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PUBLIC UTILITY DISTRICT No. 1
of Whatcom County

**Agenda for the
Regular Meeting of November 8, 2022
8:00 a.m. at the PUD Office
(In-person, Zoom, & Teleconference)**

1. Call to Order | Pledge of Allegiance (3 min.)
2. Approval of Agenda (3 min.)
3. Consent Agenda (5 min.)
 - a) Approval of Minutes of the Regular Meeting of October 25, 2022
 - b) Approval of Claims for November 8, 2022
4. Public Comment (10 minutes – Individual speakers: 3 min.)
5. Old Business
 - a) Broadband Program Update (15 min.)
6. New Business
 - a) Approve Interagency License Agreement with Washington State Dept. of Ecology (15 min.)
 - b) Approve Resolution No. 820 – Water System Take Over Policy (15 min.)
 - c) Approve Amendment No. 1 – RH2 Professional Services Agreement for Regional Water Supply Plan (15 min.)
 - d) Approve Amendment No. 2 to Work Order 17– RH2 Regional Water Supply Plan (5 min.)
7. General Manager Report (10 min.)
8. Commissioner Reports (15 min.)
9. Public Comment (10 minutes– Individual speakers: 3 min.)
10. Executive Session: RCW 42.30.110(1)(i): Potential Litigation - Water Rights Adjudication
Separate Zoom platform invite from Legal Counsel (Estimated time 20 min.)
11. Adjourn (10:30 AM estimated)

Notice:

In-person attendance is now allowed at PUD Commission Meetings.

All Commissioners will participate either in-person, via Zoom or teleconference.

The public meeting can be accessed by internet: <https://us02web.zoom.us/j/88933629210>

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

Webinar ID: 889 3362 9210

Next Commission Meetings

November 22, 2022 | 8:00 a.m. | Regular Meeting and Draft 2023 Budget Public Hearing – District Office

December 13, 2022 | 8:00 a.m. | Regular Meeting – District Office

Access information will be announced - the public may join the meeting in-person, by phone or internet.

Contact: Ann Grimm, Commission Clerk at (360) 384-4288 x 27 • www.pudwhatcom.org

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MINUTES OF THE REGULAR

MEETING OF THE COMMISSION

October 25, 2022

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 Christine Grant. Said meeting was open to the public and notice thereof had been given as required by law. Those present in person included: Commissioner Mike Murphy; Commissioner Atul Deshmane; and Legal Counsel Jon Sitkin. Staff: General Manager Chris Heimgartner; Ann Grimm, Executive Assistant; Andrew Entrikin, Broadband Program Manager; and Steve Jilk, In-House Consultant. Those present via Zoom included: Commissioner Christine Grant; Brian Walters, Assistant General Manager; Annette Smith, Director of Finance; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Paul Siegmund, Manager of Automation and Technology; Aaron Peterson, IT/SCADA Technician; Jon Littlefield, Electric System Supervisor; Traci Irvine, Accountant I; and Kurt Wank, Director of Utility Operations;

Public attending:

Rick Maricle, Citizen

Dave Olson, Citizen

Max Perry, Citizen

Carryn Vande Griend, Puget Sound Energy

Eric Alm, Citizen

2. Approval of Agenda

No changes.

ACTION: Commissioner Murphy made the motion to APPROVE THE AGENDA OF OCTOBER 25, 2022. Commissioner Deshmane second the motion. Motion passed unanimously.

3. Approval of Consent Agenda

- Approval of Meeting Minutes of the Regular Meeting, October 11, 2022; and
- Approval of the Claims of October 25, 2022:

VENDOR NAME	AMOUNT
ALL SEASON SPRAYING	854.08
ASPEN, INC.	3,296.00
ASPLUNDH TREE EXPERT CO	44,324.43
BIRCH EQUIPMENT COMPANY	841.11
BONNEVILLE POWER ADMINISTRATION	614,607.00
BRIDGEVIEW AUTO PARTS	39.12
CHMELIK SITKIN & DAVIS	8,317.00
COMCAST	186.57
COMCAST - NWRC	300.00
CULLIGAN NORTHWEST	184.63
EES CONSULTING	10,280.00
FERNDAL ACE HARDWARE	167.37
GENEVA CONSULTING	5,397.75
GUARDIAN SECURITY SYSTEMS, INC	456.12

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HARDWARE SALES, INC	15.26
INTERNAL REVENUE SERVICE	16,528.70
MASSMUTUAL RETIREMENT SVCS LLC	9,133.33
MURRAYSMITH	48,203.00
NESS CRANE SERVICE, INC	4,650.67
NW PUBLIC POWER ASSOCIATION	135.00
P&P EXCAVATING, LLC	31,959.68
PACIFIC UNDERWRITERS CORP INC	236.00
PAYLOCITY	176.68
PAYROLL	206,654.26
PLATT ELECTRIC SUPPLY CO	1,394.76
PROBUILD - OSO LUMBER	49.48
PUGET SOUND ENERGY, INC	488.91
RH2 ENGINEERING, INC	10,603.63
SMITH MECHANICAL	1,330.73
SPRAYING SYSTEMS INC.	906.38
TENABLE, INC.	13,038.00
UNIT PROCESS COMPANY	1,994.16
WA FEDERAL VISA CARD MEMBER SERV	5,114.43
WA ST DEPT OF REVENUE	71,077.62
WA ST DEPT OF REVENUE LEASEHOLD TAX	707.10
WESTERN CONFERENCE OF TEAMSTERS	7,374.50
WHATCOM COUNTY EXECUTIVE DEPT	44,332.00
WINDWOOD ENTERPRISES INC.	3,138.54
GRAND TOTAL	\$1,168,494.00

ACTION: Commissioner Deshmane made the motion to APPROVE THE CONSENT AGENDA OF OCTOBER 25, 2022. Commissioner Murphy second the motion. Motion passed unanimously.

4. Public Comment

No comments.

5. Whatcom County Councilmember Kaylee Galloway

Council member Galloway presented an update on Whatcom County government's interest in being an active partner in the ongoing broadband effort with the Port and PUD. She discussed the proposed "Dig-Once" and affiliated policies idea and funding response - \$2.75 million from EDI funds over the past few years and established \$4 million for upcoming broadband deployment.

ACTION: No action taken or requested of. Information only.

6. Old Business

• Broadband Program Update

Whatcom County Council

- Heimgartner said he and EntriKin will be meeting with the Council to discuss the Port/PUD's relationship and progress on broadband later this afternoon.

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WA State Broadband Office (WSBO)

- WSBO's *Call for Comment* has responded to the stakeholders that provided comments. Two submittals were not in favor of open access. WSBO is now planning an in-person public comment meeting.
- Waiting for the WSBO's announcement for fall funding opportunities.
- FCC Fabric Data – Acting as an extension of the FCC to help identify where the businesses and residences that are un- or under-served (mapping address locations). The original data from the census was not adequate; and has now received data/address information from the US Postal Service to compare addresses.

Whatcom County Council Committee of the Whole Meeting

- Heimgartner, Entrikin, Commissioner Grant, and staff from the Port will be attending this afternoon's meeting to present information regarding broadband projects and planning.

b) Cherry Point Development Study Discussion

Goldberg (Port) is developing a committee to meet with *Heartland* to develop the proposed economic development study by County Executive Sidhu. *Heartland* has worked with the Port on other studies in the past. Heimgartner said the PUD has been involved with similar studies done at Cherry Point in the past--relating from zoning permits from Whatcom County to ready-to-serve services, depending on the need.

Heimgartner added that he does not see any direct benefit for current PUD customers, who, would be paying in addition to regular rates, to fund it. The PUD can assist as a member of the committee but there is no recommendation to help fund the study.

ACTION: No action taken or requested of. Information only.

7. New Business

a) Approve Resolution 819 – Cancellation of Warrant

Smith said the warrant was processed to Asplundh Tree Expert Co. Due to a clerical error, Warrant No.01155521 issued on October 18, 2022 in the amount of \$46,463.64 to Asplundh Tree Expert Co. was issued in the wrong amount and has not been tendered. The District has requested that the County cancel Warrant No.01155521 and will be reissued by the County in the next check run. There is no fiscal impact.

ACTION: Commissioner Murphy made the motion to APPROVE RESOLUTION NO. 819 AUTHORIZING CANCELLATION OF WARRANT. Commissioner Deshmane second the motion. Motion passed unanimously.

b) 2023 Draft Budget Presentation

Finance Director Smith provided the first draft presentation of the 2023 Budget.

Budget Schedule:

- November 2, 2022: Customer Meetings on Draft Budget
- November 22, 2022: Second draft 2023 budget presentation to Commission and Public Hearing
- December 13, 2022: 2023 Final Budget and Rates approved.

Slides from the 2023 Draft Budget PowerPoint are attached at the end of the Meeting Minutes.

ACTION: No action taken or requested of. Information only.

CLERK NOTE: At 9:45, the Commission requested a ten (10) minute recess.

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8. General Manager Report

- Suggested topics for the Water Workshop (date TBD) were presented. The main subjects are Nature and Physics, Laws Governing Water and Operations of the Utility.
- Jon Humphrey's public records request is now totaling over \$46,000. There is least one more installment to come in November before the request is complete.
- Clean Tech Alliance held "Fusion Week" with a series of discussion panels for adopting fusion energy where Heimgartner was invited to speak. There are 29 worldwide companies, four in Seattle, that are generating fusion energy. One Seattle company was potentially looking at Cherry Point for a location. Small fusion power plants may arrive sooner (20 years) as compared to large fusion power plants (50 years).
- Will be attending the WPUA General Managers Committee meeting and Energy Northwest this week, Wednesday – Friday.

9. Operations Report

- Good news for electric operations - the contractor, Potelco, started remobilizing to move forward on the Ferndale Pump Station project and anticipates completion by second quarter 2023.
- Walters discussed the impacts of Nooksack River low flows on the District's two water intake plants. The major impacts on the flow of water into the intakes are caused by Frazil Ice in the fall/winter which clogs the intake screens, and/or high sediment/turbidity. Plant 1 is most impacted due to its design and location in the water (below Main Street Bridge).

Lowest flow records from the *USGS Ferndale Gauge* were in November 1988, at 466 cubic feet per second (cfs) or 2.15 feet. In October 1988, another low flow recorded was 477 cfs. The most current report is at 670 cfs. An extremely low flow of 150 cfs would still put the surface of the river at the top of our Water Plant 1 intake screens; however, the real issue at low flow is the higher amount of sediment deposited on and inside of the screens. Divers are brought in once or twice a year, to clean the sediment off and check the condition of the screens. Alarms are set to notify staff if water levels in the intake wet wells get to low. This indicates that the screens are impaired and too little water is entering. If this occurs, sometimes a pump(s) will need to be shut down to avoid damage due to de-watering. Unless there is an extremely low flow water event (less than 150 cfs, which has never occurred), there is still sufficient water to meet customer needs.

In regards to the *Whatcom County Drought Plan*, the State did not issue a drought advisory for Western Washington in 2022. However, a drought advisory/emergency was declared in some sections of Eastern Washington, but were pulled in April due to the late winter snowpack and heavy rains. Whatcom PUD irrigation customers used less water in 2022 than 2021 – the wet spring delayed the use of irrigation until late summer. The biggest impact was on well owners who experienced wells running dry.

10. Commissioner Reports

Murphy:

- Has been meeting with Heimgartner regarding the Water Workshop (TBA); and
- Meeting with farmers and others within the Whatcom community to discuss current and future projects, mainly in regards to water issues.

Deshmane:

- Deshmane suggested a method of delivering potable water which is needed for private well owners that go dry. He suggested using County-funded tanker trucks to deliver drinking water. Heimgartner responded that while we do have a small potable water plant at Grandview, but it is not large enough to provide tanker trucks full of water.
- Attended the Whatcom County Council meeting on October 11;

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- Plans to attend one or both of the PUD Budget/Customer Meetings on November 2nd.

Grant:

- Attended the Whatcom Council of Governments meeting;
- Will be attending the Whatcom County Council Committee regarding broadband this afternoon;
- Suggests a PUD work party to join *Nooksack Salmon Enhancement Association's* community work party on Saturday, November 19, at Terrell Creek, Blaine.

11. Public Comment

No comments.

12. Executive Session

Commission President Grant requested an Executive Session pursuant to RCW 42.30.110(i) – Potential Litigation, relating to water rights adjudication on a separate Zoom webinar. Estimated time for Executive Session was thirty minutes. The Commission President indicated no action is anticipated to be taken after the adjournment of Executives Session. After a thirty (30) minute break, the Commission adjourned to Executive Session at 11:10 a.m.

- At 12:15 p.m., an additional 45 minutes was requested;
- At 12:45 p.m., an additional 15 minutes was requested;
- At 1:00 p.m., an additional ten (10) minutes was requested.

Executive Session Adjourn

There being no further business for Executive Session, the Commission rejoined the Regular Commission Meeting at 1:07 p.m.

13. Adjourn

There being no further business for the regular meeting, Commissioner Grant adjourned the regular meeting at 1:08: p.m.

Christine Grant, President/Commissioner

Atul Deshmane, Vice President/Commissioner

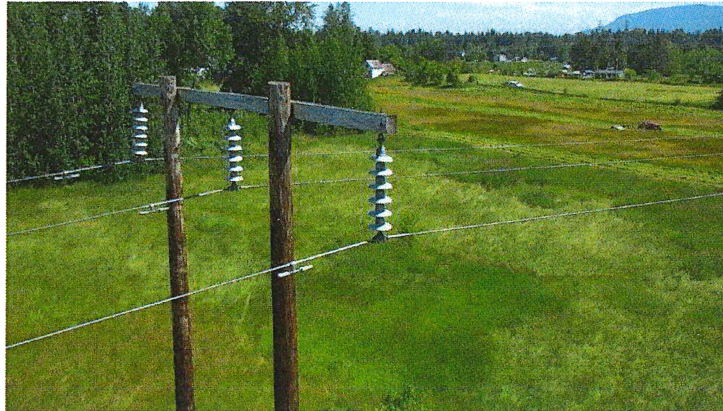
Mike Murphy, Secretary/Commissioner

Commission Clerk Notes:

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/2022-agendas-packets-meeting-minutes-recordings/>

Public Utility District No. 1 of *Whatcom County*

2023 Budget



Presentation to the Commissioners
October 25, 2022

Commissioner Christine Grant – Commissioner Mike Murphy – Commissioner Atul Deshmane – General Manager Chris Heimgartner

Presentation Outline

- Operating Budget
- Personnel
- Capital Budget
- Extraordinary Maintenance
- Debt
- Reserves
- Strategic Plan Objectives

Budget Book: <https://www.pudwhatcom.org/the-commission/financial-documents/>

Operating Budget

COSTS - 2023	Industrial Water	Grandview	Electric	A	B	A-B	%
				2023 TOTAL	2022 TOTAL PROJECTED	INCREASE (DECREASE)	
Electric Power Costs & tax	\$ -	\$ -	\$ 9,450,000	\$ 9,450,000	\$ 9,462,831	\$ (12,831)	-0.1%
Water Power Net of BPA Credit	545,600	5,500	-	551,100	551,022	78	0.0%
Purchased Water	-	5,800	-	5,800	4,512	1,288	28.5%
Water Purification Costs	452,300	1,100	-	453,400	377,819	75,581	20.0%
Operating Labor & Benefits	2,848,300	107,900	984,200	3,940,400	3,631,819	308,581	8.5%
O&M Expense - On-going	297,000	30,100	150,800	477,900	431,212	46,688	10.8%
Extraordinary Maint	1,010,000	-	250,000	1,260,000	675,474	584,526	86.5%
Admin Expenses	313,400	13,100	122,600	449,100	380,465	68,635	18.0%
Education	26,000	800	14,000	40,800	16,138	24,662	152.8%
Outside Services	259,800	25,700	123,700	409,000	368,855	40,145	10.9%
Insurance	134,400	9,800	41,000	185,200	148,284	36,916	24.9%
Miscellaneous & Election Costs	-	-	-	-	146,072	(146,072)	-100.0%
Electric General Svc Charge	206,400	-	-	206,400	78,960	127,440	161.4%
Business Development / Projects	576,500	1,700	11,800	590,000	372,677	217,323	58.3%
Business Services / Reimbursed	170,000	-	-	170,000	310,412	(140,412)	-45.2%
Taxes on Services	536,300	16,400	176,900	729,600	617,566	112,034	18.1%
LUD Debt Service	-	161,000	-	161,000	164,042	(3,042)	-1.9%
Other Debt Service	1,965,400	-	530,200	2,495,600	2,496,070	(470)	0.0%
Capital Transfers	2,200,000	90,000	150,000	2,440,000	1,715,000	725,000	42.3%
TOTAL BY FUND	\$ 11,541,200	\$ 468,900	\$ 12,005,200	\$ 24,015,300	\$ 21,949,229	\$ 2,066,071	9.4%

Sections 2 - 5

Public Utility District #1 of Whatcom County

Budget Presentation – October 25, 2022

Operating Budget

ADMIN EXPENSES		
	2023	2022
Office Expense	\$ 99,500	\$ 95,966
Office - Computer	180,000	137,633
Office - Utilities	52,100	50,580
Dues & Subscriptions	69,400	52,152
Fees, permits, locates	20,200	19,416
Advertisements	18,900	16,420
Mileage & Vehicle expenses	9,000	8,298
	\$ 449,100	\$ 380,465

OUTSIDE SERVICES		
	2023	2022
Accounting	\$ 97,000	\$ 54,120
Computer Services	40,000	54,130
Engineering	100,000	103,478
Legal	120,000	118,934
System Monitoring	4,000	1,914
Outside Consulting - other	38,000	28,568
Power Regulations	10,000	7,711
	\$ 409,000	\$ 368,855

BUSINESS PROJECTS

Adjudication	\$ 450,000
Water System Services	30,000
Habitat Restoration	25,000
Outreach - NW Washington Fair	25,000
Logo / Rebranding	15,000
Water Supply Management	10,000
Community Education	10,000
Watershed Management Support	10,000
Social Media Work	5,000
Water Association work	5,000
Customer Survey	5,000
PUD Impact Study	5,000
Clean & Renewable Energy	50,000
	\$ 645,000

BUSINESS SERVICES

Education and Outreach	PSP grant	100,000
Feasibility Study Small Wtr	DOH	70,000
		\$ 170,000

Section 4

Public Utility District #1 of Whatcom County

Budget Presentation – October 25, 2022

Personnel

2023				2022				2021	
EMPLOYEES w/o Commissioners	Budget Count	Change		Forecast Count	Change		Actual Count		
Administration and Finance	17	4		13	1		12		
O&M Management	2	0		2	0		2		
Water Operations	6	0		6	0		6		
Electric Operations	2	0		2	0		2		
TOTAL EMPLOYEES*	27	4		23	1		22		
LABOR & BENEFIT COSTS	Budget	\$ Change	Percent	Forecast	\$ Change	Percent	Actual		
Employee	\$ 3,951,326	\$ 408,903	11.5%	\$ 3,542,422	\$ 580,236	19.6%	\$ 2,962,186		
Commissioner	209,569	(5,574)	-2.6%	215,142	(10,234)	-4.5%	225,376		
TOTAL LABOR & BENEFITS	\$ 4,160,894	\$ 403,330	10.7%	\$ 3,757,564	\$ 570,002	17.9%	\$ 3,187,562		
Operations	\$ 3,940,445	\$ 308,627		\$ 3,631,819	\$ 647,103		\$ 2,984,716		
Capital	\$ 220,449	\$ 94,703		\$ 125,746	\$ (77,101)		\$ 202,846		

NEW POSITIONS				OPERATIONS				
	# Months		# Months	IW	GV	Electric	Total	
Contract Manager	6	Asst General Manager	3	\$ 285,463	\$ 2,466	\$ 138,570	\$ 426,499	
Energy Analyst	3	Automation Technician	12	2,562,882	105,393	845,671	3,513,946	
Project Manager	12			\$2,848,345	\$107,859	\$984,241	\$3,940,445	

Section 7

Public Utility District #1 of Whatcom County

Budget Presentation – October 25, 2022

Capital Budget – by Year

CIP Number	Project Name	2022 Projected	2023 Budget	2024 Budget	2025 Budget	2026 Budget	2027 Budget	2023-2027 Budget
INTERNAL SERVICES								
IS-12	SCADA System Analysis, Equipment Eval & Upgrade	\$ 30,167	\$ 50,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 210,000
IS-14	Office Equipment and Computer HW & SW Replace	45,250	32,000	25,000	27,000	7,000	70,000	161,000
IS-15	Communications Backbone System Build-out and Upgrade	73	300,000	300,000	300,000	300,000	300,000	1,500,000
	Smaller Projects	76,943	90,000	-	-	-	-	90,000
	Sub-Total (IS) Internal Services CIP Projects	\$ 152,432	\$ 472,000	\$ 365,000	\$ 367,000	\$ 347,000	\$ 410,000	\$ 1,961,000
INDUSTRIAL WATER								
RW-14	Water Utility Vehicles	\$ -	\$ 115,000	\$ -	\$ 55,000	\$ -	\$ 55,000	225,000
RW-22	Install Main Line Valves on Distribution System	-	100,000	350,000	450,000	-	-	900,000
RW-28	Water Treatment Plant 1 Project	155,318	25,000	25,000	25,000	25,000	25,000	125,000
RW-33	Petrogas Meter/Valve Relocate	171	272,000	-	-	-	-	272,000
RW-34	PSE-Whitehorn Meter/Valve Relocate	-	280,000	-	-	-	-	280,000
RW-35	Plant 1 & 2 VFD Replacement & Additions	32,837	650,000	-	-	-	-	650,000
RW-38	Plant 1 Rebuild	606,580	900,000	9,500,000	19,000,000	19,000,000	20,000,000	68,400,000
RW-45	Replace Hydrant valves on Douglas Road	-	150,000	150,000	150,000	150,000	150,000	750,000
	Smaller Projects	10,000	161,000	559,000	1,073,000	1,098,000	1,104,000	3,995,000
	Sub-Total (RW) Industrial Water CIP Projects	\$ 804,905	\$ 2,653,000	\$ 10,584,000	\$ 20,753,000	\$ 20,273,000	\$ 21,334,000	\$ 75,597,000
GRANDVIEW								
GVP-4	Potable Plant Land Acquisition	\$ -	\$ 75,000	\$ -	\$ -	\$ -	\$ -	\$ 75,000
GVP-5	Road Crossing at 2349 Grandview	-	250,000	-	-	-	-	250,000
GVP-6	Line Extension on Grandview Rd	-	375,000	-	-	-	-	375,000
	Smaller Projects	8,511	27,000	27,000	27,000	27,000	1,000	109,000
	Sub-Total (GV) Grandview CIP Projects	\$ 8,511	\$ 727,000	\$ 27,000	\$ 27,000	\$ 27,000	\$ 1,000	\$ 809,000
ELECTRIC								
E-6	115 kV Transmission Structure/Conductor Upgrades	\$ 341	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 250,000
E-22	Upgrade/Replace Ferndale Substation (Plant 1)	981,547	900,000	-	-	-	-	900,000
E-27	Refinery Substation Remodel	153,347	-	-	-	-	-	-
	Smaller Projects	10,000	254,000	18,000	18,000	68,000	19,000	377,000
	Sub-Total (E) Electric CIP Projects	\$ 1,145,235	\$ 1,204,000	\$ 68,000	\$ 68,000	\$ 118,000	\$ 69,000	\$ 1,527,000
	Grand Total	\$ 2,111,083	\$ 5,056,000	\$ 11,044,000	\$ 21,215,000	\$ 20,765,000	\$ 21,814,000	\$ 79,894,000

Section 8 & 9

Public Utility District #1 of Whatcom County

Budget Presentation – October 25, 2022

Extraordinary Maintenance Budget – by Year

EXTRAORDINARY MAINTENANCE		2022 Projected	2023 Budget	2024 Budget	2025 Budget	2026 Budget	2027 Budget	2023-2027 Budget
RW-M-2	Clean Sediment Settling Ponds	\$ 313,741	\$ 310,000	\$ 155,000	\$ 155,000	\$ 155,000	\$ 155,000	\$ 930,000
RW-M-6	Douglas Rd Vault Power & SCADA Upgrades	243	130,000	-	-	-	-	130,000
RW-M-7	D Station Reliability Upgrades	59,622	250,000	-	-	-	-	250,000
RW-M-10	High Head Pump Re-build (Annual Maint Project)	128,121	250,000	125,000	125,000	125,000	125,000	750,000
GVF-M-2	Grandview Fire System Decommissioning	607	-	25,000	75,000	-	-	100,000
E-M-1	Transmission Line Vegetation Management	-	150,000	25,000	25,000	25,000	25,000	250,000
E-M-2	Refinery Substation Testing during turnaround	95,131	-	-	-	-	-	-
E-M-3	Substation Maintenance	-	170,000	135,000	-	-	-	305,000
MMISC	Miscellaneous Extraordinary Maintenance	78,008	-	-	-	-	-	-
Sub-Total (M) Maintenance Projects		\$ 675,474	\$ 1,260,000	\$ 465,000	\$ 380,000	\$ 305,000	\$ 305,000	\$ 2,715,000

Section 8 & 9

Debt

Bond	Issue Amt	Outstanding	Rate	Purpose
2012	\$ 5,980,000	\$ 805,000	2.70%	Refunded 2004 bonds, telecom, work on substation, intake, SCADA
2013	\$ 6,025,000	\$ 3,650,000	2.66%	Finish Plant 2 remodel
2016	\$ 1,457,628	\$ 728,813	2.09%	Refunded 2007 bonds, Grandview line extension (LUD)
EDI	\$ 800,000	\$ 689,910	1.00%	Connection between Industrial Water and Grandview Fire
2021	\$ 14,800,000	\$ 12,630,000	1.45%	Refunded 2010B, Refinery Substation Rebuild
2024	\$ 30,000,000			Water Treatment Plant 1 Rebuild
2026	\$ 39,000,000			Water Treatment Plant 1 Rebuild
TOTAL	\$ 98,062,628	\$ 18,503,723		

Section 4

\$ 323,681,070

Per RCW 54.24.018, Current non-voted Debt Capacity (.75% of assessed)

Public Utility District #1 of Whatcom County

Budget Presentation – October 25, 2022

Reserves

		Projected 2023				Current	Change
		Industrial Water	Grandview	Electric	Total		
Operating	60 days Operating Expenses (excludes Extraordinary maintenance, Power Pass thru, Grants, Business Develop)	\$ 812,800	\$ 35,400	\$ 352,700	\$ 1,200,900	\$ 1,171,600	\$ 29,300
Capital	1.5% of Capital Assets	\$ 673,600	\$ 64,000	\$ 266,200	\$ 1,003,800	\$ 962,800	\$ 41,000
Emergency	Emergency	\$ 231,000	\$ 20,000	\$ 99,000	\$ 350,000	\$ 350,000	\$ -
Additional	Retirement Cash-outs	\$ 61,500	\$ 2,500	\$ 23,500	\$ 87,500	\$ 87,500	\$ -
	Invoice float			\$ 200,000	\$ 200,000	\$ 200,000	\$ -
	Customer Reduction	\$ 200,000			\$ 200,000	\$ 200,000	\$ -
		\$ 3,042,200				\$ 2,971,900	\$ 70,300

- Insurance Deductible \$250.00
- Rough estimate: Replace 3 electric transmission structures: \$70,000
- Rough estimate: Line break in Industrial Water: \$350,000

Public Utility District #1 of Whatcom County

Budget Presentation – October 25, 2022

Strategic Plan Action Items

	BUDGET TOTAL	FUNDING SOURCE		BUDGET TOTAL	FUNDING SOURCE
CS <i>CUSTOMER SERVICE: Maintain a high-level degree of customer service to the local industries that rely on PUD power and water.</i>			CL <i>CLEAN INDUSTRY: Advance 'clean' industry in Whatcom County</i>		
Customer Survey	\$ 5,000	A	Infrastructure Projects (county)		B
WR <i>WATER RESOURCES: Continue the PUD's support and assistance in regional efforts to protect and manage local water resources.</i>			RE <i>CLEAN AND RENEWABLE ENERGY: Define the PUD's role in advancing clean and renewable, local energy.</i>		
Adjudication	\$ 450,000	A	Clean & Renewable Energy Study	\$ 50,000	B
Water Habitat Restoration (NSEA)	\$ 25,000	A			
Watershed Management Support (Peterson)	\$ 10,000	A			
WA <i>WATER ASSOCIATION SUPPORT: Re-affirm the PUD's commitment to provide technical support to water associations.</i>			CO <i>COMMUNITY OUTREACH: Refresh the PUD's community, governmental, industry, and internal facing identity.</i>		
Water Systems Service/Tech Support	\$ 30,000	A	NW Washington Fair booth support	\$ 25,000	A
Feasibility Studies for two small water associations	\$ 70,000	B	Logo / Rebranding	\$ 15,000	A
Working with Whatcom County on Water Associations	\$ 5,000	A	Education & Outreach	\$ 100,000	B
			Community Education	\$ 10,000	A
			Social Media	\$ 5,000	A
WS <i>WATER SUPPLY: Undertake a pilot project with Ecology funding and other partners, to demonstrate the feasibility of providing water supply to those in need.</i>			CA <i>COMMUNITY IMPACT ANALYSIS: Determine the economic impact of the PUD on the Whatcom economy.</i>		
Water Supply Management (preparing for funding application)	\$ 10,000	A	Impact Analysis	\$ 5,000	B
BB <i>BROADBAND: Advance the community wide strategy in making broadband available to underserved areas of Whatcom county</i>			AM <i>ASSET MANAGEMENT: Build asset management culture to ensure sustainable replacement of key physical assets and personnel succession plan.</i>		
Broadband Technician	\$ 160,000	A	Internal Actions / Policies	\$ -	A
A - PUD RATE REVENUE	\$750,000		B - GRANTS / ALCOA FUND	\$225,000	

What's Next

November 2nd @ 10:00 am - Industrial Water customer meeting

November 2st @ 2:30 pm - Grandview customer meeting

November 22rd — Second presentation and public hearing

December 13th - Final 2023 budget and rates approved

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: Chris Heimgartner – General Manager
Date: November 8, 2022
Re: Approve Site License Agreement with Department of Ecology

Requested Action – APPROVE SITE LICENSE AGREEMENT WITH DEPARTMENT OF ECOLOGY (DOE) TO INSTALL A MONITORING DEVICE ON A PUD OWNED WATER INTAKE STRUCTURE LOCATED AT 1921 MAIN STREET, FERNDALE.

Background – Washington State Department of Ecology (DOE) has requested access to our intake structure to install a monitoring device. Steve Jilk and I drafted parameters of the agreement, and Peter Ruffatto of our legal firm drafted the agreement. The agreement was then forwarded to DOE for review and comment. They have accepted it as written.

The agreement holds the Utility harmless for DOE actions on site, provides for PUD access to the data generated, precludes the DOE from using the data against the PUD in legal actions including the upcoming adjudication, and stipulates that DOE will bear all costs related to this installation, among other terms.

Fiscal Impact – Signing this License will have no fiscal impact on the PUD.

Recommended Action – APPROVE THE LICENSE AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER TO EXECUTE THE DOCUMENT.

INTERAGENCY LICENSE AGREEMENT BETWEEN
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY
AND
THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

THIS INTERAGENCY LICENSE AGREEMENT ("Agreement"), dated this _____ day of _____ 2022, is entered into between the PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY (hereinafter referred to as the "PUD") and the STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY (hereinafter referred to as "Ecology"), pursuant to the authority granted by Chapter 39.34 RCW. The PUD and Ecology are referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the PUD owns the property located at 1921 Main Street, Ferndale, Washington that has been used to divert water, consistent with its water rights, as part of PUD operations (the "Premises");

WHEREAS, Ecology has requested permission of the PUD to enter upon a portion of the Premises for the sole purpose of installing, maintaining, and operating a freshwater monitoring station (the "Station");

WHEREAS, the Parties recognize benefits to the public that will result in obtaining data from the Station which will include nutrient information related to the Nooksack river;

WHEREAS, the PUD, subject to the conditions and limitations in this Agreement, agrees to provide Ecology with a license to use the Premises for the duration of this Agreement solely for the purposes set forth herein;

WHEREAS, all costs associated with the installation, maintenance, operation, and removal of the Station shall be borne by Ecology; and

WHEREAS, the Parties hereby acknowledge and represent that the exchange of value, mutual benefits, and consideration set forth in this Agreement represents an exchange of true and full value, consistent with RCW 43.09.210.

NOW, THEREFORE, pursuant to the above recitals that are incorporated herein as if fully set forth below, the Parties hereto agree as follows:

1. License. The relationship between Ecology and the PUD under this Agreement is not one of landlord and tenant, but rather one of licensor and licensee. This Agreement grants a license to use the Premises solely for the purposes set forth herein, subject to the PUD's right to terminate the Agreement if such use impairs or interferes with the PUD's operations or water rights. The incurrence of any costs with respect to the Premises by Ecology shall in no way operate to confer upon Ecology any other interest, status, or estate of any kind other than licensee, nor obligate the PUD to enter into any agreement conferring such other interest. The PUD shall not be obligated for any loss, financial or otherwise, which may be incurred by Ecology as a result of termination of this Agreement. Ecology expressly waives any claim for expense or loss which Ecology might incur as a result of termination of this Agreement.

2. Duration and Termination. This Agreement shall remain in effect for a period of one (1) year and shall automatically extend for a minimum of four (4) additional one (1) year periods (together, the "Extension Periods") unless terminated as provided below. Upon conclusion of the Extension Periods, this Agreement shall automatically continue for additional one (1) year periods in perpetuity until terminated as provided below. Termination of this Agreement shall constitute a revocation of the license.

a. Termination for Convenience. After the conclusion of the Extension Periods, either Party may terminate this Agreement for convenience. Additionally, Ecology may terminate this Agreement for convenience at any time, subject to the PUD's option to assume ownership of the Station as provided below under Section 10. Termination by either Party for convenience shall be accomplished by providing the other Party with ninety (90) days' advance written notice of termination.

b. Termination for Cause. This Agreement may also be terminated at any time by either Party by providing thirty (30) days' written notice should one Party be in breach of its obligations under this Agreement or otherwise fail to perform in accordance with its obligations under this Agreement. Further, the PUD, in its discretion, may terminate this Agreement at any time by providing thirty (30) days' advance written notice if it reasonably determines that the license granted herein in any way interferes with or impairs the PUD's operations or water rights.

3. Duties of Ecology. Ecology shall, at its own cost and expense, install, maintain, and operate one freshwater monitoring station as shown in **Exhibit A**, which is incorporated herein by this reference. The location of the Station shall be as shown in **Exhibit B**. Ecology shall provide all resources necessary for the installation, servicing, maintenance, operation, and removal of the Station (the "Work").

4. Duties of PUD. For the duration of this Agreement, the PUD shall provide Ecology with access to the Station so that Ecology may perform the Work described herein. Ecology's access to the Station shall be limited to the hours of [REDACTED] and [REDACTED] unless other hours are arranged by mutual agreement between the PUD and Ecology. The PUD shall not alter the Station.

5. No Additional Activities or Work. Ecology shall not, except as approved by the PUD in writing, perform any activities on the Premises that are different than the Work set forth herein. Ecology shall not engage in any additions, alterations, or modifications to the Premises other than as specified in this Agreement.

6. Ownership of Equipment and Data. All equipment installed by Ecology related to the Station and all data obtained from the Station shall be owned by Ecology; provided, however, that Ecology shall share all data obtained from the Station with the PUD in a mutually acceptable format when requested by the PUD.

7. Certain Uses of Data Prohibited. Ecology shall not use data or information obtained from the Station or activities associated with the Station in connection with any water rights adjudication or any water rights settlement process without prior written consent of the PUD. Unless prior written consent is provided by the PUD, Ecology shall not use data or information obtained from the Station or activities associated with the Station, in any manner that may lead to validation, invalidation, or modification of any of the PUD's water rights, of any nature, at any location.

8. Permits. Ecology shall be responsible for obtaining, at its sole cost and expense, all necessary permits for any uses authorized under this Agreement. Ecology shall hold the PUD harmless from liability and shall fully reimburse expenses of the PUD, including attorneys' fees and costs, for Ecology's failure to comply with any necessary permit process or requirements.

9. Condition of Premises. Ecology agrees to accept the Premises without modification, as they exist at the time of execution of this Agreement.

10. Surrender of Premises. Subject to the PUD's option to assume ownership of the Station set forth in this Section, Ecology agrees to remove the Stations and all related equipment and surrender the Premises to the PUD at the end of its occupancy in the same condition as when accepted and shall diligently avoid damage to PUD property and/or facilities. Ecology shall be liable for the costs of repair for any damage to PUD property or facilities caused by Ecology, its agents, or invitees. As an alternative to removal of the Station and all associated equipment, the PUD, in its sole and exclusive discretion, shall have the right to assume ownership of the Station and all related equipment, at no cost to the PUD, in the event Ecology terminates this Agreement for convenience at any time.

11. Responsibility for Conduct of Employees and Agents. Ecology assumes full responsibility for the conduct of persons on or at the Premises with the consent of, or at the invitation of, Ecology. Ecology assumes the duty of protecting property of the PUD from the acts of such persons, and for these purposes, the "property of the PUD" means not only the Premises, but related property owned by the PUD as well.

12. Indemnification and Hold Harmless. Ecology hereby agrees to protect, save, defend (with legal counsel acceptable to the PUD), hold harmless and indemnify the PUD, its elected officials, staff, and agents, from any and all demands, claims, judgments, or liabilities for loss or damage arising out of any activities associated with or concerning Ecology's uses permitted under this Agreement. This provision is intended to cover all claims for property damages, attorneys' fees and costs, and personal injuries (including wrongful death) occasioned by either the negligent or willful conduct of Ecology, its employees, agents, or invitees, regardless of who the injured party may be, associated with the uses allowed by this Agreement. This provision shall not apply to the extent the damage or injury was caused by the gross negligence or willful misconduct of the PUD, its elected officials, staff, and agents.

13. Insurance. During the existence of this Agreement, Ecology shall maintain all risk comprehensive general liability insurance policy covering all claims for personal injury (including wrongful death) and property damage for the Fish Hatchery Premises and Surface Water System. The limits of liability shall not be less than One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. This insurance shall name the PUD as "also insured" or as "additionally insured" by way of policy endorsement which shall be provided to the PUD. If Ecology maintains higher insurance limits than the minimums required by this Agreement, the PUD shall be insured for the full available limits of commercial

general and/or excess or umbrella liability maintained by Ecology, irrespective of whether such limits maintained by Ecology are greater than those required by this Agreement or whether any certificate of insurance furnished to the PUD evidences the lower limits of liability set forth herein. In the event Ecology relies on a program of self-insurance instead of commercial insurance, a program of self-insurance that substantially complies with the terms of this Section will satisfy the provisions of this Section.

14. Laws and Regulations. The Parties shall conform to and abide by all lawful rules, codes, laws, and regulations in connection with the uses provided for in this Agreement.

15. Assignment. Ecology shall not assign any portion of this Agreement, without the prior written consent of the PUD, which consent can be withheld at the PUD's sole and exclusive discretion.

16. Survival Clause. Any clauses of this Agreement which require performance beyond the termination of the license granted hereunder shall continue as obligations of the PUD until fully performed.

17. Notice. All notices required by this Agreement shall be hand-delivered or mailed to the Parties, sent via certified or registered U.S. mail to the following addresses:

TO THE PUD:

TO ECOLOGY:

or to such other addresses that either Party may hereafter from time-to-time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed, postage prepaid, and the postmark affixed by the U.S. Postal Service shall be conclusive evidence of the date of mailing.

18. Interpretation. This Agreement has been submitted to the scrutiny of the Parties hereto and their legal counsel, if desired. In any dispute between the Parties, the language of this Agreement shall, in all cases, be construed as a whole according to its fair meaning and not for or against either of the Parties. If any provision is found to be ambiguous, the language shall not be construed against either of the Parties solely on the basis of which Party drafted the provision. If any word, clause, sentence, or combination thereof for any reason is declared by a court to be invalid or unenforceable against one Party or the other, then such finding shall in no way affect the remaining provisions of this Agreement.

19. Entire Agreement. The entire agreement between the PUD and Ecology is contained in this Agreement. Each Party represents that no promises, representations, or commitments have been made by the other as a basis for this Agreement that have not been reduced to writing herein. No oral promises or representations shall be binding upon either Party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Agreement executed with all necessary legal formalities.

IN WITNESS WHEREOF, the parties hereto execute this Agreement.

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

By: _____
Title: General Manager

Date signed: _____

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY:

By: _____
Title: _____

Date signed: _____

EXHIBIT A

[Depiction of Monitoring Station]

EXHIBIT B

[Location of Monitoring Station]

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 Grant, Deshmane, and Murphy

From: Jon Sitkin

Date: November 8, 2022

Re: **Resolution No. 820 - Water System Management and/or Take Over Policy
and Interlocal Agreement with Whatcom County**

Requested Actions:

- 1) Consider and approve Resolution Number 820 establishing a policy for the District response to requests to manage water systems and/or take over a water system.
- 2) Consider for proposal to Whatcom County regarding an Interlocal Agreement with Whatcom County for the District to serve, on a case-by-case basis, as an agent for Whatcom County when the County is to be a receiver for a failing water system.

Background: From time to time the District may be requested by a water system owner to take over the management and/or ownership of a water system. Further, in the rare circumstances where a water system has failed and the State Department of Health has commenced an action to place the water system into receivership, Whatcom County is designated by statute to be the receiver of last resort. Whatcom County can seek to have an agent perform the receiver services as the County's agent.

The attached Policy related to the Voluntary Transfer of Water System Ownership and/or Operational Responsibilities would establish the requirements and expectations of the District should a water system owner seek to contract with the District for the transfer of the water system ownership and/or management. This policy does not bind the District to enter into any takeover agreement, as such decisions would be made by the Commission on a case-by-case basis.

The attached proposed Interlocal Agreement with Whatcom County has been drafted in response to the County's request that the District act as the County's agent should there be a water system placed into receivership by a Superior Court. This Interlocal Agreement would establish the conditions and requirements for the District to be a receiver should the Commission decide to serve in that capacity on a case-by-case basis. This Interlocal Agreement does not bind the District to serve as the receiver, as such decisions would be made by the Commission on a case-by-case basis. This Interlocal Agreement has not been presented to the County for review and consideration.

Fiscal Impact: Both the Policy and the proposed Interlocal Agreement provide for recovery of costs from the water system and/or Whatcom County.

Recommended Action:

- 1) Approve Resolution Number 820 establishing a District Policy related to Voluntary Transfer of Water System Ownership and/or Operational Responsibilities.
- 2) Authorize the District staff and legal counsel to propose the Draft Interlocal Agreement to Whatcom County, subject to Commission final approval and after approval by the Whatcom County Council.

RESOLUTION NO. 820
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY
POLICY RELATED TO VOLUNTARY TRANSFER OF WATER SYSTEM OWNERSHIP
AND/OR OPERATIONAL RESPONSIBILITIES

WHEREAS, pursuant to RCW 54.16.030, Whatcom PUD is authorized to construct, purchase, condemn, acquire, add to, maintain, conduct, and operate water systems, within or without its limits, for the purpose of furnishing the PUD, inhabitants, businesses, farmers, or other systems, water for all purposes throughout Whatcom County for the benefit of the people of Whatcom County with full and exclusive authority to sell and regulate and control the use, distribution, and price thereof, among other authorized activities: and,

WHEREAS, pursuant to RCW 54.16, Whatcom PUD may make surveys, plans, investigations, or studies for domestic, industrial and agricultural supply, and for matters and purposes reasonably incidental thereto, within and without the PUD's boundaries, and compile comprehensive maps and plans showing the territory that can be most economically served by the various resources and utilities, the natural order in which they should be developed, and how they may be joined and coordinated to make a complete and systematic whole; and

WHEREAS, Whatcom PUD is recognized by Whatcom County as having County-wide authority for technical, managerial, financial, operational, and support services needed to provide satisfactory water resources development, protection, and utility services (See County Council Resolution No. 92-062, and Whatcom County Comprehensive Plan Chapter 5-12); and,

WHEREAS, from time to time private or public water systems may seek technical, managerial, operational, and support services needed to provide satisfactory water resources, development, protection, and utility services for their water system; and

WHEREAS, Whatcom PUD is, on a case-by-case basis, willing to consider entering into agreements with private water associations that are not at risk of nor in receivership status with Whatcom County or its agent acting as the receiver pursuant to RCW 43.70.195, and then only when such agreement is consistent with this policy and/or other terms and conditions approved by the Commission for Whatcom PUD.

NOW, THEREFORE, THE COMMISSION FOR WHATCOM PUBLIC UTILITY DISTRICT NO. 1 ADOPTS THE FOLLOWING POLICY FOR THE VOLUNTARY TRANSFER OF OWNERSHIP AND/OR OPERATIONS OF WATER SYSTEMS TO WHATCOM PUD:

1. **SEE POLICY ATTACHED HERETO AS EXHIBIT A.**
2. This resolution and policy supersedes and replaces in its entirety all prior resolutions and policies related to the voluntary transfer of ownership and/or operations of water systems in Whatcom County.
3. This resolution and policy does not create any obligation on the part of Whatcom PUD to enter into any agreement with a water association, special purpose district, general purpose government, or any other individual or entity.

ADOPTED THIS ____ DAY OF _____, 202__ IN OPEN SESSION BY THE BOARD OF COMMISSIONERS OF THE PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY.

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

Christine Grant, President/Commissioner

Atul Deshmane, Vice President/Commissioner

Attest: Mike Murphy, Secretary/Commissioner

EXHIBIT A

I. Intent, Principles, and Procedures

- A. This Policy is intended to provide the public with an overview of the procedures, principles, and conditions for Whatcom PUD to take over the ownership and/or operational roles of water systems in Whatcom County when requested by the Water System, but does not create any obligation on the part of Whatcom PUD to enter into any agreement with a water association, special purpose district, general purpose government, or any other individual or entity.
- B. When requested by a Water System, Whatcom PUD may decide to take over the ownership and/or management of the Water System upon terms and conditions approved by Whatcom PUD in writing.
- C. Whatcom PUD shall decide on a case-by-case basis whether it will take over the ownership and/or management of a Water System.
- D. In the implementation of this Policy, Whatcom PUD will use its reasonable best efforts as determined by Whatcom PUD to pursue and facilitate the investigation of financially feasible solutions for operation of a Water System seeking to transfer ownership and/or management to Whatcom PUD.
- E. Whatcom PUD will be reimbursed for its costs and expenses for operation of the Water System and for making emergency expenditures through Water System revenues collected from the Water System users/customers.
- F. If a Water System seeks to have Whatcom PUD consider the transfer of ownership or management of the Water System to Whatcom PUD, then the Water System should first provide to Whatcom PUD the following:
 - 1. A written petition signed by the property owners and potential users/customers of the Water System requesting such transfer, specifically identifying if it is the transfer of system ownership or transfer of management of the Water System, together with a statement of willingness to bear the cost of operating the Water System in compliance with all applicable regulations and policies.
 - 2. A written agreement between Whatcom PUD and the Water System in a form approved by Whatcom PUD providing for Whatcom PUD's recovery of the investigation costs from the Water System, regardless of whether the transfer is accomplished.
 - 3. In the event of transfer of ownership of the Water System to Whatcom PUD, the request must be executed by a majority of the Board of the Water System and a minimum of sixty percent (60%) of the owners of the system to be transferred, and fulfillment in advance of all requirements in the entity's bylaws, articles of incorporation, and/or as may be required by statute.
 - 4. Prior to any transfer of any assets of the Water System or Whatcom PUD assuming any interest in the Water System, the entity owning the Water System and the assets of the Water System shall demonstrate that it has complied with all requirements under law, and applicable regulations including the bylaws and articles of incorporation providing

for such transfer, and that all such assets and/or interests to be transferred are free of any and all claims, liens, or similar.

- G. In the event that Whatcom PUD receives a request to transfer ownership and/or management of a Water System to Whatcom PUD, the factors that would be considered by Whatcom PUD, at a minimum, include the following:
1. Preliminary investigation demonstrating financial and economic feasibility and factoring the allocation of all costs to the existing Water System users/customers. This may entail a review of the costs of bringing the Water System into compliance with applicable Department of Health regulations and the allocation of costs and charges to the Water System users/customers associated therewith, in addition to monthly and annual operating costs.
 2. Whether the Water System and its operations and uses are consistent with applicable Whatcom County comprehensive plans for the area.
 3. Whether appropriate financing (grants, loans, revenue bond sales, revenue agreements, etc.) can be accomplished within project feasibility.
 4. Whether necessary approvals, permits, water rights, etc. exist and/or can be secured from various governmental agencies.
 5. The authority and ability of the Water System and all assets associated therewith are to be transferred to Whatcom PUD with appropriate transfer documents approved by Whatcom PUD.
 6. As a condition of ownership of a Water System, each user/customer may be required to execute a service agreement with Whatcom PUD. If such agreements cannot be obtained, Whatcom PUD may offer only to contract for the management of the Water System.
- H. In the event of transfer, Whatcom PUD under the direction of its General Manager shall solely determine the acceptable method to manage, operate, and improve the Water System to operate the Water System consistent with the applicable Water System plan and local, state, and federal regulations and Whatcom PUD policies, including the considerations of management and ownership by Whatcom PUD, and the transfer costs to be allocated to the Water System users/customers.
- I. Whatcom PUD may require as a condition of the takeover of a Water System that Whatcom County execute an Interlocal Agreement with Whatcom PUD that may be necessary for Whatcom PUD to effectively operate and manage the Water System.
- J. To the extent the Water System's existing reserves, rate charges, and assessments are not adequate or readily available to pay for capital needs of the Water System, Whatcom PUD may be required to levy special assessments upon the Water System users/customers that may require written amendments to the Water System governing documents and/or written consent by each user.
- K. Whatcom PUD may establish and maintain a reserve fund specific to the Water System.

- L. The billing, accounting, and customer service functions of the Water System will be managed by Whatcom PUD. Customers will be billed by the Whatcom PUD and service receipts will be collected and used to cover the Whatcom PUD's expenses in operating the Water System. On a monthly basis, Whatcom PUD shall do a reconciliation of income to expenditures. Excess revenue shall be held in reserve as an asset of the Water System. If monthly expenses are not covered by revenue, the difference will be made up from reserve funds. Whatcom PUD may in its discretion include in the monthly rates and charges the development and increase of a reserve fund for the Water System.
- M. As part of its regular budget process, Whatcom PUD would prepare a budget that includes the projected maintenance costs, capital costs, operational costs, and reserve fund development of and for the Water System, and water rates, charges, and assessments to be charged or levied on the Water System and the users/customers thereof.
- N. Whatcom PUD shall maintain applicable property and liability insurance coverage which will be charged to the Water System and the users/customers thereof.
- O. Approvals and/or decisions of any kind by Whatcom PUD contemplated herein may only be made by the Commission for Whatcom PUD, unless expressly delegated to the Whatcom PUD General Manager, and in all cases such approvals or decisions shall be in the sole discretion of Whatcom PUD unless expressly stated otherwise herein or in a specific agreement.

**INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY
AND PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY**

THIS INTERLOCAL AGREEMENT (the “Agreement”) is made as of the last date of the execution of this Agreement below pursuant to the Interlocal Cooperation Act, RCW 39.34, between Public Utility District No. 1 of Whatcom County, a Washington municipal corporation (hereinafter “Whatcom PUD” or “Agent”), and Whatcom County, a Washington municipal corporation (hereinafter “Whatcom County” or “Receiver”). Whatcom PUD and Whatcom County are jointly referred to herein as (the “Parties”) and individually as (“Party”).

WHEREAS, The water needs of Whatcom County’s citizens and businesses are served by over four hundred (400) municipalities, water districts, and associations. Many of these systems are small in size, measured by connection counts, annual revenues, or amount of water throughput; and,

WHEREAS, Over the course of time, some of these systems may fail for a variety of reasons, including financial insolvency, operating challenges, staffing issues, or water rights, among other reasons; and,

WHEREAS, Water systems that do not comply with state and federal standards represent a potential threat to public health and safety; and,

WHEREAS, RCW 43.70.195 requires that counties become the receiver of last resort for failed or failing water systems within their jurisdictions that the State Department of Health has determined have not been effective in resolving deficiencies that threaten public health and safety (such water systems are referred to herein as a “Water System” or generally as “Water Systems”); and

WHEREAS, Whatcom County does not provide public water service; and,

WHEREAS, Whatcom County, pursuant to RCW 43.70.195, is authorized to enter into an agreement with agencies to provide services to Water Systems in receivership; and

WHEREAS, the Whatcom County Council in Resolution No. 92-062 adopted a resolution that (1) recognized the District as having the authority to offer county-wide technical managerial, operational, planning and support services related to water resources in Whatcom County, and (2) requesting that the District be an agent for Whatcom County for the receivership of failed water systems in Whatcom County; and

WHEREAS, pursuant to RCW 54.16.030, Whatcom PUD is authorized to construct, purchase, condemn, acquire, add to, maintain, conduct, and operate water systems, within or without its limits, for the purpose of furnishing Whatcom PUD, inhabitants, businesses, farmers, and other systems, water for all purposes throughout Whatcom County for the benefit of the people of Whatcom County together with full and exclusive authority to sell, regulate, and control the use, distribution, and price thereof, among other authorized activities; and,

WHEREAS, pursuant to RCW 54.16, Whatcom PUD may make surveys, plans, investigations, or studies for domestic, industrial, and agricultural supply, and for matters and purposes reasonably incidental thereto, within and without Whatcom PUD’s boundaries, and compile comprehensive maps and plans showing the territory that can be most economically served by the various resources and utilities, the natural order in which they should be developed, and how they may be joined and coordinated to make a complete and systematic whole; and

WHEREAS, Whatcom PUD is recognized by Whatcom County as having County-wide authority for technical, managerial, financial, operational and support services needed to provide satisfactory water resources development, protection, and utility services; and,

WHEREAS, Whatcom County and Whatcom PUD desire to work cooperatively to provide management of Water Systems that require a default receiver pursuant to RCW 43.70.195; and

WHEREAS, Whatcom County has requested that Whatcom PUD serve as its agent when Whatcom County is appointed as a receiver pursuant and subject to RCW 43.70.195, and Whatcom PUD has agreed to be available to serve as Whatcom County's agent in certain instances as provided for in this Agreement.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Purposes. The purposes of this agreement are to:

- A. Provide for the terms and conditions related to the operation and maintenance of Water Systems by Whatcom PUD at the request of and as an agent for Whatcom County in the event that the Water Systems are subject to a receivership order(s) entered in Whatcom County Superior Court (the "Court") pursuant to RCW 43.70.195.
- B. Provide that the operation and maintenance of such Water Systems are operated in a manner that meets state and federal standards, any orders of the Court, the requirements of the Washington State Department of Health ("WA DOH"), and this Agreement.
- C. Protect public health and safety through provision of water service that complies with applicable state and federal standards for water system operations and drinking water standards.
- D. Ensure effective and efficient utilization of water resources.
- E. Support adopted land use plans and the goals of the Growth Management Act.

Section 2. Intent, Principles, and Procedures. In order to achieve the goals and objectives of this Agreement, Whatcom County and Whatcom PUD agree to the following principles and procedures:

- A. This Agreement is intended to provide the basis for Whatcom PUD to be Whatcom County's agent to take all actions required by the Court as a receiver of last resort for Whatcom County pursuant to RCW 43.70.195 when Whatcom County is appointed as the receiver for the Water System. Accordingly, the requirements of RCW 43.70.195 shall be the controlling basis for interpreting and implementing this Agreement; provided, however, this Agreement does not create any obligation on the part of Whatcom PUD to enter into any agreement with a water association, special purpose district, general purpose government, or any other individual or entity, unless agreed to by the Whatcom PUD Commission on a case-by-case basis.
- B. Whatcom PUD may act as Whatcom County's agent for all Water Systems placed into receivership by the Court based upon a petition filed with the Court by the WA DOH in accordance with the terms and requirements imposed by the Court, the WA DOH, and this Agreement if accepted by Whatcom PUD in writing. The period of time that the Water Systems may be under a receivership order and the Whatcom PUD is serving as Whatcom County's agent as the receiver is referred to herein as the "Receivership Period".

- C. Whatcom PUD shall decide on a case-by-case basis whether it shall be the agent for Whatcom County for a Water System placed into receivership.
- D. Upon Whatcom PUD's agreement to serve as a receiver for a Water System, Whatcom PUD will use its best efforts during the Receivership Period to facilitate financially feasible solutions for said Water System. Further, in such instance, Whatcom PUD will make every reasonable effort, in reviewing the status of a Water System, to make recommendations to the Court, the WA DOH, and/or the Whatcom County Health Department on how Whatcom PUD intends to proceed with the management and operation of the Water System by Whatcom PUD. In doing so, Whatcom PUD shall make such recommendations consistent with applicable state regulations, the requirements of RCW 43.70.195, and any requirements of the Court.
- E. If a Party makes application for financial assistance to fund a receivership action(s) required by a Court and related actions, the other Party agrees to assist the applying Party to identify and secure the funds and/or grant monies necessary to finance such receivership actions.
- F. A Water System shall be operated during a Receivership Period for the benefit of its current and future users/customers pursuant to applicable laws and regulations.
- G. Investment in the operation and maintenance of the Water System during the Receivership Period will benefit and be paid for by the Water System users/customers pursuant to RCW 43.70.195 (5) regardless of the ultimate disposition of the Water System.
- H. Whatcom PUD will be reimbursed for its costs and expenses for operation of the Water System and for making emergency expenditures through Water System revenues collected; provided, however, to the extent that Water System revenues that are paid when due are inadequate to pay for all such costs and expenses, Whatcom County as the Receiver shall fund any shortfall remaining uncollected beyond sixty (60) days.
- I. Whatcom PUD shall determine the acceptable method to improve the Water System to keep the Water System from failing, or for recovering the failed Water System, including the considerations of management and ownership by Whatcom PUD or other parties as may be determined by the Court.

Section 3. Term.

- A. The Term of this Agreement shall commence immediately upon approval and shall terminate immediately upon Whatcom PUD's delivery of written notice of termination to Whatcom County, provided that Whatcom PUD shall continue as the receiver as appointed by the Court until such time as the Court appoints a replacement receiver, or the County is discharged as a receiver of the Water System by the Court.

Section 4. Operation and Maintenance - Personnel.

- A. Upon agreement in writing, Whatcom PUD, under the direction of its General Manager, shall be responsible for the management of the Water System during the Receivership Period.
- B. Whatcom County shall assist Whatcom PUD to accomplish any regulatory and/or Water System contract approvals or amendments that may be necessary for Whatcom PUD to effectively operate and manage the Water System.

- C. The employees of Whatcom PUD and Whatcom County who are engaged in any aspects of the operation and management of the Water System shall continue to be employed and paid solely by their respective agencies.
- D. The cost of wages and wage-related overheads of the respective employees of Whatcom PUD and Whatcom County will be tracked in proportion to their work on the Water System during the Receivership Period and become part of the overall expense of operating the Water System included in the revenue requirements of the Water System to be recovered from water rates and charges, assessments to Water System users/customers, and grants or financing packages, depending upon the nature of the work performed.

Section 5. Operation and Maintenance - Physical Assets.

- A. During the Receivership Period, all Water System facilities and equipment, including pipes, pumps, valves and reservoirs and any vehicles, spare parts, and related equipment that now is used to operate and maintain the Water System, will be made available to Whatcom PUD, Whatcom County, and WA DOH as may be necessary to implement this Agreement through authority granted by the Court.

Section 6. Operation and Maintenance - Funding.

- A. For capital requirements of the Water System, the Parties acknowledge and agree to pursue, as may be appropriate, Public Works Trust Funds and other grants and loans as available. To the extent the Water System's existing reserves, rate charges and assessments, including special assessments as provided by Water System users/customers, are not adequate or readily available to pay for such capital needs, Whatcom County will provide interfund borrowing as necessary, which will be reimbursed by special assessments imposed on the Water System users/customers.
- B. Other Funding. Any further borrowing for financial needs of the Water System that cannot be funded from Whatcom County interfund loans must be recommended by Whatcom PUD and authorized by Whatcom County as a Whatcom County borrowing obligation in accordance with the procedures for rate setting and joint oversight by Whatcom County and Whatcom PUD Boards set forth in Section 8 below.
- C. Upon the conclusion of the receivership and disposition of the Water System, the Water System shall continue to repay in full any interfund borrowing from Whatcom County or Whatcom PUD.
- D. All existing indebtedness and such further indebtedness of the Water System incurred during the Receivership Period will remain the obligation of the Water System during and after the Receivership Period.

Section 7. Billing and Accounting.

- A. As of the commencement of the Receivership Period, this Agreement, the billing, accounting, and customer service functions of the Water System will be managed by Whatcom PUD. Users/customers will be billed by the Whatcom PUD and service receipts will be collected and used to cover the Whatcom PUD's expenses in operating the Water System. On a monthly basis, Whatcom PUD shall do a reconciliation of income to expenditures. Excess revenue shall be held in reserve as an asset of the Water System. If monthly expenses are not covered by revenue, the difference will be made up from reserve funds. If reserve funds do not cover the expenditures, Whatcom County will pay the difference to Whatcom PUD and work with Whatcom PUD to

adjust rates or impose assessments to allow for recovery of funds from Water System users/customers.

- B. The current rates for Water Service existing on the commencement of the Receivership Period will be billed by Whatcom PUD until such time as rates are changed in accordance with the procedures for rate setting and joint oversight by Whatcom County and Whatcom PUD as set forth in Section 8 below.
- C. During the Receivership Period, there shall be no commingling of the Water System funds with existing Whatcom PUD water funds. Whatcom PUD shall maintain the accounting records of the Water System separately from the accounting records of the existing systems so that Whatcom PUD can provide Whatcom County and the Court with the following Water System information. This information will be provided to Whatcom County and the Water System users/customers on a quarterly basis during the Receivership Period, unless the Court orders a more frequent period for reporting:
 - i. A reconciliation of all cash and investment accounts;
 - ii. A detailed list of all receipts and disbursements that can be reconciled to beginning and ending cash and investment balances;
 - iii. Sales reports that support user/customer billings, receipts, and adjustments to user/customer accounts that have been reconciled to the user/customer accounts receivable aging report;
 - iv. Financial statements of the Water System, consisting of Balance Sheet, Statement of Operations, and Statement of Cash Flows; and
 - v. Any supporting documentation that may be needed to verify balances, transactions, and compliance with laws and regulations as reasonably requested by Whatcom County.
- D. During the Receivership Period, Whatcom PUD shall also provide to Whatcom County:
 - i. All audit reports including Management Letters, Findings, and Exit Comments;
 - ii. All correspondence received from agencies that materially affect water service or quality;
 - iii. All correspondence received which asserts or threatens litigation and is either directly or indirectly related to the Water System;
 - iv. Whatcom County shall have appropriate access to all Water System operations, maintenance and repair logs, records, and related reports if any; and
 - v. Whatcom County shall address any concerns it may have in writing about the contents of any documents supplied within ninety (90) days of Whatcom County's receipt or access to such documents of concern, as the case may be.

Section 8. Rate Setting, Budget, and Joint Oversight.

- A. During the Receivership Period, Whatcom County will continue to be the receiver of record for the Water System as Whatcom PUD takes over operation and maintenance of the Water System.

Whatcom County and Whatcom PUD Boards will therefore both be involved in joint oversight of the operation and maintenance of the Water System.

- B. Special joint meetings of the Whatcom County Council and the Whatcom PUD Board of Commissioners may be scheduled at the request of either Board and noticed at any location with public access.
- C. A budget for maintenance and operation of the Water System, water rates, and charges will be established under the following procedures:
 - i. The budget for operation and maintenance of the Water System and any proposed changes in water rates and charges will first be developed by Whatcom PUD's General Manager and then acted upon by the Whatcom PUD Board;
 - ii. Following action by the Whatcom PUD Board on the budget or on proposed changes in water rates and charges, and terms and conditions of service, Whatcom PUD will transmit its proposed budget and /or rate and service recommendations to Whatcom County;
 - iii. Within thirty (30) days of receipt of Whatcom PUD's recommendations, the Whatcom County Council will either adopt or reject the said recommendations;
 - iv. If the Whatcom County Council rejects Whatcom PUD's recommendations, it will set forth its reasons in writing to Whatcom PUD within one week of the Whatcom County Council meeting at which the recommendations were rejected;
 - v. After consideration of Whatcom County's explanation of rejection, Whatcom PUD may develop a different budget or rate proposal in accordance with the procedural steps set forth in this subsection;
 - vi. In resubmitting a proposal for the budget and/or rates and charges, Whatcom PUD may submit its original proposal with additional explanation, submit a modified proposal taking into account the comments of the Whatcom County Council, or submit an entirely new proposal;
 - vii. Failure of Whatcom County to adopt the budget within thirty (30) days of its initial transmission shall automatically terminate this Agreement; provided, however, no additional prior written notice need be given by Whatcom PUD to Whatcom County in this instance. Should the Whatcom County Council fail to adopt a budget recommended by Whatcom PUD, Whatcom PUD may terminate this Agreement and end its role as the Agent for Whatcom County effective thirty (30) days after delivery of a written notice of termination to Whatcom County.
- D. Unanticipated needs for capital investment or capital borrowing will be presented to the Whatcom County Council for approval or rejection under the same procedures established for adopting annual budgets and/or water rates and charges set forth in this Section 8.
- E. Any regulatory approvals or contractual amendments regarding the Water System that require confirmation or approval by the Whatcom County Council will be timely presented for approval or rejection under the same procedures established for adopting annual budgets and/or water rates and charges, and terms and conditions of service set forth in this Section 8.

- F. Planning documents developed by Whatcom PUD for the Water System during the Receivership Period must be approved by both the Whatcom PUD Board and the Whatcom County Council, in the same manner as the approval of a budget as set forth in this Section 8.

Section 9. Indemnity and Insurance.

- A. Whatcom PUD shall maintain applicable property and liability insurance coverage, which will be charged to the Water System during the Receivership Period.
- B. To the extent authorized by existing insurance policy provisions, if the same can be accomplished at no additional expense, Whatcom County and Whatcom PUD shall mutually indemnify each other for any personal injury, property damage, or contract claims arising from the operation and maintenance of the Water System during the Receivership Period, unless the loss is caused solely by either Whatcom County or Whatcom PUD, in which case that entity will be solely responsible for such loss.
- C. To the extent possible, both Whatcom County and Whatcom PUD will name the other as an additional insured on each of their policies related to the Water System. In the event that "additional insured" status is not available on any Water System insurance policy by either entity, the parties shall consider and determine whether additional insurance policies may be advisable.

Section 10. General Conditions.

- A. Whatcom PUD Decisions and/or Approvals. Approvals and/or decisions of any kind by Whatcom PUD contemplated herein may only be made by the Commission for Whatcom PUD unless expressly delegated to the Whatcom PUD General Manager, and in all cases such approvals or decisions shall be in the sole discretion of Whatcom PUD unless expressly stated otherwise herein or in a specific agreement.
- B. Amendment. Both the County and Whatcom PUD recognize that this Agreement may need to be amended from time to time and that such amendments will only be completed with mutual agreement of both the Whatcom County Council and the Whatcom PUD Board.
- C. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters set forth herein.
- D. Severability. In the event that any provision of the Agreement or the application thereof shall be held invalid, illegal, or unenforceable under applicable law, or any court or arbitrator having jurisdiction, the remainder of such provisions and their application shall not be affected thereby and shall remain in full force and effect. If the invalidation of any provision would deprive a Party of a material benefit under this Agreement, the Parties shall negotiate in good faith to substitute a new term for the invalidated term and otherwise amend the Agreement as necessary to effect the purpose of this Agreement and to restore the balance of consideration under this Agreement, to the extent permitted by applicable law.

E. Dispute Resolution/Applicable Law And Venue. In the event of any dispute arising out of the interpretation or implementation of this Agreement, the Parties shall attempt to resolve such dispute(s) by first utilizing the following process:

- i. The first step will be for the Whatcom County Executive or his/her/their designee and the General Manager of Whatcom PUD or his/her/their designee to meet in an attempt to resolve the dispute; and
- ii. If the Whatcom County Executive and the Whatcom PUD General Manager or their respective designees are unable to resolve the dispute within two (2) weeks of their meeting, they shall mutually appoint a mediator recommended by the Whatcom County Dispute Resolution Center who will convene the Parties for mediation within fifteen (15) days of appointment. The costs of the mediator shall be paid by the Water System; and
- iii. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any judicial action required to interpret or enforce the terms hereof shall be in Whatcom County Superior Court.

F. Other Agreements Between A Non-Failing/Failed Water System. Nothing herein prevents a Water System from seeking assistance from Whatcom PUD or Whatcom County outside of the receivership process set forth in RCW 43.70.195 to assist the Water System in meeting state and federal standards subject to a separate written agreement approved by the participating agency.

G. Notice And Contact.

The primary contact for the County in this agreement is:

Whatcom County Deputy Executive
311 Grand Avenue
Bellingham, WA 98225

The primary contact for the Whatcom PUD in this agreement is:

PUD No. 1 of Whatcom County
General Manager
1705 Trigg Road | PO Box 2308
Ferndale, WA 98248

H. Execution And Recording. This Agreement may be executed in one or more counterparts and shall be recorded with the Whatcom County Auditor pursuant to RCW 39.04.034 within seven (7) days of the last date of the execution of this Agreement.

I. Termination. Except as otherwise provided herein, this agreement may be terminated by either Party by providing one hundred and eighty (180) days prior written notice to the other Party.

Executed this __ day of _____, 202__.

WHATCOM COUNTY

By: _____
Its: _____

Executed this __ day of _____, 202__.

PUBLIC UTILITY DISTRICT NO.1 OF WHATCOM COUNTY

By: _____
Its: General Manager

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: Chris Heimgartner

Date: November 2, 2022

Re: Re -Approve Amendment No. 1 Professional Services Agreement with RH2 Engineering, Inc. to Support development of Phase 2 of the WRIA 1 Regional Water Supply and Management Plan

Requested Action – TO APPROVE AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH RH2 ENGINEERING, INC, TO SUPPORT DEVELOPMENT OF PHASE 2 OF THE WRIA 1 REGIONAL WATER SUPPLY AND MANAGEMENT PLAN AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT.

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

The NTA was originally based on a “Phase 1” scope of work for Strategy 3 of the WRIA 1 Watershed Management Board’s 5-Year Work Plan. “Phase 1” was intended to scale the task from a WRIA 1 – wide effort to pilot areas. The additional \$100,000 added in April 2020 provided for a “Phase 2” scope of work that will allow for the WRIA 1 wide planning effort.

Because the District is the lead on the NTA, it manages the agreement(s) with any subcontractors. In May 2020 Aspect Consulting was hired to perform the work on Phase 1 of the Regional Water Supply. Phase 1 was completed in April of 2021 and WDFW approved Phase 1 work and deliverables on behalf of the PSP Habitat Initiative. The Regional Water Supply Work Group (RWSP Work Group) selected RH2 to perform the Phase 2 work based on their knowledge of water supply issues in the Nooksack Basin.

The original PSA term end date is December 31, 2022, which corresponded to the original end date of December 15, 2022 for the RWSP grant. Due to the amount of data compiled and analyzed, the review and comment of the draft Phase 2 Water Supply Plan has taken longer than anticipated. District staff met with WDFW staff to request a time extension to February 1, 2023 to allow completion of Water Supply Plan. WDFW agreed to the time extension and is in the process of amending the RWSP Grant Statement of Work to reflect the additional time. District staff recommends that the Commission approve an amended end date of February 28, 2023 for Amendment No. 1 of RH2 PSA for the Regional Water Supply Plan.

Fiscal Impact – No fiscal impact to the District. The District will pass funds from the WDFW grant to sub-contractors who will perform the work.

Recommended Action – TO APPROVE AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH RH2 ENGINEERING, INC, TO SUPPORT DEVELOPMENT OF PHASE 2 OF THE WRIA 1 REGIONAL WATER SUPPLY AND MANAGEMENT PLAN AND AUTHORIZE GENERAL MANAGER TO SIGN THE AGREEMENT.

**STANDARD AGREEMENT
FOR PROFESSIONAL CONSULTING SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into this 8 day of November 2022, by and between the **PUBLIC UTILITY DISTRICT NO. 1 of WHATCOM COUNTY**, 1705 Trigg Road Ferndale, WA 98248, hereinafter called the "Whatcom PUD," and, **RH2 ENGINEERING, INC** having an address of 22722 29th Drive SE Ste 210, Bothell, WA 98021 hereinafter called "Consultant," for projects generally described as:

Consulting Services to support the preparation of the Phase 2 Regional (WRIA 1) Water Supply Plan including “Data Consolidation and Synthesis and Identification” and “Instream and Out-of-Stream Water Supply and Water Management Solutions”, and “WRIA 1 Water Supply Report”

WHEREAS, the purpose of the Regional (WRIA1) Water Supply Plan (RWSP) is to establish a framework to address water supply needs for instream and out-of-stream uses; and

WHEREAS, developing a RWSP is a strategy in the WRIA 1 Watershed Management Board 2018-2023 Implementation Strategy; and

WHEREAS, Whatcom PUD is serving as the administrative lead for the RWSP Strategy; and

WHEREAS, Whatcom PUD wishes to obtain consulting services necessary to provide support for the development of the Phase 1 Regional (WRIA 1) Water Supply Plan; and

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

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

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

provisions. In the event that any provision of this Agreement is in conflict with any provision of an approved Work Order, the more specific shall control, and if a conflict still exists, then the Work Order shall control the specific conflicting provision

2. **Term.** The term of this Agreement shall commence on execution of this Agreement until all tasks associated with the scope of services herein, as may be amended, have been completed by Consultant or February 28, 2023, whichever is sooner, unless terminated earlier as provided herein.

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

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

4.1 The Consultant shall submit monthly statements, including project budget status and a narrative progress description of services rendered in a form and in such detail as requested by Whatcom PUD. Whatcom PUD shall make prompt monthly payments for work completed on

Works to the Whatcom PUD's satisfaction and billed before the first day of the month. Whatcom PUD shall review and consider for approval all bills submitted one week prior to a regularly scheduled meeting of Whatcom PUD Commissioners. After approval of the Consultant's statement of bill, Whatcom PUD shall forward the approval to the County Treasurer for payment in the normal course of events. In no event shall Whatcom PUD be charged interest on payments due under this Agreement. Whatcom PUD shall not be obligated to pay for services deemed unsatisfactory.

5. Compliance With Laws. All Federal, State and local laws applicable in the rendering of the services by the Consultant shall be complied with in all respects by the Consultant, as shall all rules and regulations of Whatcom PUD and any other governmental agency. The Consultant shall register, as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to Whatcom PUD.

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

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

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

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

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

b. Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or on behalf of Consultant. The limits of liability shall

be not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate unless Whatcom PUD approves in writing a lesser limit.

c. Workers Compensation Insurance as required by law.

9.1 The insurance policies associated with 9.a and 9.b shall name Whatcom PUD as an additional insured. Consultant shall provide two (2) certificates of insurance and, if requested, copies of any policy to Whatcom PUD. Receipt of such certificate or policy by Whatcom PUD does not constitute approval by Whatcom PUD of the terms of such policy. Furthermore, the policy of insurance required herein shall: (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to Whatcom PUD except upon forty-five (45) days prior written notice from the insurance company to Whatcom PUD; (iii) contain an express waiver of any right of subrogation by the insurance company against Whatcom PUD and Whatcom PUD's elected officials, employees, or agents; (iv) expressly provide that the insurance proceeds of any covered loss will be payable notwithstanding any act or negligence of Consultant which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to Whatcom PUD and Consultant.

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

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

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

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

13. Electronic Transmission. All electronically transmitted output must be compatible with existing District software and will be accompanied by a pdf of report(s). Consultant shall check with Whatcom PUD for software application and system compatibility.

14. Contamination. For the purpose of this clause, contamination conditions shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant, contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. Consultant will promptly notify Whatcom PUD of contamination conditions, if identified.

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

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

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

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

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

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

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

District: Chris Heimgartner, General Manager
Public Utility District No. 1 of Whatcom County
1705 Trigg Road | PO Box 2308
Ferndale, WA 98248

Consultant: Richard L. Ballard, Director
RH2 Engineering Inc.
22722 29th Drive SE, Suite 210
Bothell, WA 98021

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

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties hereto execute this Agreement.

DISTRICT:

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

By: _____

Title: General Manager

Date signed: _____

CONSULTANT:

By: _____

Title: _____

Firm's EIN: _____

Date signed: _____

EXHIBIT A

AMENDMENT NO. 2 to WORK ORDER NO. 17

Services for:

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

Regional Water Supply Plan Phase 2

Performed by:

RH2 ENGINEERING, INC

This Amendment No. 2 to Work Order No.17 is issued pursuant to the Standard Agreement for Professional Engineering Services (“Agreement”) dated September 14, 2021, between Public Utility District No.1 of Whatcom County (“Whatcom PUD”) and RH2 Engineering Inc. (“Consultant”). Work Order No.17 is hereby incorporated into the Agreement by this reference.

Background

Public Utility District No. 1 of Whatcom County (PUD) is managing a grant administered by the Washington Department of Fish and Wildlife (WDFW) titled *Regional (WRIA 1) Water Supply and Management Plan*. This grant has been divided into two phases. Phase I of the grant was completed by Aspect Consulting (Aspect) in April 2021, and focused on three pilot areas (Drayton Harbor, Bertrand/Schneider, and South Fork Nooksack River sub-basins). In that effort, Aspect produced the Phase I Task 2 memo (Task 2 memo) and the Phase I Task 3 memo (Task 3 memo). Phase II of the grant is currently scheduled to be completed by February 1, 2023, and is the subject of this Scope of Work

The goal is to expand the pilot work to the remainder of the Water Resource Inventory Area (WRIA) 1 watershed. The organization of data and analysis for Phase II will be based on the 18 sub-basins delineated in the 2005 Surface Water Delineation Boundaries map, which is a modification of the 2000 surface water delineations for the WRIA 1 watershed management project. Two of the 18 sub-basins and two watersheds within sub-basins have been completed under Phase 1. The remaining 16 sub-basins, and excluding those watersheds completed under Phase 1, will be sequenced for purposes of completing Phase II RWSP. Sub-basins 1 through 9 will be the first set of sub-basins for Phase II efforts. Modifications to order may occur after consulting with RWSP Work Group.

Sub-basin Order for Phase II RWSP

1. Lower Mainstem Nooksack (exclude Schneider Cr. Watershed completed in Phase 1)
2. Lynden North (exclude Bertrand completed in Phase 1)
3. Middle Fork Nooksack
4. North Fork Nooksack
5. Ten Mile Cr.

6. Upper Mainstem Nooksack
7. Lummi Bay
8. Silver Cr
9. Sumas River
10. Bellingham Bay
11. Birch Bay
12. Lake Whatcom
13. Squalicum Cr.
14. Lummi Peninsula/Portage Island
15. Lummi/Eliza Island
16. Samish Bay

Phase 1 Pilot Areas – Completed

17. South Fork Nooksack (Phase 1 pilot)
18. Drayton Harbor (Phase 1 pilot)

Bertrand Watershed/Schneider Watershed (Phase 1 pilot)

In support of Phase II, RH2 Engineering, Inc., (RH2) will utilize and rely on the methodologies developed during Phase I and expand them to the sub-basins with direction provided by the Regional Water Supply Plan staff work group. No field work or data collection will occur under Phase II.

The PUD will be responsible for hosting or providing a repository for all data, GIS shapefiles, and reports produced.

RH2 will rely upon the accuracy and completeness of information, data, and materials generated or produced by the Phase I consultant, the PUD, and RWSP Work Group in relation to each task within this Scope of Work. To improve efficiency, editable forms of the information, data, and materials used to complete Phase I must be provided.

Scope of Services

Task 1 – Project Administrative Services

Objective: Provide project management services to help facilitate project completion.

Approach:

- 1.1 Monitor RH2's scope, budget, and schedule of the project. Provide updates and monthly invoices by the 15th of the month to the PUD, including percent budget remaining by task aligned with the task work reflected in the invoice.
- 1.2 Coordinate with the PUD to facilitate the project.

Assumptions:

- *It is assumed that Task 1 will be necessary for the duration of the project.*

RH2 Deliverables:

- Monthly invoices and schedule updates in electronic format (PDF).

Task 2 – Meetings

Objective: Attend meetings with the Regional Water Supply Plan staff work group in order to obtain guidance and to inform the group of findings.

Approach:

- 2.1 Attend up to ten (10) meetings of the Regional Water Supply Plan staff work group. *It is assumed that Geneva Consulting will prepare the meeting agendas and/or minutes.*
- 2.2 Participate in up to ten (10) meetings with the PUD or Geneva Consulting.

Assumptions:

- *It is assumed that the first staff work group meeting with RH2 will be to confirm sub-basins (Tasks 4-6) and stream flow comparison approach (Task 7).*
- *It is assumed that the staff work group meetings will be half virtual and half in person.*
- *It is assumed that all of the PUD or Geneva Consulting meetings will be virtual.*

Provided by PUD:

- Attendance and participation in meetings and coordination with other consultants and the Regional Water Supply Plan staff work group.

RH2 Deliverables:

- Attendance and participation in meetings.

Task 3 – Pilot Area Phase I Report

Objective: Consolidate information and summarize the Phase I work for the three pilot areas.

Approach:

- 3.1 Review the Task 2 and Task 3 memos (Aspect Consulting, 2021) as informed by RWSP Work Group guidance.
- 3.2 Prepare draft Pilot Area Phase I Report.
- 3.3 Prepare document containing reviewer comments and responses to comments.
- 3.4 Prepare final Pilot Area Phase I Report.

Assumptions:

- *Prior to initiating the Phase 1 report input will be provided by the RWSP Work Group.*
- *The draft Pilot Area Phase I Report will be limited to a brief summary of the identified existing work in the Task 2 and Task 3 memos.*
- *Comments and suggested edits to the draft report will be electronic in Track Changes and will be consolidated such that RH2 will not be arbitrating between competing comments.*

Provided by PUD:

- MS Word format of the Task 2 and Task 3 memos.
- Electronic copies of references cited in Phase I memos.

- Review and provide consolidated comments on draft Pilot Area Phase I Report.

RH2 Deliverables:

- Draft Pilot Area Phase I report (electronic MS Word only).
- Reviewer comments and responses to comments document (electronic MS Word and PDF formats only).
- Final Pilot Area Phase I report (electronic MS Word and PDF formats only).

Task 4 – Summarize Surface Water Delineations

Objective: Summarize details for sequenced surface water delineations for the Phase II report. Include physical characteristics such as area, elevation, average precipitation, major streams, and rivers. Document current and estimate future land use. Document salmonid species and current and historic/presumed presence and likely areas used by key salmonid species to meet life history needs such as rearing, spawning, or migration. Document hydrogeology. Document current water right regulatory scheme.

Approach:

For each surface water delineation:

- 4.1 Describe physical characteristics (area, elevation, average precipitation, and major streams and rivers).
- 4.2 Describe fish type and use of surface waters.
- 4.3 Describe the hydrogeology.
- 4.4 Describe surface and ground waters tributary.
- 4.5 Describe water right regulations such as closed streams and instream flow control points.
- 4.6 Describe population.
- 4.7 Describe changes including population and land use.

Assumptions:

- *Appropriate sequenced surface water delineations will be confirmed at the first RWSP Work Group/RH2 meeting.*
- *Data sources used will be identified with a brief statement describing data integrity, if known.*
- *Members of the RWSP Work Group that are members of the WRIA 1 Salmon Recovery Staff Team will consult with the Staff Team to identify key species for the surface water delineations.*
- *Surface area and elevation will be calculated in GIS from digital elevation models.*
- *Precipitation will be calculated in GIS using PRISM Climate Group data.*
- *Fish distribution (current and historic/presumed) will be as documented on WDFW's SalmonScape.*

- *Groundwater as documented in the recently completed WRIA 1 groundwater modelling effort, public USGS reports, and other publicly available sources.*
- *Land use and population data will be as documented by Whatcom County in its Comprehensive Plan, and as extrapolated. If this information has been broken out by surface water delineation, RH2 will use that directly. Otherwise, RH2 will have to extrapolate from the County-wide data.*

RH2 Deliverables:

- Language for inclusion in final report (Task 10-Regional Water Supply Plan Report) (electronic MS Word and PDF format only).

Task 5 – Expand Current Out-of-Stream Water Use Calculations from Pilot Areas

Objective: Utilize methodology developed in Phase I Pilot Areas, as detailed in the Task 2 memo, and expand estimates of current total and consumptive water use to the entire region, broken out by surface water delineations.

Approach:

For each surface water delineation:

- 5.1 Calculate self-supplied single domestic residential total and consumptive use consistent with the methods in Task 2 memo, Section 3.1.1.1.
- 5.2 Calculate municipal and group domestic (Group A and B public water systems) water total and consumptive use consistent with the methods in Task 2 memo, Section 3.1.1.2.
- 5.3 Calculate commercial and industrial total and consumptive water use consistent with the methods in Task 2 memo, Section 3.1.1.3.
- 5.4 Calculate crop irrigation total and consumptive water use consistent with the methods in Task 2 memo, Section 3.1.2
- 5.5 Calculate dairy total and consumptive water use consistent with the methods in Task 2 memo, Section 3.1.3.
- 5.6 Prepare tables and maps to summarize existing estimated total and consumptive use by surface water delineation.

Assumptions:

- *Data sources used for development of Phase I methodologies are publicly available and the calculations described in the Task 2 memo can be duplicated, except in cases where RH2, in consultation with the RWSP Work Group, has modified the methodology (Information in Task 2 memo, Section 8, Table 8.1 will be considered.)*

Provided by PUD:

- All GIS shapefiles, layers, geodatabases, and spreadsheets produced under the Phase I work in native format.

RH2 Deliverables:

- Tables, GIS shapefiles, and maps depicting the existing total and consumptive use for each surface water delineation (electronic MS Excel and PDF format only).

Task 6 – Expand Projected Out-of-Stream Water Use and Demand Calculations from Pilot Areas

Objective: Utilize methodology developed in Phase I Pilot Areas, as detailed in the Task 2 memo, and expand estimates of future consumptive water use for various uses to the entire region, broken out by surface water delineations.

Approach:

For each surface water delineation

- 6.1 Calculate self-supplied single domestic residential future consumptive use consistent with Task 2 memo, Section 3.2.1.1.
- 6.2 Calculate municipal and group domestic (Group A and B public water systems) future consumptive water use consistent with Task 2 memo, Section 3.2.1.2.
- 6.3 Calculate commercial and industrial future consumptive water use consistent with Task 2 memo, Section 3.2.1.3.
- 6.4 Calculate crop irrigation future consumptive water use consistent with Task 2 memo, Section 3.2.2.
- 6.5 Calculate dairy future consumptive water use consistent with Task 2 memo, Section 3.2.3.
- 6.6 Prepare tables and maps to summarize future estimated total and consumptive use by surface water delineation.

Assumptions:

- *Data sources used for development of Phase I methodologies are publicly available and the calculations described in the Task 2 memo can be duplicated, except in cases where RH2 has modified the methodology, with Regional Water Supply Plan staff work group approval. (Information in Task 2 memo, Section 8, Table 8.1 will be considered.)*
- *Future climate conditions are incorporated in the Phase I methodologies. Where they are not considered, options for modifying methods will be discussed with the RWSP Work Group and considered.*

Provided by PUD:

- All GIS shapefiles, layers, and geodatabases and spreadsheets produced under the Phase I work in native format.

RH2 Deliverables:

- Tables, GIS shapefiles, and maps depicting the projected future total and consumptive use for each surface water delineation (electronic MS Excel and PDF format only).

Task 7 – Minimum Instream Flow Comparison with Existing and Climate Change Conditions

Objective: Compare minimum instream flows identified in Chapter 173-501 Washington Administrative Code (WAC) with historic discharge, calculated future discharge considering climate change (Year 2025, Year 2050, and Year 2070), and calculated future discharge considering climate change and expanded future water use for the entire Nooksack River

watershed, using the methodology in the Task 2 Phase 1 RWPS memo. Summarize current minimum instream flows [IRPP flows] (both location and rate) with Utah State University (USU) ecological flows (both location and rate).

Approach:

- 7.1 Calculate daily minimum instream flow values for the Nooksack River at Ferndale (United States Geological Survey (USGS) Gage 12213100) control station identified in Chapter 173-501 WAC.
- 7.2 Compute streamflow statistics (10th, 50th, and 90th percentiles) for the gage on a daily basis.
- 7.3 Prepare hydrograph plots comparing streamflow statistics to minimum instream flows.
- 7.4 Prepare hydrograph plots comparing future streamflow statistics considering climate change for year 2025, 2050, and 2070 to minimum instream flows.
- 7.5 Prepare hydrograph plots comparing future streamflow statistics considering future use for 2070 upstream of the gage to minimum instream flows.
- 7.6 Map the current active streamflow gage locations, minimum instream flow control station locations from Chapter 173-501 WAC, and USU Intensive and Rapid Assessment sites.
- 7.7 Summarize the differences (location and flow) between the Chapter 173-501 WAC minimum instream flows and the USU ecological flow recommendations across the WRIA.

Assumptions:

- Will not recreate undepleted flows.
- In consultation with RWSP Work Group clarify subtasks 7.1-7.6 under Task 7 and the budget.
- Task 7.7 is included as a point for future reference. The application of the extrapolation methodology WRIA-wide is recommended prior to proceeding with this subtask.
- *Percent change in runoff will be calculated by comparing climate change simulations to the historic simulation as provided by The Climate Toolbox. The Climate Toolbox has already projected future stream flows for this site, and it will be used directly using the 10 Model Mean.*

Provided by PUD:

- All applicable spreadsheets produced under the Phase I work in native format.

RH2 Deliverables:

- Tables and plots depicting the streamflow statistics for the Nooksack River at Ferndale control station over time and considering future consumptive use (electronic MS Excel and PDF format only).

Task 8 – **Water Right Summary**

Objective: Estimate and summarize water right rate and volume for different purposes of use in each subbasin.

Approach:

- 8.1 Obtain water right data from the Washington State Department of Ecology and prior sources to estimate instantaneous rate and annual volume of water rights for various uses (municipal, commercial/industrial, irrigation) as broken out by subbasin.
- 8.2 Compare the existing and future out-of-stream demands with the water rights in each surface water delineation.

Assumptions:

- *Municipal water supply will use the Whatcom County Coordinated Water System Plan (RH2, 2016) as the starting point. Irrigation will use the Quantification of Agricultural Irrigation Water Use and Water Rights (RH2, 2018) as the starting point. Water right actions made since these past summaries will be relied upon to identify the change from prior studies.*
- *Short-form claims will not be included. Review will include active - permits, certificates, long form claims, and change authorizations.*

Provided by PUD:

- All applicable GIS files and spreadsheets produced under the Phase I work in native format.

RH2 Deliverables:

- Tables, GIS shapefiles, and maps depicting the water rights by purpose of use for each surface water delineation (electronic MS Excel and PDF format only).

Task 9 – **Water Supply Problem Identification and Potential Solution Identification**

Objective: Identify and document water supply problems for both instream and out-of-stream uses. Identify, document, and rank potential solutions.

Approach:

- 9.1 Identify known water supply problems. Collaborate with the WRIA 1 Management Team and Regional Water Supply Plan staff work group to use staff knowledge and available references to identify known water supply problems.
- 9.2 Review water supply solutions identified in prior work, as identified in Phase I, to determine if they have potential to help with any of the known water supply problems.
- 9.3 Identify potential water supply solutions. Collaborate with the WRIA 1 Management Team and Regional Water Supply Plan staff work group to brainstorm additional water supply solutions that should be considered.
- 9.4 Rank potential water supply solutions consistent with the Project Scoring developed in Phase I.

Provided by PUD:

- All applicable spreadsheets produced under the Phase I work in native format.

RH2 Deliverables:

- Populated Project Summary Descriptions, Out-of-Stream Benefit Scoring, Instream Benefit Scoring, Other Considerations, Political and Economic Scoring, and Numeric Scoring Table spreadsheets (electronic MS Excel and PDF format only).

Task 10 – Regional Water Supply Plan Report

Objective: Prepare the Regional Water Supply Plan based on the findings of the preceding tasks and incorporate policy recommendations.

Approach:

- 10.1 Prepare outline for Regional Water Supply Plan
- 10.2 Prepare draft Regional Water Supply Plan.
- 10.3 Prepare document containing reviewer comments and responses to comments.
- 10.4 Prepare final draft of comments and responses prior to final plan.
- 10.5 Prepare final Regional Water Supply Plan.

Assumptions:

- *An outline for the Regional Water Supply Plan report will be provided early on and reviewed and approved by RWSP Work Group prior to drafting report.*
- *Comments and suggested edits to draft plan will be electronic in Track Changes and will be consolidated such that RH2 will not be arbitrating between competing comments.*

Provided by PUD:

- Review and provide consolidated comments on draft Regional Water Supply Plan.
- Electronic data repository for all items prepared under each task of this Scope of Work.

RH2 Deliverables:

- Draft Regional Water Supply Plan report (electronic MS Word format only).
- Reviewer comments and responses to comments document (electronic MS Word and PDF format only).
- Final Regional Water Supply Plan report (electronic MS Word and PDF format only).

Cost for Services

The total cost not to exceed for the Scope of Services described above is **ONE HUNDRED THIRTY TWO THOUSAND FIVE HUNDRED TWELVE DOLLARS (\$132,512.00)** for Work Order No.17. It includes labor, materials, expenses and applicable taxes. Consultant shall not exceed this amount, without prior approval of Whatcom PUD's General Manager. A

breakdown of the total cost for services is included for review. Exhibit B is the Fee Estimate. Exhibit C is RH2's 2021 Schedule of Rates.

Project Schedule

Once the work order is approved and Whatcom PUD's General Manager authorizes RH2 to commence work. It is anticipated that with approval of this work order that RH2 will commence its services during September 2021. The schedule for this Work Order No.17 may be modified as agreed to by Whatcom PUD and RH2.

SIGNATURE PAGE

This Work Order No.17 – Amendment No. 2 is effective as of the date signed by Whatcom PUD's General Manager.

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

By: _____

Name: Chris Heimgartner

Title: General Manager

Date: _____

RH2 ENGINEERING INC

By: _____

Name: Richard L. Ballard

Title: Director

Date: _____

PUBLIC UTILITY DISTRICT NO. 1
of Whatcom County

1705 Trigg Road, Ferndale, WA 98248
(360) 384-4288 • www.pudwhatcom.org

November 2, 2022

Contact: Ann Grimm

Public Utility District No. 1 of Whatcom County

(360) 384-4288 ext. 27

**NOTICE OF PUBLIC HEARING REGARDING THE PROPOSED 2023 BUDGET FOR
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY**

Notice is hereby given that the Board of Commissioners of Public Utility District No. 1 of Whatcom County (District) will hold a public hearing at the District's Regular Commission Meeting on **Tuesday, November 22, 2022** at 8:00 A.M. at the District's Administration Office, 1705 Trigg Road, Ferndale, WA.

The purpose of the hearing will be to receive comment on the proposed 2023 budget. The proposed budget is available for review on the District website at the following link, under Annual Budget Books:

<https://www.pudwhatcom.org/the-commission/financial-documents/>

All Commissioners will participate in-person, Zoom platform or by teleconference. The Commissioner's meeting room is open for the public to attend the meeting.

To attend the public hearing via Zoom/internet: <https://us02web.zoom.us/j/82576598555>

Or by telephone (253) 215-8782;

Webinar ID 825 7659 8555