after this meeting, allowing other Commissioners to object to such meetings being on behalf of the District, and
  - 7.2.2 At the next regular Commission Meeting following the individual Commissioner's attendance at such meeting, the Commissioner will provide the Board with a report of such meeting attended, for which per diem pay will be requested by the Commissioner.
- Upon satisfaction of the forgoing conditions, the meeting per diem for attendance will then be processed for payment.
- 7.3 **Commissioner Expense Reimbursement.**
- 7.3.1 In addition to the above allowances, Commissioners shall receive reimbursement of reasonable and necessary expenses incurred in attending activities, meetings and events as outlined in Washington State Per Diem Rates for meals and lodging. Travel reimbursement will be based on the current Internal Revenue Service rate.



**Section 8. TRAINING, ORIENTATION**

The Commission shall ensure that its skills are sufficient to assure excellence in governance of the District subject to available resources, new Commission members should participate in training and orientation in Commission governance, policies and procedures, an orientation on the District's Strategic Plan, Water and Electric Systems and all District comprehensive plans. With other Commissioners, receive training on the Open Public Meetings Act and District Public Records Retention, along with skills of effective communication and decision-making.

## Section 9. COMMISSION CODE OF CONDUCT

### 9.1 Commissioners are Trustees.

Holding public office and maintaining the public trust requires high ethical standards. Washington law provides that those holding public office is synonymous with public trust and that a public officer's relationship with the public is that of a fiduciary.<sup>3</sup> Commissioner duty is to the interests of the District's residents and ratepayers. This duty of loyalty supersedes any conflicting duty or loyalty such as that to advocacy or interest groups and membership on other Boards or staffs. It also supersedes the personal interest of any Commission member acting as a consumer of the District's activities. Additionally;

### 9.2 State Code of Ethics.

The State of Washington has adopted a "Code of Ethics" that applies to all municipal officers. Chapter 42.23 RCW. The declared purpose of the Code of Ethics is to make uniform the laws of the State concerning the transaction of business by municipal officers in conflict with the proper performance of their duties in the public interest, and to promote the efficiency of local government by prohibiting certain instances and areas of conflict while at the same time sanctioning, under sufficient controls, certain other instances and areas of conflict. RCW 42.23.010. The obligations under the state's ethics laws, and other laws impacting local officials, include:

- 9.2.1 Commission members are strictly prohibited by law from entering into or engaging in any activity defined by Chapter 42.23 RCW as a conflict of interest with their duties as a District Commissioner.
- 9.2.2 At the first regular meeting of each year and in a public forum/as needed, each Commissioner shall acknowledge their obligation to disclose any conflicts of interest as defined in Chapter 42.23 RCW.
- 9.2.3 This Policy incorporates the District's Conflict of Interest Code and Code of Ethics Policy adopted by the Commission. Consistent with that Policy, Commissioners shall conduct themselves with civility and respect at all times with one another, with staff, and with members of the public.
- 9.2.4 Commission members will adhere to District policy on appropriate use of District Resources.
- 9.2.5 Commission members will become familiar with their individual and joint obligations pertaining to the District's directive on reporting alleged improper governmental action, including actions required of the Commission regarding employee complaints of alleged improper governmental actions and/or employee claims of retaliation for reporting alleged improper governmental actions.

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<sup>3</sup> *Northport v. Northport Townsite Co.*, 27 Wash. 543, 54-50 (1902)

- 9.2.6 Commission members understand that all records (including but not limited to letters, memoranda, e-mail and/or interactive computer or electronic information), the subject of which relates to the conduct of the District or the performance of any District function, are public records and may also be subject to disclosure under the Washington Public Records Act, Chapter 42.56 RCW. Any such public record shall be provided to the Public Records Officer for including in the District's records management program.
- 9.2.7 Commission members will refrain from accepting a gratuity, compensation or reward because he or she is a District Commissioner, subject to District policy. See the District's Conflict of Interest Code and Code of Ethics Policy.
- 9.2.8 Commission members shall work with staff through the General Manager and shall not attempt to or exercise individual authority over District staff, except as explicitly set forth and authorized in Commission policies.
- 9.2.9 In interactions with public, press or other entities, Commission members must recognize the same limitation and the inability of any Commission member to speak for the Commission except to repeat explicitly stated and adopted Commission decisions. Commission members are at liberty to exercise their individual freedom of expression, as long as the exercise of this freedom does not put the District at a legal disadvantage or conflict with the Commissioners fiduciary duties to the District. For example, a Commissioner may express their individual views, and may only express a position of the District on an issue or proposal if the Board of Commissioners has formally expressed such a position.

**9.3. Washington's Open Public Meetings Act.**

Under Washington's Open Public Meetings Act, Commission members:

- 9.3.1 Shall not meet outside of Commission-called public meetings in violation of the Open Public Meetings Act. See Chapter 42.30 RCW;
- 9.3.2 Understand that the requirements of the Washington Open Public Meetings Act applies to communication via telephone, e-mail, instant messaging or other forms of electronic communications. Any exchange of communication between any two Commission members may constitute an official meeting of the Commission and be in violation of the Act.
- 9.3.3 May send information to other members of the Commission on an informational basis only; however, replies and/or exchanges of communication regarding District business must not occur outside of an official public meeting of the Commission. Any such e-mail sent for informational purposes as described above, shall be copied to the District General Manager. Commissioners will not "reply" to any e-mail received by another member of the Commission.

- 9.3.4 Shall respect the confidentiality appropriate to issues regarding national security, personnel, real estate transaction, proprietary matters, and attorney-client privileged communications including those requirements listed under RCW 42.30.110, executive session and including any other confidential information gained by reason of the Commissioner's position. See RCW 42.23.070 (4) ("No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.")

**9.4 Commission Access to Public Records.**

- 9.4.1 The District has a duty to comply with appropriate public records requests as required by the Washington Public Records Act, chapter 42.56 RCW.
- 9.4.2 Because of the special status conferred upon the Commission as elected representatives, the following protocols are established:
- 9.4.2.1 A Commission member request to inspect District documents that do not meet the criteria of a "public record" under RCW 42.56 and/or which may be confidential in nature, shall be forwarded directly to the General Manager, who will provide the requested files, as allowed by law, for review on District premises.
- 9.4.2.2 No confidential or original documents shall be taken from District premises except with the authorization of the General Manager.
- 9.4.2.3 Commission members shall adhere to the same confidentiality requirements applicable to employees when dealing with the District's records and other documents. District employee personnel files will not be subject to Commission review, consistent with the District's directive relating to Employee Records Confidentiality and Access.
- 9.4.2.4 Access to District public records may be achieved by providing a "Request for Public Records" to the General Manager. If a Commissioner receives a request for records (either verbal, in writing or electronically) from any person or entity, the Commissioner shall immediately forward such request to the District's public record officer.

**Section 10. COMMISSION, NOT COMMISSIONER ACTION**

**10.1 General.**

The Commission acts through a majority of its members. Only decisions of the Commission acting as a body are binding upon the General Manager, the Legal Counsel, the District Auditor, or District Treasurer.

**10.2 Commissioner Communications.**

- 10.2.1 Decisions or instructions of individual Commission members are not binding on the General Manager, Legal Counsel, or other District staff except in instances when the Commission has specifically authorized such exercise of authority.
- 10.2.2 In the case of Commission members requesting information or assistance without Commission authorization, the General Manager, Legal Counsel, or other District staff must refuse such requests that may be a conflict of interest between the District and the Commissioner requesting the information or assistance.
- 10.2.3 Commission member may communicate directly with District employees or contractors. However, the Commission as a body and the Commission members individually will never give direction to persons who report directly or indirectly to the General Manager, with the exception of the Legal Counsel.
- 10.2.4 The Commission and its members will refrain from evaluating either formally or informally, the job performance of any District employee other than the General Manager.

**Section 11. MANAGEMENT, LEGAL COUNSEL AND AUDITOR/TREASURER**

**11.1 General Manager.**

The General Manager is responsible for the following:

- 11.1.1 All operations of the District, as well as the business affairs of the District.
- 11.1.2 Achieving the results established by the Commission within the appropriate and ethical standards of business conduct set by the Commission.
- 11.1.3 Enforcing District resolutions, administering directives, staff policies and procedures, hiring and terminating all employees, attending meetings of the Commission and reporting on the general affairs of the District, and keeping the Commission advised as to the current and future business needs of the District.
- 11.1.4 Ensuring the smooth continuous operation of the District in the event of the planned or unplanned absence of the General Manager. As required under RCW 54.16.100, the General Manager shall designate a competent person as Acting General Manager when absent. On an annual basis, the General Manager shall provide to the Commission a written designation of the order of positions to perform in this capacity.
- 11.1.5 Interacting with the public and other utilities and government agencies, pursuant to policies and direction adopted by the Commission.
- 11.1.6 Performing other responsibilities as may be appropriate, directed by the Commission.
- 11.1.7 The General Manager shall provide a timely communications report to the Commission and Staff.

**11.2 Evaluating the General Manager's Performance.**

- 11.2.1 The General Manager's job performance shall be evaluated by comparing the District's operations and results and the General Manager's performance to the policies and direction established by the Commission. The Commission shall evaluate the General Manager's performance on an annual basis.
- 11.2.2 The General Manager shall propose performance criteria prior to acceptance of the budget for the following twelve months that represents his or her reasonable interpretation of achieving the goals identified by the Commission. The Commission shall accept or modify the criteria.

### **11.3 Legal Counsel.**

- 11.3.1 The District Legal Counsel provides legal advice and counsel to the District and to the Commission. The Legal Counsel reports both to the Commission and to the General Manager.

The Commission is ultimately responsible for hiring (or contracting for) and terminating Legal Counsel. As a general practice, the Commission with the General Manager may participate jointly in hiring and terminating District Legal Counsel.

The District's Legal Counsel shall advise the Commissioners regarding potential conflict of interest issues or other ethical matters. District's Legal Counsel shall provide assistance to individual Commissioners in complying with applicable statutes and laws only when such advice does not conflict with the District's Legal Counsel's obligations to the District or to specific direction of the Commission.

- 11.3.2 With respect to the Commission, the District's Legal Counsel shall: Provide advice or counsel whenever required by the Commission.
- 11.3.3 Inform the Commission of material legal issues impacting the District or the Commission known to the District's Legal Counsel.
- 11.3.4 When necessary, act independently of the General Manager.
- 11.3.5 The District's Legal Counsel shall not provide legal counsel to Commission members except as it relates to their role as District Commission members.

### **11.4 Auditor and Treasurer.**

- 11.4.1 The District Auditor (not Washington State Auditor) and the District Treasurer (Treasurer) serve in the capacity set forth by Title 54 of the Revised Code of Washington.
- 11.4.2 Under Resolution Number 3, dated 24 April 1937, the Commissioners of PUD No. 1 of Whatcom County duly appointed the Auditor of Whatcom County as a competent person to perform such duties. The Auditor of Whatcom County is hereby appointed Auditor and Treasurer of Public Utility District No. 1 of Whatcom County with the powers and duties prescribed by Chapter 1, Laws of Washington for 1931 and such other duties as are now or hereafter may be prescribed by the rules and regulations of this Commission.

- 11.4.3 Under Resolution Number 202, dated 26 September 1968, that any two or more of the duly elected, qualified and acting Commissioners of Public Utility District No. 1 of Whatcom County be and they are hereby authorized to approve payments on warrants of the District of any claim voucher for materials furnished, services rendered or labor performed for or in on behalf of the District.



## **Section 12. BUDGET AND PROCUREMENT**

### **12.1 General.**

By resolution, the Commission shall set for the authority of the General Manager to manage and expend District funds in accordance with financial policies and budgetary limits. Procurement of goods and services shall take place in accordance with applicable legal requirements in a fair, competitive, and inclusive manner to maximize the benefit to the District's ratepayers.

### **12.2 Financial Policies.**

The Commission, by resolution, shall adopt financial policies that provide guidance to the General Manager in managing the finances of the District and in developing budgets, financial plans and rates. At a minimum, these policies shall 1) provide for sufficient liquidity relative to the District's risk profile, 2) provide for adequate coverage to meet debt covenants, 3) establish criteria for debt and rate – financed capital expenditures, 4) require that budgets be developed based on conservative and prudent assumptions consistent with standard industry practice, and 5) establish budgetary and procurement controls over expenditures.

### **12.3 Budgetary Authority.**

The Commission, by resolution, shall approve the District's budget prior to the start of each calendar year in accordance with Chapter 54 RCW. The General Manager shall manage the District's operations within the approved budget levels consistent with authority levels set for in the District's financial policies.

### **12.4 Procurement Authority.**

The Commission, by resolution, shall establish procurement authorities and guidelines for the General Manager consistent with state laws and regulations. The General Manager shall establish procurement controls that provide reasonable assurance that the procurement of goods and services are made for valid business purpose and within authorized budget levels.

It is District policy that procurement decisions be made free from actual or perceived conflicts of interest consistent with the District's Code of Ethics.

It is District policy that due diligence and prudent judgement be exercised in the making of procurement decisions, including conducting a risk assessment. If the General Manager reasonably determines that a procurement activity presents, regardless of the size of the financial commitment, either: (i) a unique and significant operational risk to the District; or (ii) a significant impact to customers, the General Manager shall inform the Commission.