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2023 BOARD OF COMMISSIONERS

ATUL DESHMANE, PRESIDENT
CHRISTINE GRANT, VICE PRESIDENT
JAIME ARNETT, SECRETARY

PUBLIC UTILITY DISTRICT No. 1 of Whatcom County

Agenda for the Regular Meeting of January 24, 2023
8:15 a.m. at the PUD Office
(In-person, Zoom, & Teleconference)

1. Call to Order | Pledge of Allegiance (2 minutes)
2. Approval of Agenda (3 minutes)
3. Consent Agenda (5 minutes)
 - a) Approval of Minutes of the Regular Meeting of January 10, 2022
 - b) Approval of Claims for January 24, 2023
4. Public Comment (10 minutes – Individual speakers: 3 min.)
5. Old Business (10 minutes)
 - a) Broadband Program Update
6. New Business (15 minutes)
 - a) Approve Resolution No. 828 – Cancellation/Re-Issue of Warrant
 - b) Approve Amendment No. 1 to Exhibit A to Interlocal Agreement with Public Utility District No. 1 of Jefferson County
 - c) Approve First Amendment to Employment Agreement with General Manager
 - d) Approve Resolution No. 829 – Reappoint Chmelik, Sitkin and Davis, P.S.
7. General Manager Report (10 minutes)
8. Operations Report (10 minutes)
9. Commissioner Reports (15 minutes)
10. Public Comment (10 minutes– Individual speakers: 3 min.)
11. Executive Session: RCW 42.30.110(1)(i) Potential Litigation
 - (a) Water Rights Adjudication and (b) General Litigation (45 minutes)
12. Adjourn (10:30 AM estimated)

Notice:

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

The public meeting can be accessed: In-person at location announced;

By internet: <https://us02web.zoom.us/j/84127178613>

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

Webinar ID: 841 2717 8613

NOTE NEW START TIME: 8:15 AM

Next Commission Meetings

Feb. 14 and 28, 2023 | 8:15 a.m. | Regular Meetings – District Office

1705 Trigg Road, Ferndale, WA 98248

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

January 10, 2023

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 included: Commissioner Christine Grant, Commissioner Jaime Arnett; Commissioner Atul Deshmane; and Legal Counsel Jon Sitkin. Staff: General Manager Chris Heimgartner; Ann Grimm, Executive Assistant; Andrew Entrikin, Broadband Program Manager; Steve Jilk, In-House Consultant; 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; Mike Macomber, IT/SCADA Technician; Jake Wittmer, Automation Technician; Garrett Love-Smith, Project Manager; Traci Irvine, Accountant I; Devin Crabtree, Chief Water Operator; and Kurt Wank, Director of Utility Operations.

Public attending:

Rick Maricle, Citizen

Jack Wellman, PSE

Lauren Turner, Phillips 66

Dave Olson, Citizen

2. Approval of Agenda

Three additions to the agenda: Operations Report and Welcoming Commissioner Arnett were added after the first public comment, and general litigation matters as a second topic for Executive Session.

ACTION: Commissioner Deshmane made the motion to APPROVE THE AGENDA OF JANUARY 10, 2023 AS AMENDED. Commissioner Arnett second the motion. Motion passed unanimously.

3. Approval of Consent Agenda

- a) Approval of Meeting Minutes of the Regular Meeting, December 13, 2022;
- b) Approval of the Meeting Minutes of the Regular Meeting, December 20, 2022;
- c) Approval of the Claims of January 10, 2023:

VENDOR NAME	AMOUNT
ALUMICHEM CANADA INC	29,835.00
BELLINGHAM HERALD	844.00
BIRCH EQUIPMENT COMPANY	7,748.11
BRIDGEVIEW AUTO PARTS	104.38
CENTRAL WELDING SUPPLY	488.73
CHMELIK SITKIN & DAVIS	12,066.00
CONSOR NORTH AMERICA	50,359.09
CORNERSTONE MANAGEMENT, INC.	492.00
CRABTREE, DEVIN	93.20
FCS GROUP	5,568.75
FEDERAL EXPRESS	23.40
FERGUSON ENTERPRISES, INC	351.49
FERNDAL ACE HARDWARE	90.61

DRAFT

GDS ASSOCIATES, INC.	5,870.00
GENEVA CONSULTING	15,901.87
HARDWARE SALES, INC.	64.08
HEALTH PROMOTIONS NORTHWEST	150.00
HEIMGARTNER, CHRIS	988.57
MINMAX	2,835.00
NORTHWEST CASCADE, INC.	118.50
NORTHWEST FIBER DBA ZIPLY FIBER	1,462.45
NORTHWEST MOWING & GARDENING	540.76
NP INFORMATION SYSTEMS (3-D CORP)	269.82
NW PUBLIC POWER ASSOCIATION	6,305.51
PACIFIC NORTHWEST UTILITIES	1,000.00
PARAMOUNT SUPPLY COMPANY	479.41
PILOT TRAVEL CENTERS LLC	500.00
PLATT ELECTRIC SUPPLY CO	3,151.12
PUBLIC POWER COUNCIL	3,865.00
PUBLIC UTILITY RISK MANAGEMENT SERVICES	9,804.97
PUD #1 OF WHATCOM COUNTY	13.67
PUGET SOUND ENERGY, INC	5,895.52
REGENCE BLUE SHIELD	44,374.75
REISNER DISTRIBUTION, INC	1,838.57
RICOH USA	404.56
SHRED-IT USA	52.79
SMITH MECHANICAL	2,613.38
SSC - SANITARY SERVICE COMPANY	620.18
STAR RENTALS	2,418.60
TEAMSTER LOCAL #231	569.00
UNITED WAY OF WHATCOM COUNTY	742.00
UTILITIES UNDERGROUND LOCATION	14.19
VERIZON WIRELESS	1,141.11
WA ST DEPT OF HEALTH, ODW	408.00
WASHINGTON DENTAL SERVICE	2,744.35
WASHINGTON TEAMSTERS WELFARE	13,273.40
WHATCOM COUNTY COUNCIL OF GOVERNMENTS	150.00
WHATCOM FARMERS CO-OP	8,133.71
WHATCOM JANITORIAL	1,325.00
WSU - CASHIERS OFFICE	3,948.18
GRAND TOTAL	\$252,052.78

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ACTION: Commissioner Deshmane made the motion to APPROVE THE CONSENT AGENDA OF JANUARY 10, 2023. Commissioner Arnett second the motion. Motion passed unanimously.

4. **Public Comment** - No comments.

5. **Welcome Commissioner Arnett – District 3**

Grant welcomed Arnett to the Commission. Arnett is proud to be serving a small and mighty team. Arnett is Executive Director for *Animals as Natural Therapy* and is looks forward to serving.

6. **Operations Report**

Heimgartner updated the Commission regarding a promotion for Kurt Wank from Project Manager to Director of Utility Operations, and introduced new employees Jake Wittmer, Automation Technician and Garrett Love-Smith, Project Manager. Wank provided video and commentary regarding the recent episode of Nooksack River ice, frazil ice, and extreme river conditions that the Water Operations crew experienced the week of December 19, especially on Christmas Eve and Christmas Day. The Water Crew came to the rescue and did an excellent job in responding.

7. **Old Business**

a) **Broadband Program Update**

The State Broadband Office gave the Notice of Funding Opportunity for broadband projects. The deadline is January 17. Grant submissions planned by the Port and PUD:

- Port is submitting a grant for \$12 million, will seek matching funding from Whatcom County;
- PUD is submitting a grant application covering Point Roberts with 1,300 customers and the potential customers below;
- Fabric Data: There is a small group of customers/home owners inside full-served census blocks that are not served. The PUD is trying to reach those;
- Entrikin and Heimgartner will be attending the County Council Meeting this afternoon to seek matching funds.

8. **New Business**

a) **Work Order No. 1 with Pacific Surveying and Engineering, Inc.**

For engineering services related to the District's planned extension of its potable and fire water supply lines within the established Local Utility District boundaries along south of Grandview Road and east of Interstate-5.

ACTION: Commissioner Deshmane made the motion to APPROVE WORK ORDER No. 1 WITH PACIFIC SURVEY AND ENGINEERING INC. FOR A COST NOT TO EXCEED AMOUNT OF \$30,815 AND AUTHORIZE the District's GENERAL MANAGER TO EXECUTE THE WORK ORDER. Commissioner Arnett second the motion. Motion passed unanimously.

b) **Approve Amendment No. 1 to Work Order No. 2 – Murraysmith**

The amendment covers an expansion of the scope of services to be provided and is related to the City of Ferndale's plan for re-routing Ferndale Road. The re-route means the District's 24" pipeline carrying clarified industrial water from Water Treatment Plant 1 to Cherry Point would cross under the new road twice. The District would need to construct a new pipeline and the road would have to be trenched or tunnel bored to accommodate the new pipe.

ACTION: Commissioner Deshmane made the motion to APPROVE AMENDMENT NO. 1 TO WORK ORDER NO. 2 WITH MURRAYSMITH FOR ADDITIONAL ENGINEERING SERVICES FOR AN ADDITIONAL COST NOT TO EXCEED AMOUNT OF \$285,000 AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER TO EXECUTE THE AMENDMENT.

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Commissioner Arnett second the motion. Motion passed unanimously.

c) Elect Commission Officers for 2023

Each year the Commissioner selects officers of the Commission for the upcoming calendar year. The Commission takes action on the election of officers without recommendation from staff.

ACTION No. 1: Commissioner Deshmane motioned to NOMINATE AND ELECT COMMISSIONER ARNETT AS SECRETARY FOR 2023. Commissioner Grant second the motion. Motion passed unanimously.

ACTION No. 2: Commissioner Arnett motioned to NOMINATE AND ELECT COMMISSIONER DESHMANE AS PRESIDENT AND NOMINATE AND ELECT COMMISSIONER GRANT AS VICE PRESIDENT FOR 2023. Commissioner Grant second the motion. Motion passed unanimously.

d) Each year the Commission acts to approve Commissioners and staff representatives to agencies that the District is a member of to the following agencies (to have representatives designated by the Commission to speak on behalf of the District as appropriate):

Washington Public Utility Districts Association Committees and respective District Designees selected for 2023:

<u>Committee</u>	<u>Primary Representative</u>	<u>Alternate</u>
Board of Directors	Jaime Arnett	Christine Grant
Managers	Chris Heimgartner	Brian Walters
Government Relations	Christine Grant	Jaime Arnett
Communications	Jaime Arnett	Chris Heimgartner
Energy	Atul Deshmane	Brian Walters
Water	Christine Grant	Jaime Arnett
Telecom/Broadband*	Atul Deshmane	Jaime Arnett *Non-voting

Whatcom County Economic Development Investment (EDI) Board: Commissioner Deshmane accepted to represent this position.

Whatcom County Council of Governments (WWCOG) Associate Membership: Commissioner Grant will represent the District and Chris Heimgartner is the alternate for 2023;

Public Utility Risk Management Services (PURMS): These positions will remain the same for 2023: Elected Representative: Commissioner Deshmane as representative; and Chris Heimgartner and Annette Smith (Finance Director) as voting alternates.

Watershed Resource Inventory Area No. 1 (WRIA 1): Appoint WRIA 1 Watershed Management Board Representative and alternate; and appoint WRIA 1 Planning Unit representative and alternate:

<u>WRIA 1</u>	<u>Primary Representative</u>	<u>Alternate</u>
Watershed Management Board	Jaime Arnett	Stephan Jilk
Planning Unit	Stephan Jilk	Rebecca Schlotterback

Energy Northwest: Commissioner Grant will be District representative in 2023, and designated alternate is Atul Deshmane.

Port/PUD Broadband Advisory Committee: Chris Heimgartner will be the representative, Andrew Entrikin as staff representative.

DRAFT

ACTION: Commissioner Arnett motioned to SELECT DISTRICT REPRESENTATIVES TO THE FOLLOWING AGENCIES:

1. JAIME ARNETT AS DISTRICT REPRESENTATIVE FOR WASHINGTON PUBLIC UTILITY DISTRICTS ASSOCIATION (WPUDA);
2. WPUDA COMMITTEES

BOARD OF DIRECTORS:	PRIMARY/ARNETT	ALTERNATE/GRANT
MANAGERS COMMITTEE:	PRIMARY/HEIMGARTNER	ALTERNATE/WALTERS
GOVT RELATIONS:	PRIMARY/GRANT	ALTERNATE/ARNETT
COMMUNICATIONS:	PRIMARY/ARNETT	ALTERNATE/HEIMGARTNER
ENERGY COMMITTEE:	PRIMARY/DESHMANE	ALTERNATE/WALTERS
WATER COMMITTEE:	PRIMARY/GRANT	ALTERNATE/ARNETT
TELECOM COMMITTEE:	PRIMARY/DESHMANE	ALTERNATE/ARNETT
3. DESHMANE AS REPRESENTATIVE FOR WHATCOM COUNTY EDI BOARD;
4. GRANT AS REPRESENTATIVE FOR WHATCOM COUNTY COUNCIL OF GOVERNMENTS, CHRIS HEIMGARTNER AS ALTERNATE;
5. DESHMANE AS REPRESENTATIVE FOR PUBLIC UTILITY RISK MANAGEMENT SERVICES, CHRIS HEIMGARTNER/ANNETTE SMITH AS VOTING ALTERNATES;
6. ARNETT AS REPRESENTATIVE FOR WRIA1 WATERSHED MANGEMENT BOARD AND STEVE JILK AS ALTERNATE; PLANNING UNIT: STEVE JILK AS REPRESENTATIVE AND REBECCA SCHLOTTERBACK AS ALTERNATE;
7. GRANT AS REPRESENTATIVE FOR ENERGY NORTHWEST, DESHMANE AS ALTERNATE.
8. CHRIS HEIMGARTNER AS REPRESENTATIVE FOR PORT/PUD BROADBAND STEERING COMMITTEE; ANDREW ENTRIKIN AS STAFF REPRESENTATIVE.

Commissioner Deshmane second the motion. Motion passed unanimously.

e) General Manager Report

The Commission has made a request to change the start time of 2023 Regular Commission Meetings to be moved to 8:15 a.m. This will require a motion to amend the meeting time as the 2023 Regular Meeting Schedule was approved on December 13, 2022.

ACTION: Commissioner Deshmane made the motion to CHANGE THE START TIME OF THE 2023 REGULAR COMMISSION MEETINGS TO 8:15 AM. Commissioner Arnett second the motion. Motion passed unanimously.

f) Commissioner Reports

Deshmane: No report.

Arnett: In December, she was able to tour PUD facilities and meet the staff. She will be attending the WPUDA meetings this week.

Grant: Has had continuing conversations with Eric Hirst regarding water use efficiency, she would like to meet with Jilk and Hirst to further discuss.

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g) **Public Comment** – No comments.

h) **Executive Session**

Commission President Grant requested an Executive Session pursuant to RCW 42.30.110(i) – Potential Litigation, relating to water rights adjudication and general litigation matters. Estimated time for Executive Session was thirty (30) minutes. The Commission President indicated no action is anticipated to be taken after the adjournment of Executives Session. After a short break, the Commission adjourned to Executive Session at 9:40 a.m.

- At 10:05 a.m. an additional twenty minutes was requested.
- At 10:40 a.m. an additional five minutes was requested.

Executive Session Adjourn

There being no further business for Executive Session, the Commission rejoined the Regular Commission Meeting at 10:45 a.m.

i) **Adjourn**

There being no further business for the regular meeting, Commissioner Grant adjourned the regular meeting at 10:47 a.m.

Atul Deshmane, President/Commissioner

Christine Grant, Vice President/Commissioner

Jaime Arnett, Secretary/Commissioner

Commission Clerk Note:

Video recordings of the Whatcom PUD Commission Meetings are available online at the following link on the PUD's Website: <https://www.pudwhatcom.org/the-commission/2023-agendas-packets-meeting-minutes-recordings/>

Action Memo

To: Commissioners Arnett, Deshmane, and Grant
From: Traci Irvine, Accountant I
Date: January 24, 2023
Re: Approve Resolution No. 828 - Cancellation and Reissue of Warrant

Requested Action: Approve Resolution No. 828 AUTHORIZING CANCELLATION AND REISSUE OF WARRANT.

Background: Due to a wrong vendor number, Warrant No. 1160374 was issued on January 3, 2023, in the amount of \$4,231.50 to *Whatcom County Planning* was in error and the warrant has not been tendered. The District has requested that the County cancel Warrant No. 1160374. A new warrant will be issued, payable to with correct vendor number to *Whatcom County Administrative Services - Finance*.

Fiscal Impact: There is no fiscal impact.

Recommended Action: Approve Resolution No. 828 AUTHORIZING CANCELLATION AND REISSUE OF WARRANT.

RESOLUTION NO. 828

**RESOLUTION BY THE BOARD OF COMMISSIONERS
OF PUBLIC UTILITY DISTRICT NO.1 OF WHATCOM COUNTY (DISTRICT)
AUTHORIZING THE CANCELLATION
OF WARRANT NO. 1160374**

WHEREAS, the warrant referenced in Exhibit A (the “Warrant”) was issued on the basis of an invoice (the “Invoice”) received from Whatcom County Administrative Services (“County”) for Pictometry Services;

WHEREAS, following the Commission’s authorization of the issuance of the Warrant, the County’s Administrative Services Department (“County”) printed Warrant No. 1160374 on January 3, 2023. The warrant was issued in error to *Whatcom County Planning Services*, not *Whatcom County A.S. Finance* as requested. As such, the District has notified the County that the Warrant was issued in error, has asked the County to cancel and disregard the Warrant. A new warrant will be issued on the next Claims Request.

WHEREAS, the County has provided the Warrant that was issued on January 3, 2023, and the Warrant having not been tendered to the County, the District does now wish to cancel the Warrant, as provided by law; and

NOW THEREFORE BE IT RESOLVED that the District hereby cancels the warrant listed in Exhibit A.

ADOPTED by the Commission of Public Utility District No.1 of Whatcom County at its regular meeting held on the 24th day of January, 2023.

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

Atul Deshmane, President/Commissioner

Jaime Arnett, Secretary/Commissioner

Christine Grant, Vice President/Commissioner

Resolution No. 828: Exhibit A

Cancellation of Warrant

Warrant No.	Warrant Date	Vendor	Amount
1160374	1/03/2023	Whatcom County Planning Services	(\$4,231.50)

ACTION MEMO

To: Commissioners Arnett, Deshmane and Grant
From: Brian Walters – Assistant General Manager
Date: January 24, 2023
Re: Approve Amendment 1 to Exhibit A to Interlocal Agreement with Public Utility District No. 1 of Jefferson County

Requested Action – APPROVE AMENDMENT 1 TO EXHIBIT A TO THE INTERLOCAL AGREEMENT WITH PUBLIC UTILITY DISTRICT NO.1 OF JEFFERSON COUNTY (“JEFFERSON PUD”), WHICH TRANSFERS \$100,000 OF THE DISTRICT’S REMAINING BPA EEI PROGRAM BUDGET FOR BPA FY 2022-23 TO JEFFERSON PUD AND AUTHORIZE THE DISTRICT’S GENERAL MANAGER TO SIGN THE AMENDMENT DOCUMENT.

Background – The District entered into an Interlocal Agreement with Jefferson PUD on May 10, 2021. The Agreement expires December 31, 2023. Jefferson PUD has exhausted its BPA EEI budget for the BPA Rate Period FY 2022-23, which ends September 30, 2023. Jefferson PUD, via a letter dated January 5, 2023, has requested that the District transfer **\$100,000** of its remaining EEI budget for FY 2022-23 to the PUD.

Such transfer from one party to the other is memorialized in Exhibit A and any amendments thereto, which is incorporated into the Interlocal Agreement. Any future transfers agreed to by the parties (either to or from Jefferson PUD) will be accomplished by further amendments to Exhibit A.

If the transfer is approved by the Commission, the District will have sufficient remaining BPA EEI Program Budget for FY 2022-23 to cover any District sponsored energy efficiency projects occurring before the end of the BPA rate period. The District will receive another EEI budget allocation for the next BPA rate period, which begins October 1, 2023.

Fiscal Impact – If approved, Amendment 1 to Exhibit A and the EEI budget transfer described therein will have no fiscal impact on the District’s 2023 Annual Budget.

Recommended Action – APPROVE AMENDMENT 1 TO EXHIBIT A TO THE INTERLOCAL AGREEMENT WITH PUBLIC UTILITY DISTRICT NO.1 OF JEFFERSON COUNTY (“JEFFERSON PUD”), WHICH TRANSFERS \$100,000 OF THE DISTRICT’S REMAINING BPA EEI PROGRAM BUDGET FOR BPA FY 2022-23 TO JEFFERSON PUD AND AUTHORIZE THE DISTRICT’S GENERAL MANAGER TO SIGN THE AMENDMENT DOCUMENT.

EXHIBIT A-1

BPA EEI BUDGET TRANSFERS

This Exhibit A-2 is attached to and by this reference incorporated into the Interlocal Agreement between Public Utility District No.1 of Whatcom County (“Whatcom PUD”) and Public Utility District No. 1 of Jefferson County (“Jefferson PUD”) (collectively referred to as the “Parties”).

1.0 Budget Transfer – BPA Rate Period (FY 2022-23)

Subject to Bonneville Power Administration (“BPA”) approval, Whatcom PUD and Jefferson PUD agree for each Party’s respective BPA Rate Period (FY 2018-19) as follows:

Whatcom PUD and Jefferson PUD agree to request that BPA transfer **ONE HUNDRED THOUSAND DOLLARS (\$100,000)** of BPA’s Rate Period (FY 2022-23) Energy Efficiency Incentive (EEI) program budget funds from Whatcom PUD to Jefferson PUD. This transfer does not involve any actual monetary payment by Whatcom PUD to Jefferson PUD, nor is Whatcom PUD obligated to make any payment to Jefferson PUD. Rather, it is a joint request to BPA to re-allocate a portion of the BPA EEI program budget funds allocated to Whatcom PUD for Rate Period (FY 2012-23) to Jefferson PUD.

2.0 Conditions on Transfer

For this specific transfer of EEI program budget from Whatcom PUD to Jefferson PUD, there are no conditions imposed on the transfer with the exception of BPA prior approval.

3.0 Amendments to Exhibit A

Should either Party request future fiscal year BPA conservation budget transfers from the other Party and such Party agrees, then it shall be by further amendment to this Exhibit A, pursuant to written agreement of the Parties.

IN WITNESS WHEREOF, the Parties have caused this EXHIBIT A-1 to the AGREEMENT to be executed by their duly authorized representatives all as of the day and year written above.

PUBLIC UTILITY DISTRICT NO.1 OF WHATCOM COUNTY

Chris Heimgartner
General Manager

Date

ATTEST:

PUBLIC UTILITY DISTRICT NO. 1 OF JEFFERSON COUNTY

Kevin Streett
Acting General Manager

Date

ATTEST:

ACTION MEMO

To: Commissioners Arnett, Deshmane, and Grant
From: Jon Sitkin, Legal Counsel
Date: January 24, 2022
Re: Approve First Amendment to Employment Agreement with Chris Heimgartner

Requested Action – APPROVE FIRST AMENDMENT TO EMPLOYMENT AGREEMENT WITH CHRIS HEIMGARTNER, EFFECTIVE JANUARY 1, 2023.

Background – On February 1, 2022, the Commission approved the Employment Agreement with Chris Heimgartner. The proposed first amendment to the Agreement adds language as described below to: (i) establish that the cost-of-living adjustment for 2023 will be 7.5% and will be based on a designated consumer price index in subsequent years; and (ii) clarify that vacation accrual is set at four weeks per year without acceleration.

- **Section 4.1.1 – Salary**
...Beginning January 1, 2023, an increase of the 2022 base salary will be made at the rate of 7.5%. Beginning January 1, 2024, an adjustment of the base salary will be made based on the latest annual Consumer Price Index – W (CPI) Seattle-Tacoma-Bellevue or similar. Salary may be reviewed and/or adjusted annually due to market rate adjustments and/or significant increases in the responsibilities of the General Manager as a result of organizational changes within the PUD or within the larger region of Washington Public Utilities.
- **Section 5.1 - Vacation**
...Commencing January 1, 2023, the General Manager shall be entitled to vacation leave at the rate of four weeks per year without acceleration. Accrual of vacation shall be administered based upon the non-union employees as set forth in the POLICY FOR EMPLOYEE COMPENSATION FOR ADMINISTRATIVE EMPLOYEES Resolution adopted by the PUD Commission.

Fiscal Impact – The Annual Budget will not be impacted or amended. The 2023 Annual Budget includes sufficient funds to cover the Cost-of-Living Adjustment and Vacation amounts.

Recommended Action – APPROVE FIRST AMENDMENT TO EMPLOYMENT AGREEMENT WITH CHRIS HEIMGARTNER EFFECTIVE JANUARY 1, 2023.

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

THIS AMENDMENT TO EMPLOYMENT AGREEMENT (the “First Amendment”) is entered into as of the last date written below between **WHATCOM PUBLIC UTILITY DISTRICT #1** (hereinafter referred to as the “PUD”) and **Chris Heimgartner** (hereinafter referred to as the “Employee”), collectively referred to as the “Parties.”

WHEREAS, the Employee and the PUD entered into an Employment Agreement commencing on February 1, 2022 (“Employment Agreement”); and

WHEREAS, the parties desire to amend the Employment Agreement to provide for a fixed cost of living adjustment to the Employee’s 2022 base salary to be effective January 1, 2023 for Employee’s 2023 salary and provide for a Consumer Price Index (“CPI”) adjusted salary thereafter and to clarify vacation accrual.

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

1. COMPENSATION. Section 4.1.1 of the Employment Agreement is amended to add the underlined language and to read as follows:

4.1.1 Salary. Beginning February 1, 2022, a monthly base salary of Sixteen Thousand Six Hundred and Sixty-Six and 67/100 Dollars (\$16,666.67) payable on the last working day of each month in which such services are performed, consistent with common payroll practices for the PUD. Beginning January 1, 2023, an increase of the 2022 base salary will be made at the rate of 7.5%. Beginning January 1, 2024 an adjustment of the base salary will be made based on the latest annual CPI-W for Seattle-Tacoma-Bellevue or similar. Salary may be reviewed and/or adjusted annually due to market rate adjustments and/or significant increases in the responsibilities of the General Manager as a result of organizational changes within the PUD or within the larger region of Washington Public Utilities.

2. VACATION. Section 5.1 of the Employment Agreement is amended to read as follows:

5.1 Vacation. In 2022 the General Manager shall be entitled to five weeks of vacation based on currently planned and booked vacations (planned for 3 weeks in April and 2 weeks in June). Commencing January 1, 2023, the General Manager shall be entitled to vacation leave at the rate of four weeks per year without acceleration. Accrual of vacation shall be administered based upon the non-union employees as set forth in the POLICY FOR EMPLOYEE COMPENSATION FOR ADMINISTRATIVE EMPLOYEES Resolution adopted by the PUD Commission.

3. OTHER TERMS AND CONDITIONS. All other terms and conditions of the Employment Agreement shall remain unchanged and in full force and effect. In the event of a conflict between this First Amendment and the Employment Agreement, this First Amendment shall control.

Signatures on Next Page

PRESIDENT, BOARD OF COMMISSIONERS

Print Name: Atul Deshmane

Date: _____

Chris Heimgartner, EMPLOYEE

Print Name: Chris Heimgartner

Date: _____

ACTION MEMO

To: Commissioners Arnett, Deshmane, and Grant
From: Chris Heimgartner, General Manager
Date: January 24, 2023
Re: Resolution No. 829 – Reappoint Jon Sitkin and Chmelik Sitkin and Davis P.S.
as District Legal Counsel

Requested Action: ADOPT RESOLUTION NO. 829, A RESOLUTION OF THE BOARD OF COMMISSIONERS OF PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY (“DISTRICT”) TO REAPPOINT JON SITKIN AND CHMELIK SITKIN AND DAVIS P.S. AS DISTRICT LEGAL COUNSEL AND AUTHORIZE THE GENERAL MANAGER TO ENTER INTO THE LEGAL SERVICES AGREEMENT WITH CHMELIK SITKIN & DAVIS P.S.

Background: The District appointed Jon Sitkin and the law firm of Chmelik Sitkin & Davis P.S. as District Legal Counsel in year 2006 and reappointed the firm as District Legal Counsel in 2012, 2016, 2018 and 2020. Based on the District’s Purchasing Policy, it is appropriate to review professional service agreements, including legal services every two years.

As part of establishing appropriate implementation of the District’s Purchasing Policy, staff is recommending that the Commission review the appointment of Legal Counsel and recommends the reappointment of Jon Sitkin and Chmelik Sitkin & Davis P.S. law firm for an additional two-year time period, ending December 31, 2024. At that time, the Commission should review this appointment for consideration of an additional term.

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

Recommended Action: ADOPT RESOLUTION NO. 829 – A RESOLUTION OF THE BOARD OF COMMISSIONERS OF PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY (“DISTRICT”) TO REAPPOINT JON SITKIN AND CHMELIK SITKIN AND DAVIS P.S. AS DISTRICT LEGAL COUNSEL TO THE DISTRICT AND AUTHORIZE THE GENERAL MANAGER TO ENTER INTO THE LEGAL SERVICES AGREEMENT WITH CHMELIK SITKIN AND DAVIS P.S.

RESOLUTION NO. 829

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY (“DISTRICT”)
ACCEPTING AND APPOINTING DISTRICT GENERAL LEGAL COUNSEL**

WHEREAS, the District General Legal Counsel has been Jon Sitkin of Chmelik Sitkin & Davis P.S. since February 2006, was re-appointed in 2012, 2016, 2018, and was again re-appointed in December of 2020; and,

WHEREAS, The District Commissioners desire to re-appoint Jon Sitkin of Chmelik, Sitkin & Davis P.S. as the District’s General Legal counsel effective January 1, 2023.

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

1. Effective this 24th day of January, 2023, the Commission re-appoints Jon Sitkin and Chmelik Sitkin & Davis P.S. as the General Legal Counsel for the District effective January 1, 2023.
2. The District’s General Legal Counsel shall report directly to the District Commission and shall advise and direct the District Commission and staff with regard to all general legal matters as set forth in the Legal Services Agreement attached hereto.
3. The District General Manager is authorized to execute the Legal Services Agreement attached hereto as “Exhibit A”.

ADOPTED by the Board of Commissioners of Public Utility District No. 1 of Whatcom County at a regular meeting thereof held this 24th day of January, 2023.

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

Atul Deshmane Commissioner/President

Jaime Arnett, Commissioner/Secretary

Christine Grant, Commissioner/Vice President

Attest:

Commission Clerk

**RESOLUTION NO. 829
EXHIBIT A**

LEGAL SERVICES AGREEMENT

THIS LEGAL SERVICES AGREEMENT (the "Agreement") between the **PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY** (the "District"), a Washington municipal corporation, and **CHMELIK SITKIN & DAVIS P.S.**, a Washington law firm, shall be for a term of two (2) years from January 1, 2023 through December 31, 2024, and shall continue thereafter on a year-to-year term, unless amended by written agreement of the parties, or terminated by the parties as provided for herein.

WITNESSETH:

WHEREAS, the District is a municipal corporation, formed in accordance with Chapter 54 of the Revised Code of Washington; and

WHEREAS, the District requires legal services in connection with such activities; and

WHEREAS, Chmelik Sitkin & Davis P.S. (hereinafter referred to as "Attorneys") are willing and able to provide such services; and

WHEREAS, The District Commission wishes to re-appoint Jon Sitkin of the Law Firm and other attorneys employed by the Law Firm as approved by the District General Manager, as the District's General Legal Counsel effective January 1, 2023.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Attorneys agree to perform general counsel legal services as necessary for the District and as requested by the District General Manager and/or the District Commission, or its designee, and for other legal services as requested by the District.
2. In the event specialized legal services are required, Attorneys will provide such services as the parties determine appropriate or will assist the District in securing and supervising such services and cooperate and/or serve as co-counsel with the law firm providing said services.
3. The District agrees to pay Attorneys' reasonable fees and costs for its professional services, considering the time and effort required, the novelty and difficulty of the legal questions involved, the skills required to perform the services properly, the amounts involved and results obtained, and the other factors permissible under the Code of Professional Responsibility and the hourly rates then charged by Attorneys for the time of the particular attorney or paralegal providing such services.
4. The hourly rate for Attorneys' services and reimbursement for Attorneys' expenses shall be pursuant to the terms, conditions, and rates set out on Exhibit "A" attached hereto and incorporated herewith.
5. Unless prior agreement has been reached regarding special billing for certain specific matters, Attorneys will bill the District monthly for such services, indicating thereon the amount of time, the item or matter on which such time was spent (broken down to the nearest 1/10th of the hour), and whether charges are for attorney services or paralegal services.
6. This Agreement may be terminated by the District at any time effective immediately upon receipt of written notice to Attorneys, and may be terminated by Attorneys upon written notice to the District of not less than thirty (30) days prior to the effective date of termination. The existing agreement between the parties shall remain in effect up to and including December 31, 2022.

EFFECTIVE THE 1st day of January, 2023.

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

CHMELIK SITKIN & DAVIS P.S.

By: _____
Chris Heimgartner, General Manager

By: _____
Jon Sitkin, Principal

EXHIBIT "A"

**HOURLY RATE FOR ATTORNEYS' SERVICES
AND
REIMBURSEMENT FOR ATTORNEYS' EXPENSES**

All legal services performed by attorneys having a regular billing rate of \$320.00 or higher would be billed at the discounted rate of \$320.00 per hour. All other legal services would be billed at the normal billing rate of the person performing the work.

The standard hourly rates of the Attorneys at the time of execution of this Agreement, and the District's hourly rate for the duration of the initial two (2) years of the contract are as follows:

ATTORNEY	CURRENT STANDARD HOURLY RATE	DISTRICT RATE
Jon Sitkin	\$390	\$320
Frank Chmelik	\$390	\$320
Richard Davis	\$380	\$320
Peter Ruffatto	\$370	\$320
Katherine Deets	\$360	\$320
Seth Woolson	\$360	\$320
Holly Stafford	\$360	\$320
Todd Eglund	\$360	\$320
Matt T. Paxton	\$330	\$320
Tim Schermetzler	\$330	\$320
Allison Beard	\$280	\$280
Aaron Haynes	\$280	\$280
Lily Hubbard	\$270	\$270
Sara Frase	\$260	\$260
Conner Sapp	\$260	\$260
Paralegals	\$200	\$200

The parties agree that after the expiration of the first two (2) years of this Agreement, the effective or discounted hourly rate will be reviewed by both parties and shall be subject to the parties' mutual approval at that time. In the event that the parties do not agree to a new discounted rate and agree to continue this Agreement, they may do so at the same rates as set forth herein, without any further action.

Further, in the event the Attorneys hire a new attorney and/or paralegal, the rate for that attorney or paralegal shall be incorporated to the rates billed to the District as set forth in the first paragraph above in this Exhibit "A". If the regular rates of any attorney or paralegal during the term of this contract would become above the adjusted rate, the rate set forth above for such attorney or paralegal will be the rate billed to the District.

The firm charges \$0.56 per mile, or the mileage rate set by the Internal Revenue Service, whichever is higher, for mileage charges for travel outside Whatcom County. Other expenses such as witness fees, investigative fees, expert witness fees, transcription fees, and other costs and expenses necessary in the performance of legal services pursuant to this contract shall be paid by the District according to the terms of this Agreement.