

# DRAFT

**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 February 14, 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 24, 2022
  - b) Approval of Claims for February 14, 2023
4. Public Comment (10 minutes – Individual speakers: 3 min.)
5. Old Business (10 minutes)
  - a) Broadband Program Update
6. New Business (30 minutes)
  - a) Award of Bid: PAC Chemical Supply
  - b) Approve Amendment No. 1 to Professional Services Agreement – Wilson Engineering
  - c) Rate Policy Presentation
  - d) Call for Special Meeting on February 23, 2023
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 – Water Rights Adjudication (30 min)
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/86219175593>

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

**Webinar ID:** 862 1917 5593

**NOTE NEW START TIME: 8:15 AM**

**Next Commission Meetings**

Feb. 28 and March 14, 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](http://www.pudwhatcom.org)



# DRAFT

MASSMUTUAL RETIREMENT SVCS LLC	12,600.00
NORTHWEST CASCADE, INC.	118.50
NW RIVERPARTNERS	6,160.00
P&P EXCAVATING, LLC	6,957.76
PAYLOCITY	183.16
PAYROLL	230,656.87
PLATT ELECTRIC SUPPLY CO	761.68
PUBLIC UTILITY RISK MANAGEMENT SERVICES	51,898.89
PUD #1 OF WHATCOM COUNTY	1,336.27
PUGET SOUND ENERGY, INC	780.28
SPECIAL-T STRIPING & SIGN COMPANY	54.40
TUPPER MACK WELLS PLLC	7,638.00
WA FEDERAL VISA CARD MEMBER SERVICES	6,910.70
WA PUBLIC UTILITY DISTRICTS ASSOCIATION	14,690.00
WA ST DEPT OF REVENUE - EXCISE TAX	68,451.70
WA ST DEPT OF REVENUE - LEASEHOLD TAX	787.10
WESTERN CONFERENCE OF TEAMSTERS	8,778.00
WHATCOM COUNTY ADMINISTRATIVE	4,231.50
WHATCOM COUNTY AUDITOR	174,638.32
WHATCOM FARMERS CO-OP	1,373.15
<b>GRAND TOTAL</b>	<b>\$1,261,974.83</b>

**ACTION:** Commissioner Grant made the motion to APPROVE THE CONSENT AGENDA OF JANUARY 24, 2023. Commissioner Arnett second the motion. Motion passed unanimously.

#### 4. Public Comment

Eric Hirst commented on water use efficiency.

#### 5. Old Business

##### a) Broadband Program Update

Entrikin and Heimgartner updated the Commission regarding grant submissions sent to the State Broadband Office on January 17. There are three grant applications totaling approximately \$8.1 million that were submitted. The projects will be open access, publicly-owned, gig services, and affordability. Notice of Awards will be at the end of February:

- \$3.5 million grant application covering Point Roberts with 1,274 customers; Whatcom County has approved a 10% funding match.
- \$4.1 million grant covering the Glacier area with 1,100 customers, with a 10% funding match with ZIPLY.
- \$473,000 grant for the Ravencrest area with 13 customers, with a 10% funding match with Pogozone.

#### 6. New Business

##### a) Approve Resolution No. 828 – Cancellation and Reissue of Warrant

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.

**ACTION:** Commissioner Grant made the motion to APPROVE RESOLUTION NO. 828 AUTHORIZING CANCELLATION AND REISSUE OF WARRANT. Commissioner Arnett second the motion. Motion passed unanimously.

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**b) Approve Amendment No. 1 to Exhibit A – Interlocal Agreement with Jefferson County PUD**

The District entered into an Interlocal Agreement with Jefferson PUD on May 10, 2021. 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. If approved, 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. There is no fiscal impact to the District.

**ACTION:** Commissioner Grant made the motion to APPROVE AMENDMENT 1 TO EXHIBIT A TO THE INTERLOCAL AGREEMENT WITH PUBLIC UTILITY DISTRICT NO.1 OF JEFFERSON COUNTY, 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. Commissioner Arnett second the motion. Motion passed unanimously.

**c) Approve First Amendment to Employment Agreement with General Manager**

On February 1, 2022, the Commission approved the Employment Agreement with Chris Heimgartner. In summary, Sitkin said the proposed first amendment to the Agreement adds language as described 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.

**ACTION:** Commissioner Grant made the motion to APPROVE THE FIRST AMENDMENT TO EMPLOYMENT AGREEMENT WITH CHRIS HEIMGARTNER EFFECTIVE JANUARY 1, 2023. Commissioner Arnett second the motion. Commissioners Grant and Arnett voted aye. Commissioner Deshmane did not vote. Motion passed without objection.

**d) Approve Resolution No. 829 – Reappoint Chmelik, Sitkin and Davis, P.S.**

The District appointed Jon Sitkin and the law firm of Chmelik Sitkin & Davis P.S. as District Legal Counsel in year 2006 and reappointed the firm as District Legal Counsel in 2012, 2016, 2018 and 2020. Staff recommends that the Commission review the appointment of Legal Counsel and the reappointment of Jon Sitkin and Chmelik Sitkin & Davis P.S. law firm for an additional two-year time period, ending December 31, 2024.

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.

**ACTION No:** Commissioner Grant motioned to 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. Commissioner Arnett second the motion. Motion passed unanimously.

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## 7. General Manager Report

- The public records request made by Jon Humphrey is now closed and considered abandoned, as he did not access the January release of records. Approximate final costs for the District are just over \$50,000.
- Water 201 Workshop – Special workshop/meeting to address the operational side of the PUD. A tentative date of February 23 at 8:15 a.m. was discussed.
- Electric Feasibility Study has been delayed and should be ready by end of January.
- The District is looking at installing solar panels at the administration office.
- Will be attending a meeting this afternoon at the Port with Mt. Baker Ski Area to discuss electrification to the ski area.

## 8. Operations Report

Walters complimented the water crew, electric operations, and IT staff on the job well done during the frazil ice/freezing river conditions over the holidays. Commissioner Grant personally sent the crew a thank you letter for their hard work. A debrief meeting was held last week and there are many measures to analyze such as adding covers over the settling basins at Plant 2 and Plant 1 (indicated as part of the rebuild), and the design of the intake screens at Plant 2 to be considered to help avoid ice buildup on the screens. Some of the projects may require a movement of budget funds, however, no additional funding to the 2023 budget is expected.

## 9. Commissioner Reports

Grant:

- Attended the WPUDA committee meetings via Zoom, will be attending in-person for February.
- Met with Eric Hirst and Steve Jilk regarding water use efficiency. Jilk also commented on water use efficiency and other work done through the water supply planning process and Whatcom Conservation District reported on mainly irrigation water use efficiency measures titled *Ag Water Management*. Jilk will send it out to the Commission. Heimgartner added that this may or may not be an opportunity for PUD advocacy and if/how does it fit for the PUD?
- Energy NW orientation as the District representative; Board of Directors meeting is tomorrow.
- Complimented on our new logo, now on the website.
- Would like an update on the Social Media plan. (Policies are under review with Legal Counsel.)

Arnett:

- Attended the WPUDA meetings, including new commissioner orientation, Board of Directors meeting and legislative reception at the Capitol.
- Plans to attend the February committee meetings.
- Is interested in helping with the District's communication/social media plan. After meeting all the District employees, she is concerned about additional workload for staff.

Deshmane:

- Will be attending the February WPUDA Committee meetings.
- Has concerns with:
  - WPUDA language on *net metering allowance* up to 4%.
  - Regarding local control (Possible oversight from Legislative and Executive governments).
  - Grid reliability (Governor vetoed the bill, passed by both houses, has been reintroduced).
  - Streamlined process for transmission systems.
- Intalco project – no longer going forward due to unavailability low-cost energy.
- Removal of Lower Snake River dams are a topic of conversation again.

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## 10. Public Comment

- Rick Maricle commented on Phillips66 Refinery's energy efficiency projects and Bonneville Power Administration's funding requirements and/or evidence of successful project implementation.
- Andrew Redding emailed a comment and article from Crosscut.com regarding *FCC broadband service maps disputed at thousands of Washington locations*.

## 11. Executive Session

Commission President Deshmane 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 10:00 a.m.

- At 10:30 a.m. an additional fifteen (15) minutes was requested.

### Executive Session Adjourn

There being no further business for Executive Session, the Commission rejoined the Regular Commission Meeting at 10:47 a.m.

## 12. Adjourn

There being no further business for the regular meeting, Commissioner Deshmane adjourned the regular meeting at 10:48 a.m.

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Atul Deshmane, President/Commissioner

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Christine Grant, Vice President/Commissioner

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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:** Brian Walters – Assistant General Manager  
**Date:** February 14, 2023  
**Re:** Award Contract for PAC Chemical Supply 2023 to Alumichem Canada Inc.

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**Requested Action:** AWARD CONTRACT FOR PAC CHEMICAL SUPPLY 2023 TO ALUMICHEM CANADA INC. AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE CONTRACT.

**Background:** The bid opening for the Polyhydroxy Aluminum Chloride (PAC) Chemical Supply Contract for calendar year 2023 was held on Friday, February 3, 2023 at 10:00 a.m. The Request for Bid Proposals was advertised in the Bellingham Herald and bid packets were also sent to the three companies, whose chemical flocculants had previously met the District water operations staff's requirements. Only one bid package was received by the published deadline. Upon staff review, it was deemed to be a responsive bid.

The results of the bids are as follows:

Responsive Bidder: **Alumichem Canada Inc.**

Unit Price for PAC: **\$0.772 per lb.**

The unit price includes Washington State Sales Tax and Shipping, which is comprised of all costs associated with the delivery of the chemical supply including, but not limited to, labor, taxes, insurance, fuel and/or fuel surcharges.

Staff reviewed the unit price and no math errors were made on the bid proposal. All submittals required for the proposal, non-collusion affidavit and addendum acknowledgement were completed, as well as the inclusion of the product Material Safety Data Sheets.

Staff recommends awarding the Contract for chemical supply to Alumichem Canada Inc..

**Fiscal Impact:** Although there is an increase in unit pricing over 2022, the increase is less than budgeted and, therefore, there is no impact on the 2023 budget for PAC chemical supply. The actual annual cost incurred by the District is significantly dependent on Nooksack River conditions, which will impact the total amount (lbs.) of chemical used.

**Recommended Action:** AWARD CONTRACT FOR PAC CHEMICAL SUPPLY 2023 TO ALUMICHEM CANADA INC. AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE CONTRACT.

## Action Memo

**To:** Commissioners Arnett, Deshmane, and Grant  
**From:** Brian Walters – Assistant General Manager  
**Date:** February 7, 2023  
**Re:** Approve Amendment No. 1 to Agreement for Professional Engineering Services with Wilson Engineering, LLC

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**Requested Action:** APPROVE AMENDMENT NO.1 TO STANDARD AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES WITH WILSON ENGINEERING LLC AND AUTHORIZE DISTRICT'S GENERAL MANAGER TO EXECUTE AMENDMENT NO. 1 TO THE AGREEMENT.

**Background:** In March of 2020, the Commission approved the Standard Agreement for Professional Engineering Services with Wilson Engineering LLC to provide services to the District that involved current and/or future capital improvement and maintenance projects related to the District's water utility facilities, both industrial and potable water supply. Under the terms of the Agreement, the District reserves the option to extend the initial term for up to two additional one-year periods. The initial term of the Agreement extended through December 31, 2022.

In August 2022, the District received two grant awards from the Washington State Department of Health (DOH). The grants support a feasibility study for consolidation of the Fairfield MHP and for the Double L MHP into the District's Grandview Northgate Water System. In November 2022, the Commission approved the two grants with DOH. Task No. 1 of both grants is to contract with a professional engineer licensed in Washington State. The engineer will complete all engineering elements of the feasibility study for each grant.

**Amendment No.1:**

District staff will use Wilson Engineering LLC and recommends approving the amendment to the Standard Agreement for Professional Engineering Services that extends the term of the agreement to December 31, 2024.

The Amendment to Agreement, has no associated budget. Work to be assigned to Wilson Engineering LLC and the associated budget for the services to be performed will be through work orders approved by the District's General Manager or Commission pursuant to District Policy. Each work order, once approved will be attached to and incorporated into the Agreement as Exhibit A. Each new work order approved will be an amendment to Exhibit A and the underlying Agreement.

**Fiscal Impact:** Approval of the amendment to the Standard Agreement for Professional Engineering Services with Wilson Engineering LLC will have no impact on the District's approved Annual Budget, as there is no budget associated with Amendment No. 1 to the Agreement.

**Recommended Action:** APPROVE AMENDMENT NO.1 TO STANDARD AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES WITH WILSON ENGINEERING LLC AND AUTHORIZE DISTRICT'S GENERAL MANAGER TO EXECUTE AMENDMENT NO. 1 TO THE AGREEMENT.



**AMENDMENT NO. 1 TO STANDARD AGREEMENT  
FOR  
PROFESSIONAL ENGINEERING SERVICES  
FOR THE  
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY**

**AMENDMENT NO. 1 TO THIS AGREEMENT** (“Agreement”) is made and entered into this 14 day of February 2023, by and between the **PUBLIC UTILITY DISTRICT NO. 1 of WHATCOM COUNTY**, 1705 Trigg Road Ferndale, WA 98248, hereinafter called "District" or “Whatcom PUD”, and **WILSON ENGINEERING LLC**, having an address of 805 Dupont Street Suite 7 Bellingham, WA 98225, hereinafter called "Engineer", for projects generally described as:

**To provide various professional engineering services for the purpose of assisting the District in studying, identifying, planning, designing and implementing projects associated with Whatcom PUD’s water systems.**

**WHEREAS**, the District desires to retain an engineering firm to provide professional engineering services for the District; and

**WHEREAS**, the selection of engineering firms, and the Engineer 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; and

**WHEREAS**, Engineer does offer to provide such professional engineering 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 Engineer will be identified from time to time by the District. The Engineer will prepare and submit to the District a proposed Scope of Work (“SOW”), which shall include the proposed scope of services and fee estimate for the assignment. If acceptable to the District after review and consultation with the Engineer, the District will prepare and execute a Work Order for the specific assignment. The scope of services is hereinafter referred to as “Work”. Services of the Engineer 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 in advance by the Commission and/or General Manager of the District. The terms and conditions of this Agreement shall apply in all Work Orders approved by the District, 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 initial term of this Agreement shall commence on the execution date listed in the first paragraph above and will continue until all tasks associated with the scope of services described in executed Work Orders attached hereto as Exhibit A, as may be amended from time

to time, have been completed by the Engineer or December 31, 2024 whichever is sooner, unless terminated earlier as provided herein.

2.1 The District may extend the term beyond the above date should tasks associated the scope of services not yet be completed.

2.2 With agreement of the parties, the initial term may be extended for up to two additional one calendar year periods.

3. **Termination.** The District reserves the right to terminate this Agreement at any time by sending written notice of termination to the Engineer. 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 Engineer (whether by fax, mail, delivery or other method reasonably calculated to be received by the Engineer in a reasonably prompt manner) or three (3) calendar days after issuance of the notice. Upon the notice date, the Engineer shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for the Engineer's material breach, the Engineer 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 Engineer'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 Engineer actual notice in a timely manner, such as fax. The District 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, the District may deduct from the final payment due the Engineer (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.** The Engineer shall be compensated on the basis of hours worked and expenses incurred by the Engineer, or on the basis of rates established for specific tasks, all at the rates shown attached hereto as Exhibit B. The Engineer shall obtain the prior written approval of the District for any charges for additional services by the Engineer, the additional services of others retained by the Engineer, or the furnishing of additional supplies, materials or equipment. The Engineer shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

4.1 The Engineer 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 the District. The District shall make prompt monthly payments for work completed to the District's satisfaction and billed before the first day of the month. The District shall review and consider for approval all bills submitted one week prior to a regularly scheduled meeting of the District's Commissioners. After approval of the Engineer's statement of bill, the District shall forward the approval to the County Treasurer for payment in the normal course of events. In no event shall the District be charged interest on payments due under this Agreement. The District 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 Engineer shall be in compliance with in all respects by the Engineer, as shall all rules and regulations of the District and any other governmental agency. The Engineer shall register, as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to the District.

6. **Project Management.** The District'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 Engineer 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 the District 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 Engineer.

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 the District. The District shall be responsible for all costs associated with such review.

8. **Conflict of Interest.** The Engineer 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. The Engineer 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.** The 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 the Engineer'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 the District 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 the Engineer. The limits of liability shall be not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate unless the District approves in writing a lesser limit.
- c. Workers Compensation Insurance as required by law.

9.1 The foregoing insurance policies shall name the District as an additional insured. The Engineer shall provide two (2) certificates of insurance and, if requested, copies of any policy to the District. Receipt of such certificate or policy by the District 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 provides that such

insurance may not be materially changed, amended or canceled with respect to the District except upon forty-five (45) days prior written notice from the Engineer to the District; (iii) contains an express waiver of any right of subrogation by the insurance company against the District and the District's elected officials, employees, or agents; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of the Engineer 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 the District and the Engineer.

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

10. **Indemnification.** The Engineer shall indemnify and hold the District 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 the District by reason of any negligent act or omission of the Engineer, 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 the District 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 the District requests to be kept confidential shall not be made available by the Engineer to any individual or organization without prior written approval of the District, 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 the District or other documents produced in whole or in part by the Engineer under this contract shall be the subject of an application for copyright by or on behalf of the Engineer.

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

13. **Electronic Transmission.** All electronically transmitted output must be compatible with existing District software and must be accompanied by at least one (1) copy of written reports. The Engineer shall check with the District 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. The Engineer will promptly notify the District of contamination conditions, if identified.

**15. No Employment Relation Created.** The Engineer is an independent contractor, who will provide services to the District. The parties are not “partners” and this Agreement does not create a partnership, joint venture relationship or an employer-employee relationship. The relationship between the District and the Engineer 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 the District.

**16. Industrial Insurance Act Defense Waiver.** The Engineer expressly waives any claim of defense against the District 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 any contract work.

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

**18. Discrimination.** In connection with the performance of this Agreement, the Engineer 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 Engineer shall take affirmative action to ensure that the employees are treated during employment without regard to, their race, color, religion, sex, national origin, age, marital status, or being handicapped, or disadvantaged person, or disabled or Vietnam era veteran.

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

**20. Litigation/Arbitration.** In the event either party herein finds it necessary to bring an action against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs and attorneys’ fees incurred by the other party, and in the event any judgment is secured by such prevailing party all such costs and attorneys’ fees of collection shall be included in any such judgment. In the event of any dispute arising between the parties to this Agreement, any such dispute shall be submitted to binding arbitration as provided herein. The parties shall select an independent and unbiased arbitrator who is not affiliated directly or indirectly with either party within ten (10) days after any party demands arbitration. If the parties fail to select or cannot agree upon an arbitrator within this time, then they shall make application to the Superior Court of Whatcom County, pursuant to RCW 7.04A *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 7.04A 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 7.04A, and MAR 5.2 through 5.4, the terms of the Binding Arbitration Clause shall take precedence over RCW Chapter 7.04A and MAR 5.2 through 5.4; and RCW Chapter 7.04A 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:

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

Engineer: \_\_\_\_\_  
Wilson Engineering LLC  
805 Dupont Street Suite 7  
Bellingham, WA 98225

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 Engineer specifically understands that no District employees other than the project manager or his/her supervisors are authorized to direct the work of the Engineer 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: \_\_\_\_\_

**ENGINEER:**

WILSON ENGINEERING LLC

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

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

Firm's EIN: \_\_\_\_\_

Date signed: \_\_\_\_\_



## Action Memo

**To:** Commissioners Arnett, Deshmane, and Grant  
**From:** Annette Smith, Director of Finance  
**Date:** February 14, 2023  
**Re:** Rate Development Guidelines Discussion

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**Requested Action:** Establish guidelines for rate development for use by the current rate consultants, FCS Group, and the finance department in future budgets. No formal action is required.

**Background:** FCS Group was hired by the District in 2022 to perform a rate study. The focus of the rate study was on the two water utilities of the District: the Industrial Water utility (non-potable) which serves the Cherry Point heavy industrial area along with irrigation customers, and the Grandview Water system (potable and non-potable) which serves the Grandview Light Industrial, Northgate Industrial Park and the I-5 Industrial Park areas. The rate study is at the stage of fine-tuning the rate models and recommendations.

Guidelines that have shaped our budget and rates:

- **Irrigation** – the increase to the irrigation rates has been capped at 5% per year.
- **Grandview** – The full allocation of the administrative piece of the district (labor and general expenses) has slowly been applied to the Grandview utility.

The purpose of this discussion is to highlight these guidelines and get the current commission feedback.

**Fiscal Impact:** These are guidelines for future rate development. It will have no impact on current rates.

**Recommended Action:** Establish guidelines for rate development for use by the current rate consultants, FCS Group, and the finance department in future budgets. No formal action is required.