

# DRAFT

## PUBLIC UTILITY DISTRICT No. 1 of Whatcom County

Agenda for the Regular Meeting of January 23, 2024  
8:15 a.m. at the PUD Office  
(In-person, Zoom, & Teleconference)

1. Call to Order | Pledge of Allegiance
2. Approval of Agenda (2 minutes)
3. Consent Agenda (5 min.)
  - a) Approval of the Minutes of the Regular Meeting of January 9, 2024
  - b) Approval of Claims for January 23, 2024
4. Public Comment (10 minutes – Individual speakers: 3 min.)
5. General Manager Report (10 min.)
6. Old Business (15 min.)
  - a) Broadband Update
  - b) Adjudication Update
  - c) Geothermal Update
  - d) Board Retreat Planning Discussion
  - e) WPUDA Day on the Hill (Feb. 14) Planning Discussion
7. New Business (50 min.)
  - a) Approve Professional Services Agreement with Cobb, Fendley & Associates
  - b) Approve Professional Services Agreement with Eagle Eye Aerial Solutions
  - c) Approve Professional Services Agreement with Select Electrical Engineering Firms
  - d) State Auditor's Audit Report
  - e) FCS Group Rate Study Presentation
8. Operations Report (10 minutes)
9. Commissioner Reports (10 minutes)
  - a) Upcoming Per Diem Requests
10. Public Comment (10 minutes– Individual speakers: 3 min.)
11. Executive Session: RCW 42.30.110(1)(i): Potential Litigation; and RCW 42.30.110(1)g: General Manager's Performance Review (Est. 60 minutes total)
12. Adjourn (**Estimated Noon**)

**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/81416311015>

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

**Webinar ID:** 814 1631 1015

**Next Commission Meetings**

February 13 & 27, 2024 | 8:15 a.m. | Regular Meetings – District Office  
1705 Trigg Road, Ferndale, WA 98248

*or other location announced*

Contact: Ann Grimm, Commission Clerk (360) 384-4288 x 27

[www.pudwhatcom.org](http://www.pudwhatcom.org)

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AGENDA ITEM #3a  
January 23, 2024

## MINUTES OF THE REGULAR MEETING OF THE COMMISSION

January 9, 2024

### 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 8:15 a.m. by Commissioner Jaime Arnett. Said meeting was open to the public and notice thereof had been given as required by law. Those present included: Commissioner Atul Deshmane, Commissioner Christine Grant, Commissioner Jaime Arnett and Legal Counsel Jon Sitkin and Peter Ruffatto. Staff: Chris Heimgartner, General Manager; Assistant General Manager Brian Walters; Andrew Entrikin, Broadband Program Manager; Ann Grimm, Executive Assistant; Annette Smith, Director of Finance; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Paul Siegmund, Manager of Automation and Technology; Mike Macomber, IT/SCADA Technician; Jon Littlefield, Electric System Supervisor; Devin Crabtree, Chief Water Operator; Kurt Wank, Director of Utility Operations; and Stephanie Hooper, Accountant I.

Public attending:

Jack Wellman, Puget Sound Energy  
Dave Olson, Citizen  
Rick Maricle, Citizen  
Darrell Gray, NSEA  
James van der Voort, NSEA

### 2. Approval of Agenda

Requested change for Executive Session - it will not include water adjudication; there will be two general litigation topics discussed.

**ACTION:** Commissioner Deshmane made the motion to APPROVE THE AGENDA JANUARY 9, 2024 AS AMENDED. Commissioner Grant second the motion. Motion passed unanimously.

### 3. Approval of Consent Agenda

- a) Approval of Meeting Minutes of the Regular Meeting of December 12, 2023;
- b) Approval of Meeting Minutes of the Regular Meeting of December 19, 2023, and
- c) Approval of the Claims of January 9, 2024:

<u>VENDOR NAME</u>	<u>AMOUNT</u>
AMERICAN PUBLIC POWER ASSOCIATION	3,839.91
ASSOCIATION OF WASHINGTON CITIES	500.00
AT&T MOBILITY	1,801.22
CENTRAL WELDING SUPPLY	75.58
CHMELIK SITKIN & DAVIS	14,760.63
CONNER, ERIC	50.82
CONSOR NORTH AMERICA, INC.	12,952.63
CORNERSTONE MANAGEMENT, INC.	387.00
CULLIGAN NORTHWEST	68.21
DESHMANE, ATUL	532.98
EDGE ANALYTICAL LABORATORIES	24.00
FCS GROUP	935.00
FERNDALE ACE HARDWARE	184.86
FERNDALE AUTO PARTS	54.53

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FLOWSERVE FSD CORPORATION	13,423.74
GRANICH ENGINEERED PRODUCTS, INC.	3,538.19
GRAY MATTER SYSTEMS, LLC	5,836.00
HDR ENGINEERING, INC.	3,512.32
HEALTH PROMOTIONS NORTHWEST	150.00
IVOXY CONSULTING LLC	8,961.15
MALLORY SAFETY & SUPPLY LLC	208.97
MINMAX	2,835.00
NATIONAL SAFETY, INC.	716.76
NORTH COAST ELECTRIC COMPANY	1,637.12
NORTHWEST FIBER DBA ZIPLY FIBER	2,903.59
NP INFORMATION SYSTEMS (3-D CORP)	269.82
P&P EXCAVATING, LLC	13,782.30
PACIFIC NORTHWEST UTILITIES	1,000.00
PUBLIC POWER COUNCIL	3,570.00
PUBLIC UTILITY RISK MANAGEMENT SERV	9,748.49
PUGET SOUND ENERGY, INC	4,191.92
RDS - RECYCLING & DISPOSAL SERVICE	59.23
REGENCE BLUE SHIELD	46,318.38
REISNER DISTRIBUTION, INC	1,219.96
RICOH USA	199.49
SMITH MECHANICAL	519.81
SSC - SANITARY SERVICE COMPANY	613.13
STAR RENTALS	1,705.78
TEAMSTER LOCAL #231	616.00
UNITED WAY OF WHATCOM COUNTY	707.00
VALVOLINE	355.94
WASHINGTON DENTAL SERVICE	2,828.05
WASHINGTON TEAMSTERS WELFARE	13,567.40
WHATCOM COUNTY COUNCIL OF GOVERNMENTS	150.00
WHATCOM JANITORIAL	2,860.00
<b>GRAND TOTAL</b>	<b>\$184,172.91</b>

**ACTION:** Commissioner Grant made the motion to APPROVE THE CONSENT AGENDA OF JANUARY 12, 2023. Commissioner Deshmane second the motion. Motion passed unanimously.

**4. Public Comment** – None made.

**5. General Manager’s Report**

- Will be on vacation after the January 23 meeting, Assistant General Manager Walters will cover;
- Will provide additional updates during Old Business.

**6. Old Business**

**a) Broadband Program Update**

- Comments were made regarding the initial proposals regarding BEAD funding; What has been submitted should be available next week;
- Staff continues to look for additional broadband grants;
- Point Roberts Broadband Project Request for Qualifications – District is reviewing final cost estimates, contract negotiations and is preparing for Commission approval at the January 23 meeting.

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## b) Adjudication Update

- Sitkin discussed a pending bill regarding adding a fifth judge for assistance with the judicial system in Whatcom County. This requires legislative action.
- Senate Bill 5828 was also discussed, which concerns water rights adjudication commissioners and referees;
- Discussed the Department of Ecology's draft court claim forms for small use (residential groundwater up to 500 gallons per day) and for water right full-length the adjudication. Comments are due March 2, 2024.
- Sitkin will be giving local presentations on the adjudication process this week and next;

## c) Geothermal Update

- Focusing on lobbying efforts and has contracted with a lobbyist regarding geothermal and thermal.
- Grant and Heimgartner met with the Lummi Nation and Nooksack Tribal Council regarding geothermal presentation; possible engagement of a local workforce in the future.
- Commissioner Grant will be the representative to make comments on two Senate hearings this week regarding House Bill 2129 – promoting the development of geothermal energy resources.

## d) Board Retreat Discussion

- Deshmane contacted more consultants; discussion ensued to contact Kelly Smith Johnston (Mayor of Centralia) to act as a facilitator, and further discussed what the Commission is seeking for a board retreat. Commissioner Arnett said topics relating to achieving the goals of strategic plan at the retreat; however, there are other topics such as engaging staff in the retreat and explore ideas on how the Commission interacts with each other, staff and the public, working as a team, and learning more about the culture of the PUD.

## e) WPUDA Day on the Hill

Day on the Hill in Olympia is February 14. Commissioners discussed who will be attending and assisting the Washington PUD Association's event for legislators.

## 7. New Business

### a) Nooksack Salmon Enhancement Association (NSEA) Presentation

Since 2010, the Commission has approved funding requests from the Nooksack Salmon Enhancement Association (NSEA) for habitat restoration projects.

James van der Voort provided an update on the 2023 projects. For 2024, NSEA is requesting funding to provide project oversight, acquire restoration materials such as plants, vole and beaver protection, and large woody debris for salmon habitat restoration of lowland streams. The work will be performed again by the Washington Conservation Corps (WCC) Crew and managed by NSEA staff. A minimum of 20 salmon habitat restorations projects will be implemented on Watershed Resource Inventory Area 1 lowland streams. Funding has been allocated in the 2024 budget for this purpose.

**ACTION:** Commissioner Grant made the motion to APPROVE FUNDING IN THE AMOUNT OF \$20,000 FOR NOOKSACK SALMON ENHANCEMENT ASSOCIATION (NSEA) TO SUPPORT WASHINGTON CONSERVATION CORPS WORK ON HABITAT RESTORATION PROJECTS FOR 2024. Commissioner Deshmane second the motion. Motion passed unanimously.

### b) Approve Professional Services Agreement with Electric Power Systems

In February of 2021, the Commission approved the Standard Agreement for Professional Consulting Services with Electric Power Systems to provide services to the District that involved current and/or future capital improvement and maintenance projects related to the District's electric facilities. The initial term of the Agreement extended through December 31, 2023.

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Under the Agreement, the Consultant's general scope of services will include the performance of tasks focused on completing Capital Improvement and other maintenance projects associated with Whatcom PUD's systems related to its electric operations and administrative services.

If approved, the term of the new PSA would extend through December 31, 2026. There is no fiscal impact to the District.

**ACTION:** Commissioner Grant made the motion to APPROVE A PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH ELECTRIC POWER SYSTEMS FOR ELECTRICAL CONSULTING SERVICES, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT. Commissioner Deshmane second the motion. Motion passed unanimously.

## 8. Operations Report

- Walters reported on the state of the weather, weather vulnerability and impact on our operations. With bad weather forecasted this week, water operations are preparing ahead of time for any storm related incidents, especially for river turbidity spikes and possibility of frazil ice conditions.

## 9. Commissioner Reports

Grant:

- Will be providing testimony at two Senate hearings this week;
- Will attend the WPUDA Board of Directors meeting via Zoom
- Discussed the meetings with the Lummi Nation and Nooksack Tribe regarding possible geo-thermal opportunities.
- Is having ongoing conversations with Eric Hirst regarding water conservation.

Arnett:

- Will be attending the January WPUDA meetings via Zoom.

Deshmane:

- Will be attending the January WPUDA meetings in person.
- Is not attending the Public Power Council meeting.
- Will respond to email from WPUDA's Nicholas Garcia;
- Plans to attend the State Auditor's Exit Interview next week.

## 10. Public Comment – None made.

## 11. Executive Session

Commissioner Arnett requested an Executive Session pursuant to RCW 42.30.110(1)(i) general litigation and RCW 42.30.110(1)(g) to review the qualifications and/or performance of a public employee.

Estimated time for Executive Session was thirty (30) minutes. The Commission President indicated no action is anticipated to be taken after the adjournment of Executive Session. After a short break, the Commission adjourned to Executive Session at 10:15 a.m.

- At 10:49 a.m. an additional eleven (11) minutes was requested;
- At 11:00 a.m., an additional five (5) minutes was requested

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## 12. Adjourn

There being no further business for the regular meeting, Commissioner Arnett adjourned the regular meeting at 11:05 a.m.

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Jaime Arnett, President/Commissioner

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Atul Deshmane, Vice President/Commissioner

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Christine Grant, 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/2024-agenda-packets-meeting-minutes-recordings/>

## Action Memo

**To:** Commissioners Arnett, Deshmane and Grant  
**From:** Andrew Entrikin, Broadband Program Manager  
**Date:** January 23, 2024  
**Re:** Professional Services Agreement with Cobb, Fendley & Associates, Inc.

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**Requested Action:**

APPROVE A PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH COBB, FENDLEY & ASSOCIATES, INC FOR PROFESSIONAL TELECOMMUNICATION ENGINEERING AND DESIGN SERVICES AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.

**Background:**

Whatcom PUD was awarded a \$3,150,000 grant through the Washington State Broadband Office (WSBO) to bring fiber optic infrastructure to the Point Roberts community.

Whatcom County Council approved on October 10, 2023, funding in the form of an interlocal agreement, for \$350,000.

Cobb, Fendley & Associates, Inc. intends to provide professional telecommunications engineering and design services to assist Whatcom PUD and our partners, with our goal of building an open access dark fiber, carrier grade infrastructure network that will serve the currently unserved and underserved locations within the Point Roberts community.

Any requested changes to the PUD's standard Professional Services Agreement will be subject to final legal review.

**Fiscal Impact:**

Whatcom PUD's secured grants includes sufficient funds to cover work to be performed by Cobb, Fendley & Associates, Inc. under the Agreement during this calendar year.

**Recommended Action:**

APPROVE A PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH COBB, FENDLEY & ASSOCIATES, INC FOR PROFESSIONAL TELECOMMUNICATION ENGINEERING AND DESIGN SERVICES AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.

**AGREEMENT FOR PROFESSIONAL SERVICES NO. \_\_\_\_\_**

This **AGREEMENT FOR PROFESSIONAL SERVICES** ("Agreement") is made and entered into as of the later of the two (2) signature dates below, by and between:

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

Attn:  
1705 Trigg Road  
Ferndale, WA 98248

(the "PUD")

AND

Cobb, Fendley & Associates, Inc.  
ATTN: Vineeta Ram, PE  
4570 Avery Lane SE  
Suite C PMB 1020  
Lacey, Washington 98503  
Email: [vram@cobbfendley.com](mailto:vram@cobbfendley.com)

(the "Consultant")

**Project Name: Point Roberts Broadband Fiber to the Premise Project**

- **SCOPE OF WORK.** The Consultants scope of work (the "Services" or "Work") will be described pursuant to specific task orders (the "Task Orders") as described in the General Provisions herein: See attached **Exhibit "A"**.
- **COMPENSATION.** The Consultant shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown herein (the "Contract Amount"): See attached **Exhibit "B"**.
- **GENERAL PROVISIONS.** Services shall be performed in accordance with the General Provisions (which are attached hereto as **Appendix "A"** and form a part of this Agreement) and any attachments or schedules.
- **ENTIRE AGREEMENT.** This Agreement supersedes all prior agreements and understandings, and may only be changed by written amendment executed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the later of the dates indicated below. By signing below, each signatory represents that they have authority on behalf of their respective party to enter into this agreement, which shall be binding upon the parties according to its terms.

**Cobb, Fendley & Associates, Inc**

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

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Name/Title: \_\_\_\_\_

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

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



## APPENDIX A GENERAL PROVISIONS

In consideration of the mutual covenants and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. SCOPE OF WORK.** The objective of this Agreement is the timely preparation, completion and/or delivery of the scope of Work and/or deliverables described in the Task Order(s) issued pursuant to and governed by the terms of this Agreement. A copy of the Task Order form(s) to be executed by the parties is included as **Exhibit A**, attached hereto, and incorporated herein by this reference. Additional Task Orders and/or amendments to Task Orders shall be attached hereto as amendments and shall be made part of this Agreement upon approval as required herein. Any Task Order(s) issued by the PUD prior to the termination date of this Agreement shall be governed by the terms of this Agreement until completed even if the Task Order work extends beyond the termination date of this Agreement.

1.1 Services covered by this Agreement shall be performed in accordance with these General Provisions and any attachments or schedules. Except as may be otherwise provided for herein, this Agreement may only be amended by the mutual consent of both parties hereto, in writing and signed by duly authorized representatives of both parties.

**2. TERM OF AGREEMENT.** The Consultant shall not begin Work under the Agreement or any Task Order until the PUD has specifically authorized the Consultant to do so in writing. The time required for completion of all Work under each Task Order and, if appropriate, under a schedule for completion of phases of the Work shall be specified in each Task Order. The completion dates for Task Orders, or for phases of Work under a Task Order, may be modified only upon written agreement of the parties hereto. The completion dates for Task Orders, or for phases of Work under a Task Order, may be, but are not required to be, extended in the event of a delay caused by "Extra Work" requested by the PUD, or if the Consultant's Work is delayed by unavoidable circumstances beyond the control of the Consultant and which the Consultant could not reasonably have anticipated. This Agreement may be extended for multiple terms at the sole discretion of the PUD, subject to

budget appropriations and Commission approval when required; if so extended, all of the terms and conditions herein shall apply to such extension.

**3. COMPENSATION AND PAYMENT.** The Consultant shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown in the attached Consultant's Fee Schedule, **Exhibit B**. The Consultant shall receive no other payment for materials or disbursements unless expressly allowed by the Task Order. The Consultant shall not adjust the wage rates in **Exhibit B** without written authorization from the PUD.

3.1 Consultant shall supply the PUD with a monthly invoice and written documentation, satisfactory to the PUD, for all amounts due under this Agreement, including, but not limited to, project budget status and a narrative progress description of Services rendered that is acceptable in form to the PUD. All invoices submitted by the Consultant to the PUD shall reference any applicable billing codes provided by the PUD to the Consultant. Any applicable taxes shall be listed as separate line items on each Consultant invoice. All invoices and documentation may be reviewed and audited by the PUD, and payment may be subject to review or audit. Subject to the preceding, payments shall be due net thirty (30) days of receipt of such invoice by the PUD. In no event shall the PUD be charged finance charges (interest, late fees, etc.) on payments due under this Agreement. If required by the PUD, the Consultant shall provide periodic forecasts of its total fees and costs incurred to date. With regard to time and materials' Task Orders, only the reimbursable expenses specifically listed in the attached **Exhibit B** will be payable expenses under this Agreement.

3.2 If a Task Order specifies that the Work is to be performed on a fixed fee basis, the Consultant shall be paid the amount of the fixed fee as consideration for full and satisfactory performance of the Work regardless of the Consultant's cost to perform the Work. The PUD shall have sole authority for determining when all Work has been

satisfactorily performed by the Consultant; provided, however, that such determination is reasonable. The Consultant's payment for the Work shall not exceed the specific amount unless authorized in writing by the PUD, as provided herein. For a fixed fee Task Order, the fixed fee amount comprises all of the Consultant's payment for the Work, including, without limitation, all costs of salaries, overhead, non-salary expenses (including, but not limited to, travel, reproductions, telephone, supplies, and fees of outside consultants), as well as the Consultant's profits. The Consultant's payment for the Work shall not exceed the specified amount unless first authorized by the PUD.

3.3 The Consultant shall obtain the prior written approval of the PUD for any charges for additional services by the Consultant, the additional services of others retained by 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 Section.

4. **PAYMENT OF SUB-CONSULTANTS.** At the time of project completion, the Consultant agrees to certify to the PUD that all employees (including, without limitation, any union fees and benefit plans) and sub-consultants have been paid in full to the extent Consultant received payment from the PUD for sub-consultants' services. Final payment shall be preconditioned upon receipt of such certification by the PUD; the PUD may, in its sole discretion, withhold final payment until receipt of such certification. The Consultant shall be solely responsible for the performance and payment of any and all sub-consultants. All such sub-consultants shall possess all licenses and insurance as required by the laws of the State of Washington.

5. **TERMINATION.** This Agreement may be terminated by either party upon seven (7) days' written notice should a party fail to perform in accordance with its terms through no fault of the other. In the event the party that fails to perform is the Consultant, the determination of "fail to perform in accordance with its terms" shall be in the sole judgment of the PUD. In the event of termination, the Consultant shall be compensated for satisfactory Services performed to the termination date by reimbursement of the Consultant's actual

costs directly related to the project, plus normal overhead and reasonable profit. The PUD shall have sole authority for determining when all Work has been satisfactorily performed by the Consultant; provided, that such determination is reasonable. In no case, however, shall such reimbursement exceed the agreed-upon fee as approved and amended by the PUD. Upon Consultant's receipt of payment, any work product generated by the Consultant prior to such termination shall be the sole property of the PUD, and the Consultant agrees to provide the PUD with all such materials. If the accumulated payment made to the Consultant prior to notice of intent to terminate exceeds the total amount that would be due as set forth herein above, then no final payment shall be due, and the Consultant shall promptly reimburse the PUD for the excess paid.

5.1 Further, this Agreement may be terminated by the PUD at any time for any reason whatsoever, at the sole discretion of the PUD, with seven (7) days' written notice. If the PUD terminates for convenience, the PUD will pay according to the payment terms as provided in Section 5, above. If, after termination for failure of the Consultant to fulfill contractual obligations, it is determined that the Consultant has not so failed, the termination shall be deemed to have been for the convenience of the PUD.

5.2 In addition to the above, the PUD reserves the right to suspend all or any portion of the Work and Services for the Consultant's default or the PUD's convenience. If the Consultant's Work is delayed for more than thirty (30) calendar days due to circumstances for which the Consultant is responsible, the PUD may find the Consultant in default and terminate the Task Order and/or this Agreement.

6. **DEVIATIONS FROM SCOPE OF WORK.** The PUD 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 PUD 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, nor any additional charges incurred, unless and until the PUD approves in writing the

change order and the increased cost thereof. Any work done in violation of this Section shall be at the sole expense of the Consultant. Additionally, the PUD reserves the right to modify the amount spent for identified project tasks within the scope of work; provided, however, that the Contract Amount, as may be modified under Paragraph 3.3, is not exceeded.

6.1 The Consultant shall make all revisions and changes in the completed Work under this Agreement as are necessary to correct the Consultant, and its sub-consultants' negligent errors or omissions, without additional compensation from PUD.

7. **INSURANCE.** Consultant, concurrently with the execution of this Agreement, shall provide the PUD with evidence, as set forth in Section 7.7 herein, that Consultant has obtained and is maintaining the insurance listed as follows:

7.1 Workers' Compensation Insurance, as required by law.

7.2 Employers' Liability Insurance (bodily injuries) with a limit of One Hundred Thousand Dollars (\$100,000) per occurrence, with an insurance company authorized to write such insurance in all states where the Consultant will have employees located in the performance of its Work covering its common law liability to such employees.

7.3 Commercial General Liability Insurance with limits of Two Million Dollar (\$2,000,000) per occurrence and Two Million Dollar (\$2,000,000) aggregate, and Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or on behalf of Consultant with a One Million Dollar (\$1,000,000) combined single limit for bodily injury and/or property damage per occurrence.

7.4 Professional Liability Insurance covering Errors and Omissions of the Consultant in the amount of not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) annual aggregate.

7.5 Except with regard to the Professional Liability Insurance and Worker's Compensation Insurance, each of the policies required herein

**shall endorse the PUD as an additional insured.** Furthermore, each policy of insurance required herein shall (i) be written as a primary policy except for Professional Liability and Workers' Compensation; (ii) expressly provide that such insurance coverage required under this Agreement may not be materially changed, amended, or canceled with respect to the PUD except upon forty-five (45) days' prior written notice from the Consultant to the PUD (10 days' notice for cancellation due to non payment of premium); (iii) except with regard to the Professional Liability Insurance, contain an express waiver of any right of subrogation by the insurance company against the PUD and its elected officials, employees, or agents; (iv) expressly provide that the defense and indemnification of the PUD as an "additional insured" will not be affected by any act or omission by Consultant which might otherwise result in a forfeiture of said insurance; (v) except for Professional Liability and Workers' Compensation contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another, except for Professional Liability and Workers' Compensation; and (vii) provide for coverage for damage to the PUD's property caused by the Consultant.

7.6 With regard to the Professional Liability Insurance, the Consultant shall maintain the same in full force and effect during the term of this Agreement and for a period of one (1) year thereafter.

7.7 The Consultant shall furnish the PUD with copies of Certificates of Insurance, evidencing the policies of insurance required herein. The Consultant shall maintain these policies as identified above for itself and its sub-consultants for the term of this Agreement and for a period of one (1) year thereafter. The PUD's failure to request such certificates shall not relieve the Consultant of the obligation to provide them.

7.8 The Consultant shall maintain the insurance in effect at all times that it is performing Work under this Agreement. Failure to obtain and/or maintain such insurance shall be grounds for the PUD to find the Consultant in default and terminate the Agreement accordingly.

Alternatively, the PUD may, at its option, purchase such insurance and deduct the reasonable expense therefore from payments made to or owing to the Consultant.

8. **CONSULTANT IS NOT AN AGENT OR EMPLOYEE OF THE PUD.** In performing the Work and Services hereunder, the Consultant and Consultant's employees, agents, and representatives shall be acting as independent Consultants, and as such, shall not be deemed or construed to be partners, employees, or agents of the PUD in any manner whatsoever. No employee of the Consultant shall be considered an employee of the PUD even while performing Work required under this Agreement. Furthermore, the Consultant shall not hold itself out as, nor claim to be, an officer or employee of the PUD by reason hereof, and the Consultant will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the PUD.

9. **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 sub-consultants.

10. **COMPLIANCE WITH APPLICABLE LAW.** The Consultant shall comply with all the PUD's resolutions and all federal, state, and local laws, regulations, and ordinances that are applicable to the Work performed pursuant to this Agreement. Both parties mutually agree to re-negotiate scope, budget, and schedule should a change in any of the applicable PUD's resolutions, federal, state, or local laws, regulations, or ordinances during the performance of the Work affect the cost of performing the Work. The Consultant shall register (and shall require the same of all sub-consultants), as required by RCW 23B.15.010, to do business in the State of Washington and shall provide proof of the same to the PUD. By executing this Agreement, Consultant further certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. It further agrees by acceptance of this

Agreement that it will include this clause without modification in all lower-tier transactions, solicitations, proposals, agreements, contracts, and sub-contracts. Where the offeror/Consultant or any lower-tier participant is unable to certify to this statement it shall attach an explanation to this Agreement. The PUD reserves the right to require Consultant to replace a sub-consultant or lower-tier participant who cannot meet the foregoing certification requirement.

11. **INDEMNIFICATION.** The Consultant shall defend except for defense of professional liability claims, (with legal counsel reasonably satisfactory to the PUD), indemnify, and hold the PUD, its elected officials, agents, and employees harmless from and against all liabilities, obligations, fines, claims, damages, penalties, lawsuits, governmental proceedings, judgments, costs, and expenses (including, without limitation, all reasonable attorneys' fees, costs, and expenses of litigation):

- To the extent caused by any negligent act or omission of Consultant, its directors, officers, sub-consultants, agents and/or employees in connection with the Services provided pursuant to this Agreement; provided, however, that in the event of concurrent negligence of the Consultant and the PUD, then this defense and indemnification shall apply only to the extent of the Consultant's negligence; and/or
- To the extent caused by or arising out of a breach of this Agreement by Consultant; and/or
- To the extent caused by or arising out of any failure on the part of Consultant to perform or comply with any rule, ordinance, or law to be kept and performed.

The PUD will inform Consultant of any such claim or demand that alleges liability based, in whole or in part, on any negligent act or omission of Consultant, its directors, officers, agents, or employees. Thereafter the Consultant shall (i) reasonably cooperate in the defense of such claim; and (ii) except for Professional Liability and Workers' Compensation pay its defense of such claim as incurred, whether or not such claim is ultimately successful. In this regard, the PUD will reasonably cooperate with the Consultant in allowing the Consultant to jointly select, with the PUD, attorneys to defend the PUD and Consultant;

provided, however, that the Consultant confirms its obligation to pay the PUD's defense costs.

11.1 In the event of concurrent negligence by the PUD and Consultant, then at the conclusion of the action (e.g., judgment, arbitration award or settlement), the attorneys' fees and costs incurred in defending the PUD shall be apportioned to the parties based on their respective fault, as provided by RCW 4.24.115.

11.2 The foregoing indemnification obligation shall include, but is not limited to, all claims against the PUD by an employee or former employee of the Consultant, or any sub-consultant or service provider. For this purpose, the Consultant expressly waives, as respects to the PUD only, all immunity and limitation on liability under any industrial insurance Act, including Title 51 RCW, or other workers compensation act, disability act, or other employees benefits of any act of any jurisdiction which would otherwise be applicable in the case of such a claim. **BY INITIALING BELOW, THE PUD AND THE CONSULTANT CERTIFY THE WAIVER OF IMMUNITY SPECIFIED BY THIS PROVISION WAS MUTUALLY NEGOTIATED.**

\_\_\_\_\_  
Consultant

\_\_\_\_\_  
PUD

12. **WORK-PRODUCT CONFIDENTIALITY.** Any reports, documents, questionnaires, records, information, or data given to, prepared, or assembled under this Agreement which the PUD requests to be kept confidential shall not be made available by the Consultant to any individual or organization without prior written approval of the 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, or software programs provided by the PUD, nor any other documents produced, in whole or in part, by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

13. **PUBLIC DISCLOSURE REQUEST.** Correspondence, reports, and other written work product will be generated during the course of the relationship created by this Agreement, and third parties may request such information pursuant to the Washington State Public Disclosure Act (RCW 42.17.250 *et. seq.*). The parties agree that in the event that such a request is filed, the party with whom the request is filed will promptly notify all other parties to this Agreement. The parties further agree that they will not disclose any such requested material until at least ten (10) business days after providing notification to all other parties to this Agreement. The intent of this clause is to provide all parties the opportunity to seek injunctive relief pursuant to RCW 42.17.330 so as to protect the vital functions of those entities. This clause shall survive the termination or expiration of this Agreement.

14. **PLANS, ETC., PROPERTY OF PUD.** All Work performed under this Agreement is work for hire. Upon Consultant's receipt of payment, all deliverables, including, but not limited to, original plans, drawings, and specifications (collectively referred to herein as the "Drawings and Specifications"), prepared by the Consultant and any and all sub-consultants for the PUD, and funded by the PUD, are and shall remain the property of the PUD whether or not the project for which they are made is executed. This shall not apply to proprietary software or documentation that may be provided to the PUD and was developed independent of funding by the PUD. The Consultant assumes no liability for any use of the Drawings and Specifications other than that originally intended for this Project. Originals, including electronic forms of the data prepared by the Consultant and funded by the PUD, shall become the property of the PUD. No reports, records, questionnaires, software programs provided by PUD, or other documents produced, in whole or in part, by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant. The Consultant's Work shall not infringe on any copyright, patent, trade secret, or other proprietary rights held by any third party.

15. **ELECTRONIC FILE COMPATIBILITY.** All electronically transmitted output must be compatible with existing PUD software, and shall be provided to the PUD in a CAD or other

appropriate electronic format. All deliverables shall be provided in native format and a ubiquitous format (e.g. PDF). Consultants shall check with the PUD for software application, system compatibility, and preferred file type.

16. **NON-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, or a member of any other protected class. The Consultant shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, or being a handicapped or disadvantaged person or a disabled or Vietnam-era veteran, or a member of any other protected class.

17. **FEDERAL RESTRICTIONS ON LOBBYING.** Consultant certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal-appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing, or attempting to influence, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

18. **FEDERAL DEBARMENT AND SUSPENSION.** The Consultant certifies, that neither it nor its "principals" (as defined in 49 CFR 29.105 (p)) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. In the event the PUD consents to subletting a portion of the Work pursuant to Paragraph 19, below, Consultant shall include this provision in any such subcontract.

19. **SUBLETTING OR ASSIGNING OF AGREEMENT.** The Consultant shall not sublet or

assign any of the Work covered by this Agreement without the express written consent of the PUD.

20. **NOTICES.** All notices and payments hereunder may be delivered or mailed to the addresses listed above. If delivered by messenger, courier (including overnight air courier), or electronic transmittal, they shall be deemed delivered when received at the street or electronic mail addresses listed above. All notices and payments mailed, whether sent by regular post or by certified or registered mail, shall be deemed to have been given on the second (2<sup>nd</sup>) business day following the date of mailing, if properly mailed to the mailing addresses provided above, and shall be conclusive evidence of the date of mailing. The parties may designate new or additional addresses for mail or delivery by providing notice to the other party as provided in this Section. The addresses for delivery of notices and payments are as set forth in the introductory Section of this Agreement.

21. **REVIEW OF TITLE DOCUMENTS.** Prior to the execution or recordation of any documents effecting title to any property, said document shall be reviewed by the PUD. Consultant shall not execute or record (or make to be executed or recorded) any such document prior to the PUD's review and approval.

22. **JURISDICTION.** This Agreement is made and delivered in the State of Washington, and shall be construed and enforced in accordance with the laws thereof. Jurisdiction and venue of any dispute hereunder shall be solely in the Superior Court of the State of Washington in and for Grant County. In the event of a dispute arising out of or under this Agreement, the substantially prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs. Unless otherwise prohibited by law, the PUD and Consultant waive their right to a trial by jury in any litigation resulting from this Agreement.

23. **POLLUTION.** The PUD acknowledges that the Consultant is not responsible for the creation or presence of contamination or pollution, if any, at the property, except to the extent that such a discharge, release, or escape is caused by the negligent act or failure to act of the Consultant. 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 Consultant will promptly notify the PUD of contamination conditions, if identified. Notwithstanding the foregoing, the PUD does not herein waive any cause of action for damages resulting from the PUD's reliance on any misrepresentation (made either knowingly or negligently) by the Consultant with regard to the presence of any contamination or pollution.

24. **STANDARD OF PERFORMANCE.**

Consultant represents that the Services will be performed within the limits prescribed by the PUD and that Consultant's findings, recommendations, specifications, and/or professional advice provided hereunder will be prepared and presented in a manner consistent with the standard of care and

skill ordinarily exercised by other professionals providing similar services in the State of Washington under similar circumstances at the time the Services are performed.

25. **ENTIRE AGREEMENT.** This is the entire Agreement between the parties. There is no other oral or written understanding between the parties concerning this matter. The Consultant specifically understands that no PUD employees other than the project manager or their supervisor are authorized to direct the work of the Consultant.

26. **SIGNING AUTHORITY.** Anyone signing this Agreement by said signature certifies that they have the authority to execute said document on behalf of the Consultant and that their signature is binding upon the firm or corporation.

## EXHIBIT A

### TASK ORDER FORM

**PLEASE SUBMIT ON COMPANY LETTERHEAD**

Public Utility District No. 1 of Whatcom County  
Agreement for Professional Services No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_  
Task Order #\_\_-\_\_

## Point Roberts Broadband Fiber to the Premise Project

This **TASK ORDER** ("Task Order") is issued pursuant to the Agreement for Personal Services #\_\_\_\_-\_\_\_\_-\_\_\_\_, dated \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, between the **Whatcom County Public Utility District No. 1 of Whatcom County** (the "PUD") and \_\_\_\_\_ (the "Consultant") whose address is \_\_\_\_\_. Unless otherwise specified below, the performance of services hereunder and the payment therefore shall be subject to the terms and conditions of said Agreement.

### **(A) Scope of Work:**

CobbFendley will be providing professional engineering and design service for the Whatcom PUD Rural Broadband FTTx Project, located in Point Roberts community which is a pene-exclave of Washington on the southernmost tip of Tsawwassen Peninsula, south of Vancouver, Canada. Based on information provided in the RFQ and interview process, we understand the project scope extends around 26 miles of aerial and underground fiber run which serves roughly around 1,274 homes within the community. \*See Whatcom County PUD Rural Broadband Fiber to the Premise Project – Proposal for Professional Telecommunication Engineering and Design Services.

### **(B) Deliverables:**

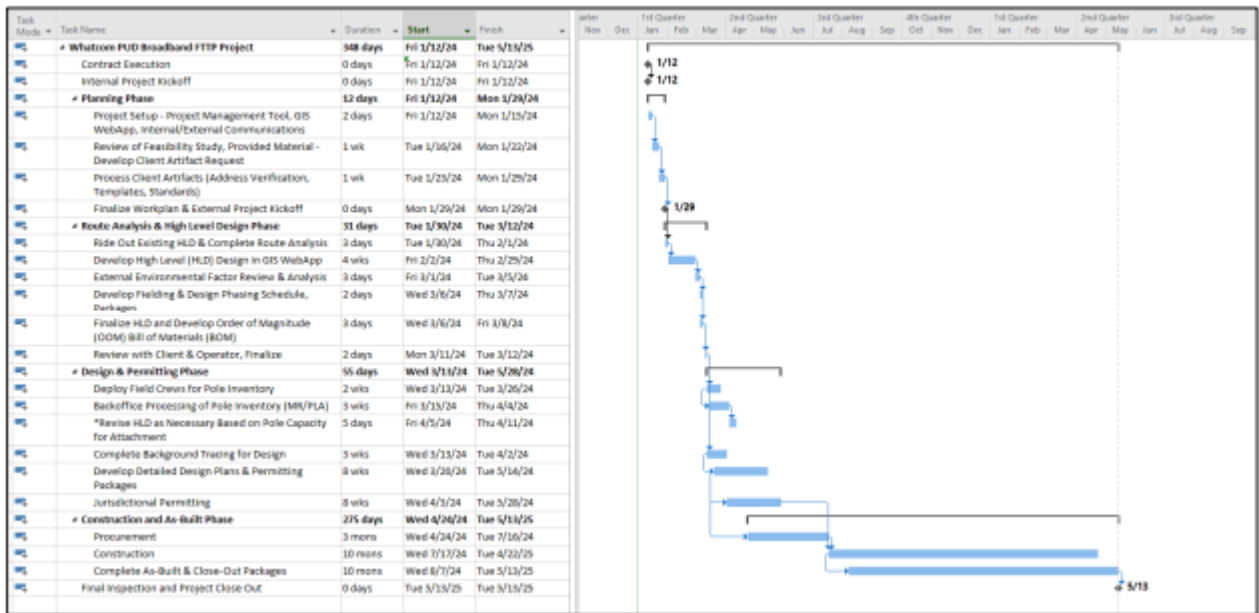
1. Aerial and underground design and construction-ready drawings for a dark fiber optic "home-run" architecture (single strand allocated from the A location to the Z location), to each premise identified in the project boundaries. These plans will be made available to the PUD in PDF and GIS ESRI shapefile format.
  2. Prepare bill of materials (BOM)/take-off sheets within 4 weeks of contract execution
  3. Permitting services to include submittals to Whatcom County, Puget Sound Energy and other jurisdictional areas as identified
  4. Assist with right-of-way acquisition as required including GIS mapping and locates
  5. Pole contact design
  6. Pole contact application with Puget Sound Energy (PSE)
  7. Interface with multiple municipalities and agencies to coordinate route requirements including Whatcom County and Puget Sound Energy
  8. Assist in preparation of engineering material required in construction bid documents and participate in any Whatcom PUD Point Roberts Broadband Fiber to the Premise Project Proposal for Engineering Services pre-bid or pre-contracting meeting
  9. Assist with oversight of the construction process through responding to RFIs and quality control of close-out documents to develop as-built drawings
- \*See Whatcom County PUD Rural Broadband Fiber to the Premise Project – Proposal for Professional Telecommunication Engineering and Design Services



All work through the design phase will be completed within 6 months of receiving the notice to proceed and other relevant information from Whatcom PUD. As-builts will be completed within 1 week of receiving the contractor redlines.

**Note:** All deliverables shall be provided in native format and a ubiquitous format (e.g. PDF).  
 . Consultants shall check with the PUD for software application, system compatibility and preferred file type.

**(C) Schedule:**



\*See Exhibit B – Project Schedule and Timeline

**(D) Fee Basis:**

CobbFendley will send monthly invoices to the client with percent completion of each milestone as described below with an accompanying progress report. See Exhibit C for detailed cost breakdown.

Project Management will be billed on each monthly invoice.

- Engineering Design milestones are estimated at 70% on permit submittal, 90% on permit approval and 100% on As-built completion.
- Auxiliary line items will be invoiced monthly, as accrued, per unit rates in Exhibit C.

Services to be billed on a Fixed Fee Basis, not to exceed \$300,414.53 Dollars (See Exhibit C for quantities and unit rate breakdown) including auxiliary services as summarized below, and per the attached cost breakdown.

CobbFendley proposes to perform the described Scope of Work and deliverables for the following lump-sum (Primary Engineering Services) and unit-based, not to exceed (Auxiliary Services) fees:

Primary Engineering Services	Not-To-Exceed Dollar Amount
1.0 Primary Engineering Services	\$ 272,707.75
<b>TOTAL</b>	\$ 272,707.75

Auxiliary Services	Not-To-Exceed Dollar Amount
1.0 Professional Engineer Seal	\$3,840.00
2.0 ROW Acquisition Support .	\$3,000.00
3.0 Special Permitting	\$5,000.00
4.0 Construction Support and Inspections	\$6,000.00
5.0 Splicing Design	\$10,200.00
<b>TOTAL</b>	Total Engineering Cost... ..... \$300,414.53

**Cobb, Fendley & Associates, Inc.**

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

Signature: \_\_\_\_\_  
Name/Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name/Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## EXHIBIT B

### CONSULTANT'S FEE SCHEDULE

[Exhibit B should set forth the agreed-upon schedule of hourly rates and other charges and disbursements the PUD is agreeing to pay the consultant. This should identify all job classifications, reimbursable expenses, and sub-consultant mark-ups.]

#### Primary Engineering Labor Cost Summary

Line Item	Qty	Unit	Comments/Notes
Total design LF	137,280	LF	26 miles per RFQ
Total Aerial Design LF	113,942	LF	Assumed 83% Aerial
Total Underground Design LF	23,337	LF	Assumed 17% Underground
<b>Primary Engineering Labor cost</b>	<b>\$ 272,707.75</b>	<b>\$</b>	
<b>Total Unit cost</b>	<b>1.99</b>	<b>\$/LF</b>	

#### Engineering Labor Cost Details

Line Item	Description	Unit Cost	Unit	Quantity	Cost	Comments
<b>INITIAL PROJECT SET UP AND PROJECT MANAGEMENT</b>						
Project Setup/Project Plan	AGDL Setup, IX Review, Coordination, Kickoff, Templates, Project Plan Preparation	\$ 1,500.00	Each	1	\$ 1,500.00	
Project Management	Project oversight and management throughout lifecycle, reporting, coordination, meetings.	\$ 0.25	LF	137,280	\$ 34,320.00	To be Invoiced monthly
<b>Project Set up and PM Total</b>					<b>\$ 37,820.00</b>	
<b>HIGH LEVEL DESIGN</b>						
Route Analysis & Planning (FTTs Rural)	Engineering labor required for high level planning and design. Review network architectures, topology, routing, constructability, sustainability, fiber and conduit capacity. Google Earth or GIS Exhibit with summary tables.	\$ 0.14	LF	137,280	\$ 19,219.20	
High Level BOM and Cost Estimate	Preparation of high level bill of materials and cost estimation including preparation of AGDL maps for the proposed route	\$ 0.04	LF	137,280	\$ 5,491.20	
<b>High Level Design Total</b>					<b>\$ 24,710.40</b>	
<b>DETAILED DESIGN AND PERMITTING</b>						
Engineering Design (UG) - Simple	Design labor required to create CAD/PDF plan set for underground fiber optic routes; plan section only. PE Seal is not included in this line item (See Professional Engineer Seal)	\$ 1.25	LF	23,337	\$ 29,171.25	Estimated from proposed route map
Engineering Design (Overhead) - Simple	Design labor required to create CAD/PDF plan set for overhead fiber optic routes; plan section only. PE Seal is not included in this line item (See Professional Engineer Seal)	\$ 0.55	LF	113,942	\$ 62,668.10	Estimated from proposed route map
Joint Pole Database Applications (<25 poles)	Complete and submit the NJUNS Application As Needed	\$ 300.00		12.00	\$ 3,600.00	
Jurisdictional Permitting	Submit, Track, and Resubmit Permit Sets	\$ 350.00	Submittal/Plan Set	14.00	\$ 4,900.00	PSE, WDOT, County, City, BNSF
Make Ready Analysis	Review Pole to JGD Standards, make ready feasibility	\$ 100.00		57.00	\$ 57,000.00	
Pole Data Collection	Title, Katapult - Attribute & Calibrate	\$ 28.00		57.00	\$ 15,960.00	
Make Ready Engineering/Pole Loading Analysis	Design make ready for proposed attachment and perform structural pole loading analysis	\$ 100.00		171.00	\$ 17,100.00	Assumed 30% needs make ready
Standard TCP	Select and apply appropriate standard TCP and details into Permit/Design Set	\$ 75.00	Sheet	14.00	\$ 1,050.00	
<b>Detailed Design and Permitting Total</b>					<b>\$ 191,449.35</b>	
<b>AS-BUILT AND PROJECT CLOSE OUT</b>						
As-Built (no seal)	Create As-Built drawing when no PE Seal is required. Does not include field verification. (Plan Sheets)	\$ 0.10	LF	137,280	\$ 13,728.00	
Project Close out	Preparation of all latest drawings and documentation for the final submission to the client and to satisfy grand requirements				\$ 5,000.00	
<b>Construction Support and As-built Total</b>					<b>\$ 18,728.00</b>	
<b>TOTAL ENGINEERING COST</b>					<b>\$ 272,707.75</b>	

**Auxiliary Cost Summary**

Line Item	Description	Unit Cost	Unit	Quantity	Not to Exceed Cost	Comments
Professional Engineer Seal	Professional Engineer review and sealing of plan set sheets, as required per jurisdiction. Can be combined with Engineering Design Units.	\$ 192.00	Sheet	20	\$ 3,840.00	
ROW acquisition Support	Review areas which needs additional easements and ROW acquisitions. Assists in ROW acquisition	\$ 150.00	Per hour	20	\$ 3,000.00	Use Exhibit D rate table for actual unit rate for invoicing.
Special Permitting	Submit, Track, and Resubmit Permit with long lead time and extensive detailed plans and coordination.	\$ 2,500.00	Submission/Plan Set	2	\$ 5,000.00	
Construction Support and Inspections	Provide support for preparation of construction bid documents and participate in pre-bid meetings. Assist with the oversight of construction process.	\$ 150.00	Per hour	40	\$ 6,000.00	Use Exhibit D rate table for actual unit rate for invoicing.
Splicing Design	Fiber strand allocation plans and leasing capacity analysis	\$ 150.00	Each	60	\$ 10,200.00	

**ASSUMPTIONS, EXCLUSIONS, AND ADDITIONAL SERVICES Assumptions**

The following assumptions were made in the development of this Scope of Work:

- No underground utility locates will be required for completing the design
- The proposal is for a maximum of 26 design miles and 1,274 homes of which 23,337 LF is underground and 113,942LF is overhead
- Record drawing or other reference documents for completing the design are available at no additional cost
- Profile sections not required for design package
- All work will be performed within the ROW
- Additional fee if a re-permitting is required for change in scope or expired permits
- Permitting fee for jurisdictions will be paid by the client or be subject to pass through markup if paid by CobbFendley

**Exclusions**

The following exclusions will apply to this Scope of Work:

- Utility Coordination
- Utility Locates
- Tribal land permitting Additional Services Any services not included in the scope shall be considered

**Additional Services**

Additional Services are provided on a negotiated lump sum basis, if requested, and after Client authorization with the execution of a Supplement to the Original Agreement.

- Subsurface Utility Engineering
- GIS Asset Management
- Full ROW Acquisition Services (Survey, Negotiations, etc.)

## Action Memo

**To:** Commissioners Arnett, Deshmane, and Grant  
**From:** Kurt Wank – Director of Utility Operations  
**Date:** January 23, 2024  
**Re:** Approve Professional Consulting Services Agreement with Eagle Eye Aerial Solutions

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**Requested Action:** APPROVE A PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH EAGLE EYE AERIAL SOLUTIONS FOR UNMANNED INSPECTION SERVICES, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.

**Background:** From time to time, as needed, the District has retained engineering and technical consulting services to evaluate the condition of its electric and water utility facilities. Both aerial and ground-based field inspections have been utilized as part of this ongoing effort. On the electric system side, past aerial inspections have included the use of a helicopter to visually inspect, photograph, and thermograph both transmission structures and lines. On the ground, District electric staff have conducted their own visual inspections and third-party line crews have been retained to do bucket-truck in-the air inspections. These efforts are time consuming and relatively expensive.

Damage assessment following a storm event (i.e., high winds, ice) is constrained by a number of factors, including (1) availability of third-party line crews to perform the work; (2) access to the transmission line corridors (electric and water); and, (3) time required to do the assessments.

Regulatory requirements, particularly on the electric system side require regular inspections and evidence that system facilities are being maintained to industry standards

Eagle Eye Aerial Solutions has demonstrated the capabilities of its aerial services, utilizing an unmanned platform for visually inspecting transmission structures. Staff is impressed by the technology and the ability of the unmanned vehicle to do close-in and top-down inspections relatively quickly. To staff's knowledge, it is the only organization in the Northwest that has a commercial license to conduct such work.

Staff believes, based on the work conducted, that the use of the unmanned platform for aerial inspection of facilities utilizing cameras for real-time observations, photography, and thermography will greatly enhance our ability to assess the condition of both electric and water facilities. Also, use of this technology is faster and less expensive than the traditional means of doing these field surveys. The use of an unmanned platform is particularly well suited for damage assessments after a storm event (high winds, floods, etc.) versus the use of traditional land-based vehicles.

If approved, the term of the new PSA would extend through December 31, 2026.

**Fiscal Impact:** Whatcom PUD's planned 2024 Annual Budget includes sufficient funds to cover work to be performed by Eagle Eye Aerial Solutions under the Agreement during this calendar year.

**Recommended Action:** APPROVE A PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH EAGLE EYE AERIAL SOLUTIONS FOR UNMANNED INSPECTION SERVICES, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.

**STANDARD AGREEMENT  
FOR PROFESSIONAL CONSULTING SERVICES**

**THIS AGREEMENT** (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_ 2024, by and between the **PUBLIC UTILITY DISTRICT NO. 1 of WHATCOM COUNTY**, 1705 Trigg Road Ferndale, WA 98248, hereinafter called the "Whatcom PUD," and **EAGLE-EYE AERIAL SOLUTIONS, LLC**, having a mailing address of P.O. Box 31272; Bellingham, WA 98226, hereinafter called "Consultant," for projects generally described as:

**Consultant’s general scope of services will include the performance of field survey tasks focused on aerial inspection & analysis of electric and water utility facilities to assist District staff in identifying items requiring maintenance, repair, and/or replacement. Aerial surveys may include, but are not inclusive of, photography, video, infrared “hot spot” thermography, LIDAR imaging. Consultant will utilize unmanned technology as the primary observation platform.**

**WHEREAS**, Whatcom PUD wishes to obtain technical consulting services related to aerial field surveys of its electric and water utility facilities; and

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

**WHEREAS**, the Consultant herein is licensed to perform such services in compliance with current applicable provisions of Federal, State, and local laws; and

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

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

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

2. **Term.** The term of this Agreement shall commence on execution of this Agreement until all tasks associated with the scope of services herein, as may be amended, have been completed by Consultant or **December 31, 2026**, whichever is sooner, unless terminated earlier as provided herein.

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

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

4.1 The Consultant shall submit monthly statements, including project budget status and a narrative progress description of services rendered in a form and in such detail as requested by Whatcom PUD. Whatcom PUD shall make prompt monthly payments for work completed to the Whatcom PUD's satisfaction and billed before the first day of the month. Whatcom PUD shall review and consider for approval all bills submitted one week prior to a regularly scheduled meeting of Whatcom PUD Commissioners. After approval of the Consultant's statement of bill, Whatcom PUD shall forward the approval to the County Treasurer for payment in the normal course of events. In no event shall Whatcom PUD be charged interest on payments due under this Agreement. Whatcom PUD shall not be obligated to pay for services deemed unsatisfactory.

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

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

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

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

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

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

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

c. Workers Compensation Insurance as required by law.

9.1 The foregoing insurance policies shall name Whatcom PUD as an additional insured. Consultant shall provide two (2) certificates of insurance and, if requested, copies of any policy to Whatcom PUD. Receipt of such certificate or policy by Whatcom PUD does not constitute approval by Whatcom PUD of the terms of such policy. Furthermore, the policy of insurance required herein shall: (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to Whatcom PUD



except upon forty-five (45) days prior written notice from the insurance company to Whatcom PUD; (iii) contain an express waiver of any right of subrogation by the insurance company against Whatcom PUD and Whatcom PUD's elected officials, employees, or agents; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Consultant which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to Whatcom PUD and Consultant.

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

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

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

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

**13. Electronic Transmission.** All electronically transmitted output must be compatible with existing District software and must be accompanied by at least one (1) copy of written reports. Consultant shall check with Whatcom PUD for software application and system compatibility.

**14. Contamination.** For the purpose of this clause, contamination conditions shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant,

contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. Consultant will promptly notify Whatcom PUD of contamination conditions, if identified.

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

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

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

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

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

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

application may be made at any time after the ten (10) day period has expired. Upon application to the court for an arbitrator, the Court shall select an arbitrator who shall render his/her decision no later than sixty (60) days after his/her appointment. If the arbitrator requests a hearing prior to rendering his/her decision, such hearing shall be held in Whatcom County, Washington within thirty (30) days of the arbitrator's appointment. The arbitrator's decision shall be binding on both parties. Each party shall bear its own expenses associated with the arbitration but shall share equally the costs of the arbitrator. RCW Chapter 7.04 and Rules 5.2 through 5.4 of the Mandatory Arbitration Rules for Superior Court ("MAR") shall govern the arbitration. In the event of any inconsistencies between the Binding Arbitration Clause, RCW Chapter 7.04, and MAR 5.2 through 5.4, the terms of the Binding Arbitration Clause shall take precedence over RCW Chapter 7.04 and MAR 5.2 through 5.4; and RCW Chapter 7.04 shall take precedence over MAR 5.2 through 5.

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

District: Kurt Wank, Director of Utility Operations  
Public Utility District No. 1 of Whatcom County  
1705 Trigg Road | PO Box 2308  
Ferndale, WA 98248

Consultant: Sam Adams  
Eagle-Eye Aerial Solutions, LLC  
P.O. Box 31272  
Bellingham, WA 98226

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: \_\_\_\_\_

## Action Memo

**To:** Commissioners Arnett, Deshmane, and Grant  
**From:** Kurt Wank – Director of Utility Operations  
**Date:** January 23, 2024  
**Re:** Approval for Standard Professional Engineering Services Agreements with Selected Electrical Engineering Firms

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### **Requested Actions:**

**ACTION ITEM No. 1:** APPROVE STANDARD PROFESSIONAL ENGINEERING SERVICES AGREEMENTS WITH ANVIL CORPORATION, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT, SUBJECT TO FINAL LEGAL COUNSEL REVIEW.

**ACTION ITEM No. 2:** APPROVE STANDARD PROFESSIONAL ENGINEERING SERVICES AGREEMENTS WITH ATWELL GROUP AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT, SUBJECT TO FINAL LEGAL COUNSEL REVIEW.

**ACTION ITEM No. 3:** APPROVE STANDARD PROFESSIONAL ENGINEERING SERVICES AGREEMENTS WITH TOTTH AND ASSOCIATES AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT, SUBJECT TO FINAL LEGAL COUNSEL REVIEW.

**Background:** Whatcom PUD, having no in-house Electrical Engineer, found it necessary to seek outside assistance. During the fourth quarter of 2023, the PUD posted a Request for Qualifications (RFQ) to provide various professional electrical engineering services for the purpose of assisting the PUD in studying, identifying, planning, designing and implementing projects associated with Whatcom PUD's high, medium, and low voltage electric systems & equipment. This assistance includes electric facilities associated with the PUD's industrial water treatment plants.

There was a robust response to the RFQ with several firms submitting Statements of Qualifications (SOQs). After review of the SOQs and follow-up on-line interviews, Whatcom PUD staff identified three qualified firms, each with different areas of electrical expertise. To assure adequate on-going electrical engineering support for the PUD, staff recommends that the Commission approve entering into agreements with the following three firms:

1. Anvil Corporation
2. Atwell Group
3. Toth & Associates

Approval by the Commission is conditioned on Legal Counsel review should any or all of the three firms identified request revisions to the Standard Professional Engineering Services Agreement (PSA) offered.

None of the PSAs will have budgets. Rather, as engineering services is required, the firm selected by the PUD to complete the services required will work with the PUD to develop a specific scope of services and budget. The scope and budget will be agreed to by the parties and included in an executed Work Order.

If approved, the term of each PSA would extend through **December 31, 2026**.

**Fiscal Impact:** Whatcom PUD's planned 2024 Annual Budget includes sufficient funds to cover electrical engineering services work to be performed by firms under the executed PSA(s) during this calendar year.

**Recommended Action:**

**ACTION ITEM No. 1:** APPROVE STANDARD PROFESSIONAL ENGINEERING SERVICES AGREEMENTS WITH ANVIL CORPORATION, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT, SUBJECT TO FINAL LEGAL COUNSEL REVIEW.

**ACTION ITEM No. 2:** APPROVE STANDARD PROFESSIONAL ENGINEERING SERVICES AGREEMENTS WITH ATWELL GROUP AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT, SUBJECT TO FINAL LEGAL COUNSEL REVIEW.

**ACTION ITEM No. 3:** APPROVE STANDARD PROFESSIONAL ENGINEERING SERVICES AGREEMENTS WITH TOTH AND ASSOCIATES AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT, SUBJECT TO FINAL LEGAL COUNSEL REVIEW.

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

THIS AGREEMENT AND CONTRACT made and entered into on this \_\_\_ day of \_\_\_\_\_ 2024, by and between the PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, a municipal corporation under the laws of the State of Washington, hereinafter also referred to as "Whatcom PUD" or "PUD" and TOTH & ASSOCIATES whose address is 5331 S Macadam Ave Suite 344, Portland, OR 97239 hereinafter also referred to as the "Engineer".

WITNESSETH THAT:

WHEREAS, Whatcom PUD desires to retain an engineer to provide professional engineering services for the PUD; and,

WHEREAS, Whatcom PUD has conducted a process that complies with all provisions of Federal, State and local laws concerning the selection of an engineer for professional engineering services for the PUD; and,

WHEREAS, Whatcom PUD, as a result of the selection process, has selected TOTH & ASSOCIATES to provide such professional engineering services; and,

WHEREAS, TOTH & ASSOCIATES does offer to provide such professional engineering services.

NOW, THEREFORE, the parties herein do mutually agree as follows:

1. Engagement of the Engineer. Whatcom PUD hereby agrees to engage the Engineer, and the Engineer hereby agrees to perform the services in a competent and professional manner. The specific assignments for the Engineer will be identified from time to time by the PUD. The Engineer will prepare and submit to the PUD a proposed Scope of Work ("SOW"), which shall include the proposed scope of services and fee estimate for the proposed engineering assignment. Upon review of the proposed SOW, the PUD may propose revisions. Once the SOW is agreed to by the parties, the PUD will prepare and execute a Work Order for the specific assignment. The scope of services described in the Work Orders is hereinafter referred to as "Services". Services of the Engineer shall conform with the standard of care applicable to professionals providing similar such services in the same or similar locality under comparative time constraints in the State of Washington. All Work Orders must be approved in writing and approved in advance by Engineer, the PUD's Commission, General Manager or other appropriate PUD staff in accordance with PUD policies. The terms and conditions of this Agreement shall apply in all approved Work Orders., 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. Time of Beginning and Completion of Performance. The term of this Agreement shall commence as of the date of execution of this Agreement and shall extend until **December 31, 2026**, unless terminated earlier as provided for elsewhere in this Agreement.

2.1 Whatcom PUD 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. Compensation.

A. Whatcom PUD shall pay the Engineer only for Services actually rendered, which are described in each Work Order. Such payment shall be full compensation for Services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Services. The Engineer shall obtain the prior written approval of the PUD 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. Such changes in scope of Services shall be implemented through an amendment to the corresponding Work Order and approval of the PUD. The Engineer shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

B. The Engineer shall be paid on a time and expenses basis in accordance with the Engineer's current Standard Schedule of Charges unless otherwise modified by the provisions of a Work Order. The Engineer's Schedule of Charges is updated annually on January 1. The Engineer's current Schedule of Charges, which is effective through December 31, 2024, is attached as Exhibit A. The Engineer shall submit any updated Schedule of Charges to Whatcom PUD for approval.

C. The Engineer may submit biweekly statements for each Work Order, but shall at a minimum submit monthly statements for each Work Order, including project budget status and a narrative progress description of Services rendered, in a form and in such detail as requested by Whatcom PUD. The PUD shall make prompt monthly payments for Services completed to the PUD's reasonable satisfaction. The PUD shall review and consider for approval all bills submitted at least ten (10) business days prior to a regularly scheduled meeting of Whatcom PUD's Commission. If the bill is not received within the time period specified, then it will be considered for approval at the next regularly scheduled meeting of the PUD's Commission. After approval of the Engineer's statement of bill by the Commission, the PUD shall forward the approval to the County Treasurer for payment in the normal course of events. In no event shall the PUD be charged interest on payments due under this Agreement for a period of thirty (30) calendar days since the date the PUD received the statement from the Engineer. The PUD shall not be obligated to pay for Services reasonably deemed unsatisfactory or not within the scope of Services.

D. All requests for payment shall be sent to:

Public Utility District No. 1 of Whatcom County  
Attn: Accounts Payable  
P.O. Box 2308  
1705 Trigg Road  
Ferndale, WA 98248

4. Termination of Agreement. Whatcom PUD 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) business days after issuance of the notice. Upon the notice date, the Engineer shall immediately commence to end the Services 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 effective date of termination, 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 Services 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 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 email or 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, the PUD 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.

5. Changes. Whatcom PUD may, from time to time, change the scope of the Services of the Engineer to be performed hereunder upon consultation with Engineer and as agreed to by the parties. Such changes, including any increase or decrease in the scope of Services (and resulting increase or decrease in compensation), shall: (a) be made only in writing and signed by an authorized PUD representative and Engineer, (b) be explicitly identified as an amendment to the corresponding Work Order and this Agreement and (c) become a part of this Agreement. The Engineer shall not be required to perform any additional or change in Services until there is a mutually acceptable amended Work Order signed by both parties.

6. Subletting/Assignment of Contracts. The Engineer shall not sublet or assign any of the Services without prior written notice to and consent of Whatcom PUD.

7. Intellectual Property Rights. Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Services are property of Whatcom PUD for all purposes, whether the project for which they are made is executed or not, and may be used by the PUD for any purpose relating to the proposed project. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the PUD, belong equally to the Engineer and Whatcom PUD. The Engineer retains any intellectual property rights in documents and intangible property, including

without limitation any created by the Engineer prior to this engagement, or not created by the Engineer for its performance of this Agreement. Any future use of the Engineer's designs or its work product delivered hereunder (including without limitation electronic or other media) without written approval by the Engineer for the specific purpose intended will be at the PUD's sole risk and without liability or responsibility of the Engineer or its consultants.

The Engineer agrees, upon request, to provide Whatcom PUD information on drawings prepared by the Engineer (to the extent they have been prepared and updated on CADD), utilizing electronic media acceptable to the PUD. The Engineer reserves the right to remove all indicia of ownership and/or involvement from each electronic display. This electronic information will be used solely by the PUD in connection with its facilities management for the project that is the subject of the design Services. Any electronic information provided to the PUD is subject to the same ownership and usage terms set forth elsewhere in this Agreement. The PUD agrees not to transfer these electronic files to any person or entity (other than a related business entity) without the prior written consent of the Engineer. The PUD hereby waives any and all claims against the Engineer that arise from or relate in any way to any unauthorized changes to or reuse of the electronic files for this or any other project by anyone other than the Engineer.

Whatcom PUD is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between any signed construction documents prepared by the Engineer and electronic files, the signed or sealed hard-copy construction documents shall govern.

8. Indemnification. Engineer shall indemnify and hold Whatcom PUD harmless from and against all costs and losses, and all claims, demands, suits, actions, payments and judgments, arising from personal injury or otherwise, brought or recovered against Whatcom PUD by reason of any negligent act or omission of 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 Whatcom PUD or its representatives in the defense of any claim or suit.

9. Insurance.

A. The Engineer shall comply with the following conditions and procure and keep in force during the term of this Agreement, at the Engineer's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, with the minimum coverage specified below, unless a higher coverage limit and other coverage requirements are specified in a particular Work Order.

1. Workers' compensation insurance as required by Washington law and employer's liability insurance with limits not less than \$1,000,000.00 per occurrence. The Engineer shall require each subcontractor to provide Workers' Compensation Insurance for its employees.

2. Comprehensive general liability insurance covering personal injury, including death, and/or property damage, on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including

but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

3. Automobile liability insurance covering all owned and non-owned automobiles in an amount not less than \$1,000,000 per occurrence and in the aggregate.

4. Professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate. Such coverage may be written on a claims-made basis and the policy may include a deductible.

B. The above liability policies shall contain a provision that the policy shall not be canceled or materially changed without thirty (30) days prior written notice to Whatcom PUD. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Engineer to furnish the required insurance during the term of this Agreement.

C. Prior to the Engineer performing any Services, the Engineer shall provide Whatcom PUD with two (2) certificates of insurance acceptable to the PUD's Attorney evidencing the required insurance. The Engineer shall provide the PUD with either (1) a true copy of an endorsement naming Whatcom PUD, its officers, employees and agents as additional insureds on the commercial general liability insurance policy and the business automobile liability insurance policy with respect to the operations performed and Services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such additional insureds. Receipt by the PUD of any certificate showing less coverage than required is not a waiver of the Engineer's obligations to fulfill the requirements.

D. If the policy listed in paragraph 9.A.4. above, professional liability insurance, is on a claims-made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy provided. The extended reporting or discovery period on a claim made policy form shall not be less than thirty-six (36) months following expiration of the policy.

E. The Engineer agrees that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. The Engineer shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. The Engineer shall provide Whatcom PUD with evidence of Workers' Compensation Insurance before any Services are commenced.

F. In case of the breach of any provision of this section, Whatcom PUD may, at its option and with no obligation to do so, provide and maintain at the expense of the Engineer, such types of insurance in the name of the Engineer, and with such insurers, as the PUD may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to the Engineer under this Agreement or may demand the Engineer to promptly reimburse the PUD for such cost.

G. Whatcom PUD in any particular Work Order may establish different insurance coverage requirement in relation to a particular Work Order. The above requirements shall apply in the absence of any requirement set forth in a Work Order. The Engineer may include such additional cost as part of any change order for such Work Order.

10. Independent Contractor.

A. This Agreement neither constitutes nor creates an employer-employee relationship, and because the Engineer is an independent contractor, the Engineer shall be responsible for all obligations relating to federal income tax, self-employment FICA taxes and contributions, and all other so-called employer taxes and contributions, including, but not limited to, industrial insurance (Workmen's Compensation), and that the Engineer agrees to indemnify, defend and hold Whatcom PUD harmless from any claims, valid or otherwise, made to the PUD, because of these obligations.

B. Any and all employees of the Engineer, while engaged in the performance of any Services, shall be considered employees of only the Engineer and not employees of Whatcom PUD. The Engineer shall be solely liable for any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or the Engineer, while so engaged and for any and all claims made by a third party but only to the extent of any negligent act or omission on the part of the Engineer's employees, while so engaged on any of the Services.

C. The Engineer shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save Whatcom PUD free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

D. The Engineer assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state business and occupation taxes), fees, licenses, excises or payments required by any agency, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Engineer and as to all duties, activities and requirements by the Engineer in performance of the Services and the Engineer shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

11. Employment. The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Whatcom PUD shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

12. Audits and Inspections. At reasonable times during normal business hours and with advance notice to Engineer, Whatcom PUD may request, that Engineer shall make available to the PUD for the PUD's examination the Engineer's records and documents with respect to all obligations covered by this Agreement and, furthermore, the Engineer will permit the PUD to audit, examine and make copies, excerpts or transcripts from such records to allow for the adequate evaluation and verification of the Engineer's labor costs and subsequent invoices provided however, the purpose of any such audit shall be only for the verification of invoices and related Engineer backup information of such invoices. Confidential business information, such as the makeup of costs covered by Fee, allowances, or fixed rates, will not be subject to audit. Engineer shall keep records for a period of three (3) years from the date that all Services provided pursuant to this Agreement are completed to the satisfaction of the PUD, unless the State of Washington Records Retention Guidelines, Whatcom PUD Record Retention Guidelines, or other State or Federal requirement requires a longer record retention period, in which case, the Engineer shall comply with the longer requirement.

13. State of Washington Requirements. The Engineer agrees to register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.

14. Compliance with Federal, State and Local Laws. Consistent with the standards of care applicable to similarly situated design professionals, the Engineer shall comply with and obey all Federal, State and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of Services hereunder which are in effect at the time of the rendition of the Services.

15. Compliance with Grant and/or Loan Terms and Conditions. Consistent with the standards of care applicable to similarly situated design professionals, and to the extent the Engineer is made aware of grant and/or loan terms and conditions by Whatcom PUD, the Engineer shall comply with any and all conditions, terms and requirements of any federal, state or other grant and/or loan that wholly or partially funds the Engineer's Services hereunder.

16. Project Management. Whatcom PUD's Project Manager 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 Project Manager in writing and take no further action concerning those written directions until such time as the parties have executed a written modification to this Agreement. No additional Services shall be performed or charges incurred unless and when the PUD approves in writing the Agreement modification and the increased cost thereof. Any Services done in violation of this paragraph shall be at the sole expense of the Engineer.

17. Subconsultants. The Engineer shall notify Whatcom PUD in writing of all subconsultants hired or utilized by the Engineer. At the time of project completion, the Engineer agrees to certify to the PUD that all subconsultants have been paid in full. The Engineer 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 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 applicants are employed and 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. Services During Project Construction. If so provided in a Work Order, the Engineer will provide general observation of the construction contractor's work on behalf of Whatcom PUD to the extent agreed by periodic visits to the site of the project to observe the progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the intent of the contract documents. On the basis of these visits, the Engineer will keep the PUD informed of the progress of the work through written reporting of site visits, will endeavor to guard the PUD against defects and deficiencies in the work of the contractor(s) and will advise the PUD to reject work or materials that fail to conform to contract requirements. Visits to the construction site and observations made by the Engineer shall not relieve the contractor of its obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the contract documents, and shall not relieve the construction contractor of its full responsibility for all construction means, methods, techniques, sequences and procedures necessary for coordinating and completing all portions of the work under the construction contract and for all safety precautions incidental thereto.

20. Construction Observation. If so provided in a Work Order, the Engineer will furnish the services of an on-site construction representative(s) to provide observation of the work of the contractor during the period of construction. The construction representative will make out periodic reports of construction progress and will prepare monthly estimates as the basis for payments to contractor as construction proceeds. The construction representative will endeavor to guard Whatcom PUD against defects and deficiencies in the work of the contractor and help determine if the provisions of the contract documents are being fulfilled. On-site construction observation will not, however, cause the Engineer to be responsible for those duties and responsibilities which belong to the contractor and which include, but are not limited to, full responsibility for the techniques and sequences of construction and the safety precautions incidental thereto, and for performing the construction work in accordance with the contract documents. The Engineer will report to the PUD observed deviations from the requirements of the contract documents. The Engineer will facilitate a final inspection of the constructed project and will make recommendation to the PUD regarding substantial completion and final project acceptance.

21. Shop Drawing Review. If so provided in a Work Order, the Engineer will perform shop drawing and submittal review. Whatcom PUD and the Engineer agree that effective review of shop drawings is important, and the PUD encourages the Engineer to develop a procedure that is properly funded to promote effective implementation. Whatcom PUD agrees that the Engineer shall review shop drawing submissions solely for their conformance with the Engineer's design intent and conformance with the requirements of the construction documents. Such reviews will be completed within fourteen (14) calendar days of receipt of submittals. The Engineer shall not be responsible for any aspects of a shop drawing submission that affect or are affected by the

means, methods, techniques, sequences and operations of construction, safety precautions and programs incidental thereto, all of which are the contractor's responsibility. The contractor shall be made aware of his or her responsibilities to review shop drawings in these respects before submitting them to the Engineer, and that the contractor will further be advised of the need to adhere to the shop drawing submission schedule furnished to it by the Engineer, the need to call any variations to the Engineer's attention, and such other requirements and responsibilities as may be identified in construction documents prepared by the Engineer.

22. Record Drawings of Construction. If so provided in a Work Order, upon substantial completion of the construction work, the Engineer shall provide Whatcom PUD a set of record drawings based on information provided by the construction contractor which illustrate the reported location of work and reported materials and equipment installed. In that record drawings are based on information provided by others, the Engineer cannot and does not warrant their accuracy.

23. Assistance with Contractor Claim Evaluations and Whatcom PUD/Contractor Dispute Resolution. Whatcom PUD and the Engineer acknowledge that construction projects present the risk of contractor construction claims that may or may not have merit and may or may not involve fault of the PUD or the Engineer. Under any circumstance, the Engineer will notify the PUD of any potential or actual claims or protests of the contractor and will coordinate with PUD's staff and, if required, the PUD's legal counsel regarding these matters. The Engineer will be available as necessary for special consultations to assist in resolving conflicts and providing interpretations. Any extended involvement in dispute resolution processes will be provided at the request of the PUD outside the agreed scope of work and fee, on a time and expenses basis in accordance with the Engineer's current Schedule of Charges.

24. Contract Administration Services. If so provided in a Work Order, the Engineer will provide construction contract administration services on Whatcom PUD's behalf. In providing such services, the Engineer's services will be guided by the Standard General Conditions of the Construction Contract Documents and the Supplementary General Conditions thereof. In operating on Whatcom PUD's behalf, the Engineer will furthermore follow guidance outlined in the State laws and administrative rules governing public procurement and contracting where applicable. The agreed scope of work and fee assumes the project will be constructed on the agreed schedule as established in the construction contract documents, it being understood that the construction contractor is in sole control of that schedule. If the construction schedule is extended beyond the original schedule due to circumstances not directly caused by the Engineer, it is agreed that additional budget shall be provided as needed on the project for extended construction phase services by the Engineer. The construction contractor will be required to provide an experienced superintendent who is on site during all construction activities and is actively engaged in managing the construction work. The Engineer will not assume any superintendent responsibilities on the project. The agreed scope of work and fee assumes that the construction contractor will operate in a cooperative manner with the PUD and the Engineer throughout the project. To that end, it is assumed that the contractor will not submit an excessive number of requests for information, change order requests, or claims or take other actions that cause an excessive administrative burden to the PUD and the Engineer. The overall budget for engineering services during construction is based on reasonable assumptions related to the anticipated construction period, the level of effort anticipated for office and field services, and



the anticipated cooperative conduct of the construction contractor. If the actions of the construction contractor cause an extension of the project construction schedule, require the need for additional Engineer office and field services beyond the reasonable level assumed, or otherwise cause additional expenses to the Engineer, the PUD agrees to consider, in good faith, an appropriate budget adjustment to provide for such additional costs. The Engineer shall promptly notify the PUD of any such conditions that warrant consideration of such budget adjustment(s) and shall request appropriate budget adjustment(s) in the form of a contract amendment for the PUD's consideration and approval. The Engineer will not bill the Whatcom PUD for any such additional costs without prior approval of the Whatcom PUD.

25. Information Provided by Whatcom PUD. In order to facilitate the Services to be performed by the Engineer, the Whatcom PUD shall furnish to the Engineer all information available to the Whatcom PUD having a bearing on the Services. It may be necessary during the Services of the Engineer to locate and expose underground utilities and/or structures. The Whatcom PUD shall cause such excavation and incidental work connected therewith to be done at no cost to the Engineer. The Whatcom PUD shall provide the Engineer all labor, equipment and materials to assist in accomplishing system operations if so required. The Engineer will provide personnel to be present as may be necessary to properly guide the Whatcom PUD to gather the required data. Engineer costs for such assistance shall be included as part of the basic scope of Services at no additional expense to the Whatcom PUD, except where such scope of Services didn't anticipate or include such services in the scope of Services.

26. Whatcom PUD to Provide Legal Access. The Whatcom PUD shall provide to the Engineer or the Engineer's representatives legal access to the properties which are necessary in performance of the Services within a reasonable time of receipt of request for legal access by the Engineer or the Engineer's representatives. Whatcom PUD shall provide access for the Engineer to these properties for the making of measurements and obtaining details for work to be performed by the Engineer.

27. Miscellaneous Project Related Fees. Whatcom PUD shall pay the costs of advertisements for construction bids, checking and inspection fees, assessment fees, materials testing fees, aerial topography fees, fees for permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this Agreement.

28. Environmental Condition of Site. Whatcom PUD will disclose to the Engineer in writing the existence of all known and suspected asbestos, PCBs, petroleum, hazardous waste, radioactive material, hazardous substances, and other Constituents of Concern located at or near any project site, including type, quantity and location. The PUD represents to the Engineer that to the best of its knowledge, no Constituents of Concern other than those disclosed in writing to the Engineer, exist at any project site. If the Engineer encounters an undisclosed Constituent of Concern, then the Engineer shall notify (a) the PUD and (b) appropriate governmental officials if the Engineer reasonably concludes that doing so is required by applicable laws or regulations. It is acknowledged by both parties that the Engineer's scope of services does not include any Services related to Constituents of Concern. If the Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then the Engineer may, at its option and without liability for consequential or any other damages, suspend

performance of Services on the portion of any project affected thereby until Whatcom PUD: (a) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (b) warrants that the site is in full compliance with applicable laws and regulations. If the presence at the site of undisclosed Constituents of Concern adversely affects the performance of the Engineer's Services under this Agreement, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the Services under a specific Work Order for cause on thirty (30) calendar days notice. The PUD acknowledges that the Engineer is performing professional services for the PUD and that the Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the site in connection with the Engineer's activities under this Agreement.

29. Changes to Plans and Specifications by Others. In the event that any changes are made in plans and specifications by Whatcom PUD or persons other than the Engineer which affects the Engineer's Services, any and all liability arising out of such changes is waived as against the Engineer, and the PUD assumes full responsibility for such changes unless the PUD has given the Engineer prior notice and has received from the Engineer written consent for such changes.

30. Delays. The Engineer shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance by reason of strikes, lockouts, epidemics, accidents, acts of God and other delays unavoidable or beyond the Engineer's reasonable control delays caused by failure of the Whatcom PUD or the PUD's agents to furnish information or to approve or disapprove the Engineer's work promptly, or due to late, slow, or faulty performance by the PUD, other contractors or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of the Engineer's Services. In the case of the happening of any such cause of delay, the time of completion and related costs shall be afforded and extended accordingly. The Engineer agrees to conduct all work in good faith so as to avoid delays that may potentially present adverse cost consequences to the project(s) and the PUD.

31. Contractor's Responsibility for Project and Safety. Whatcom PUD agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for projects, including safety of all persons and property and that this requirement shall be made to apply continuously and not be limited to normal working hours.

32. Insurance Provided by Construction Contractor. Construction specifications prepared by the Engineer shall include standard provisions for insurance coverages to be provided to Whatcom PUD by the construction contractor. Since the Engineer is not qualified to advise on insurance matters, the PUD agrees to review those provisions prior to the bidding process with its insurance advisor and to notify the Engineer of changes to be made, if any, to these provisions.

33. Quantity Estimates and Opinion of Construction Costs. The Engineer will prepare estimates of the materials to be furnished and work to be done. Any opinion of the construction cost prepared by the Engineer represents its judgment as a design professional and is supplied for the general guidance of Whatcom PUD. Since the Engineer has no control over the cost of labor and

materials, or over the competitive bidding or market conditions, the Engineer does not guarantee the accuracy of such opinions as compared to contractor bids or actual costs to the PUD.

34. Americans With Disabilities Act. The American Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility for first occupancy later than January 26, 1993, that does not meet the accessibility and usability requirements of the ADA except where an entity can demonstrate that it is structurally impractical to meet such requirements. Whatcom PUD acknowledges that the requirements of the ADA may be subject to various and possibly contradictory interpretations. The Engineer, therefore, will use its reasonable professional efforts to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project. The Engineer will apprise the Whatcom PUD on any design decisions that require special judgment as to interpretation of requirements for ADA compliance. The Engineer and the PUD agree to mutually evaluate design decisions relative to such interpretations, in a collaborative effort, to minimize the risk of potential third-party challenge of project designs relative to ADA compliance.

35. 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. The PUD shall be responsible for all costs associated with such review.

36. 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.

37. 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 Engineer to any individual or organization without prior written approval of the 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 the PUD or other documents produced in whole or in part by the Engineer under this Agreement shall be the subject of an application for copyright by or on behalf of the Engineer.

38. 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.

39. Electronic Transmission. All electronically transmitted output must be compatible with existing Whatcom PUD software and must be accompanied by at least one (1) copy of written reports. The Engineer shall check with the PUD for software application and system compatibility.

40. 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.

41. Waiver. Any waiver by the Engineer or Whatcom PUD or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

42. Complete Agreement. This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

43. Modification of Agreement. This Agreement may be modified as provided in Paragraph 5, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of Whatcom PUD and the Engineer.

44. Litigation/Arbitration. In the event either party herein finds it necessary to bring an action against the other party to enforce to collect any fee or dispute any charge, then such action shall be subject to binding arbitration as provided for herein. In all other cases, venue shall be Whatcom County Superior Court not binding arbitration, unless the parties agree to submit such disputes to arbitration as provided for herein.

A. Arbitration. In the event of any dispute arising between the parties to this Agreement that is not subject to arbitration according to the terms of this Agreement the following rules for binding arbitration apply, 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.

45. 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:

Public Utility District No. 1 of Whatcom County  
Attn: Kurt Wank  
P.O. Box 2308  
1705 Trigg Road  
Ferndale, WA 98248

Engineer:

Toth & Associates  
Jess Moran  
5331 S Macadam Ave Suite 344  
Portland, OR 97239

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.

46. 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.

47. Notices. All notices, demands, request, 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 three (3) business days after being mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

48. 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.

49. 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.

50. Venue. Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of Whatcom County, Washington.

51. 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.

IN WITNESS WHEREOF, Whatcom PUD and the Engineer have executed this Agreement as of the date first above written.

PUBLIC UTILITY DISTRICT NO. 1  
OF WHATCOM COUNTY

By \_\_\_\_\_

Chris Heimgartner  
General Manager

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

By \_\_\_\_\_

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

EIN: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

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

Attachments

Exhibit A –Schedule of Charges

AGENDA ITEM #7d  
January 23, 2024



## Action Memo

**To:** Commissioners Arnett, Deshmane, and Grant  
**From:** Annette Smith, Director of Finance  
**Date:** January 23, 2024  
**Re:** State Auditor's Audit Report

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**Requested Action:** Informational only

**Background:** The District is required by law to have a Financial and Accountability audit. January 16<sup>th</sup> 2024, we held the exit conference with representatives from the state auditor's office and Commissioner Deshmane for the audit spanning years 2021 – 2022. I am happy to report that the reports again showed the District had no material deficiencies and is operating within the appropriate policies and guidelines. This represents the 9<sup>th</sup> clean audit covering 17 years of operations.

The Financial and Accountability reports from the state auditor's office are available on our website:  
<https://www.pudwhatcom.org/the-commission/financial-documents/>

**Fiscal Impact:** No fiscal impact

**Recommended Action:** Informational only

AGENDA ITEM #7e  
January 23, 2024



## Action Memo

**To:** Commissioners Arnett, Deshmane, and Grant  
**From:** Annette Smith, Director of Finance  
**Date:** January 23, 2024  
**Re:** FCS Rate study and Cost of Service Analysis Presentation

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**Requested Action:** No action requested. Informational only.

**Background:** In June of 2022 the District selected FCS Group as the firm to conduct a Rate Study and COSA. They previously had performed the same study in 2015 for the District. Due to a full schedule and the timing of the budget, the study wasn't expected to be complete until the end of 2023, although the new rate models were used in the 2024 budget process.

The focus of the study was the Industrial Water and Grandview utility. The study was to review rates, cost allocations, and General Facility charges (GFC) for both utilities.

The report can be viewed on the District's website: <https://www.pudwhatcom.org/the-commission/financial-documents>

**Fiscal Impact:** No fiscal impact

**Recommended Action:** No action requested. Informational only.