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PUBLIC UTILITY DISTRICT No. 1 of Whatcom County

Agenda for the Regular Meeting of February 13, 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 23, 2024
 - b) Approval of Claims for February 13, 2024
4. Public Comment (10 minutes – Individual speakers: 3 min.)
5. General Manager Report (10 min.)
6. Old Business (30 min.)
 - a) Broadband Update
 - b) Adjudication Update
 - c) Legislative Update
 - d) Geothermal Update
7. New Business (15 min.)
 - a) Approve Professional Services Agreement with K Engineers
 - b) Approve Resolution No. 845 – Cancellation and Reissue of Warrant
 - c) Approve Resolution No. 846 – Cancellation of Warrant
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. Adjourn (Estimated 10:00 a.m.)

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/83871432581>

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

Webinar ID: 838 7143 2581

Next Commission Meetings

February 27 & March 12, 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

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AGENDA ITEM #3a
February 13, 2024

MINUTES OF THE REGULAR MEETING OF THE COMMISSION

January 23, 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; Mike Macomber, IT/SCADA Technician; Garrett Love-Smith, Project Manager; Kurt Wank, Director of Utility Operations; and Stephanie Hooper, Accountant I.

Public attending:

Jack Wellman, Puget Sound Energy
Dave Olson
Crina Hoyer

2. Approval of Agenda

No changes.

ACTION: Commissioner Grant made the motion to APPROVE THE AGENDA JANUARY 23, 2024. Commissioner Deshmane second the motion. Motion passed unanimously.

3. Approval of Consent Agenda

a) Approval of Meeting Minutes of the Regular Meeting of January 9, 2024;

b) Approval of the Claims of January 23, 2024:

VENDOR NAME	AMOUNT
BONNEVILLE POWER ADMINISTRATION	603,742.00
CDW/COMPUTER DISCOUNT WAREHOUSE	873.75
CENTRAL WELDING SUPPLY	252.80
CNA SURETY	399.26
COMCAST	194.86
COMCAST - NWRC	300.00
CONSOR NORTH AMERICA, INC.	7,301.45
CULLIGAN NORTHWEST	223.13
EDGE ANALYTICAL LABORATORIES	25.00
FEDERAL EXPRESS	24.78
FERNDALE ACE HARDWARE	57.40
FERNDALE CITY OF	304.55
GRANT, CHRISTINE	42.88
HARDWARE SALES, INC.	335.19
HDR ENGINEERING, INC.	6,452.88
HOOPER, STEPHANIE	101.53
HYTEC ROOFING INC	10,642.80
INTERNAL REVENUE SERVICE	24,065.90
KCDA PURCHASING COOPERATIVE	210.81
MASSMUTUAL RETIREMENT SVCS LLC	11,640.00

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NELSON-REISNER	8,301.47
NOOKSACK SALMON ENHANCEMENT ASSOC.	20,000.00
NORTH COAST ELECTRIC COMPANY	598.82
NORTHWEST CASCADE, INC.	128.50
PACIFIC SURVEY & ENGINEERING	3,272.50
PAYLOCITY	209.66
PAYROLL	240,367.79
PLATT ELECTRIC SUPPLY CO	365.47
PUBLIC UTILITY RISK MANAGEMENT SERV.	55,589.08
PUD #1 OF WHATCOM COUNTY	268.71
PUGET SOUND ENERGY, INC	5,668.28
SSC - SANITARY SERVICE COMPANY	637.36
TUPPER MACK WELLS PLLC	12,371.50
UTILITIES UNDERGROUND LOCATION	16.77
WA FEDERAL VISA CARD MEMBER SERVICES	5,536.95
WA PUBLIC UTILITY DISTRICTS ASSOCIATION	15,285.00
WA ST AUDITOR'S OFFICE	24,166.40
WA ST DEPT OF REVENUE - EXCISE TAX	74,947.13
WA ST DEPT OF REVENUE - LEASEHOLD TAX	1,272.06
WESTERN CONFERENCE OF TEAMSTERS	8,855.00
WHATCOM FARMERS CO-OP	364.80
GRAND TOTAL	\$1,145,414.22

ACTION: Commissioner Grant made the motion to APPROVE THE CONSENT AGENDA OF JANUARY 23, 2023. Commissioner Deshmane second the motion. Motion passed unanimously.

4. Public Comment – None made.

5. General Manager's Report

- BP recently purchased additional property at Cherry Point. Staff is working on the reassignment of the industrial water contract from the previous owner to BP;
- Working with Altagas on their hydrogen hub project which will need water in the future. Alcoa continues to decommission its plant and there may be a possible transfer of their industrial water agreement to Altagas. Details are forthcoming
- Will be out of the office this afternoon through next Tuesday. Assistant General Manager will cover.

6. Old Business

a) Broadband Program Update

- Contract for Professional Services Agreement for the Point Roberts Broadband Project is under New Business;
- Staff continues to look for additional project areas for broadband funding opportunities to assist with east county broadband services; or possibly around the Port's current projects;
- Notice of Funding Opportunity for the Reconnect Program should become available in February;
- The BEAD initial report from the Washington Broadband Office is now available;
- Sitkin said the request for a Telecom Franchise with Whatcom County is anticipated to be on the County Council agenda for approval in early February.

b) Adjudication Update

- Sitkin continues discussions with other local agencies, attorneys and tribes.
- Discussed Senate Bill 5828 concerning water rights adjudication commissioners and referees;
- Presented to the *Building Industry Association* on the adjudication process last week;

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c) Legislative Update

- Sitkin provided an update on HB6206 concerning small water systems and receivership/purveyor of last resort. The bill suggests changes to establish a PUD or water district to replace a county as purveyor of last resort, subject to replacement only if a PUD or water district isn't available. WPUA opposes this bill and he suggests Whatcom PUD monitor and oppose the bill as well.

d) Geothermal Update

- Senate Bill 5992 concerning a requirement that applicants seeking energy facility site certification for an energy facility that generates electricity using renewable resources to provide evidence of an adequate water supply for the project – this adds an additional level of requirement for geothermal plants.
- Senate Bill 6039/House Bill 2129 concerning a budget proviso to establish a competitive geothermal exploration cost-share grant program to incentivize and offset direct costs associated with suitable locations for the development of geothermal energy; Commissioner Grant commented on two Senate hearings regarding this.

e) Board Retreat Discussion

- The Board has met individually with Crina Hoyer to facilitate the Retreat. More details and a Professional Services Agreement are forthcoming.

f) WPUA Day on the Hill

Day on the Hill in Olympia is February 14. Commissioners discussed providing a handout of Whatcom PUD information for the Washington PUD Association's event for legislators.

7. New Business

a) Approve Professional Services Agreement with Cobb, Fendley and Associates

Whatcom PUD was awarded a \$3,150,000 grant through the Washington State Broadband Office to bring fiber optic infrastructure to the Point Roberts community and Whatcom County Council approved on October 10, 2023, funding in the form of an interlocal agreement, for \$350,000.

Cobb, Fendley & Associates, Inc. will provide professional telecommunications engineering and design services to assist Whatcom PUD and our partners, with the 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. 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.

ACTION: Commissioner Grant made the motion to 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. Commissioner Dushman second the motion. Motion passed unanimously.

b) Approve Professional Services Agreement with Eagle Eye Aerial Solutions

Eagle Eye Aerial Solutions uses an unmanned platform for visually inspecting transmission structures. The prior Professional Services Agreement expired on December 31, 2023. Staff has determined the use of the unmanned platform for aerial inspection of facilities utilizing cameras for real-time observations, photography, and thermography greatly enhances our ability to assess the condition of both electric and water facilities. Use of this technology is faster and less expensive than the traditional means of doing these field surveys.

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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 EAGLE EYE AERIAL SOLUTIONS FOR UNMANNED INSPECTION SERVICES, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT. Commissioner Deshmane second the motion. Motion passed unanimously.

c) Approve Professional Services Agreements with Select Electrical Engineering Firms

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.

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.

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.

ACTION ITEM No. 1: Commissioner Deshmane made the motion to APPROVE THE STANDARD PROFESSIONAL ENGINEERING SERVICES AGREEMENTS WITH ANVIL CORPORATION, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT, SUBJECT TO FINAL LEGAL COUNSEL REVIEW. Commissioner Grant second the motion. Motion passed unanimously.

ACTION ITEM No. 2: Commissioner Deshmane made the motion to APPROVE THE STANDARD PROFESSIONAL ENGINEERING SERVICES AGREEMENTS WITH ATWELL GROUP AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT, SUBJECT TO FINAL LEGAL COUNSEL REVIEW. Commissioner Grant second the motion. Motion passed unanimously.

ACTION ITEM No. 3: Commissioner Deshmane made the motion to APPROVE THE STANDARD PROFESSIONAL ENGINEERING SERVICES AGREEMENTS WITH TOTH AND ASSOCIATES AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE

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AGREEMENT, SUBJECT TO FINAL LEGAL COUNSEL REVIEW. Commissioner Grant second the motion. Motion passed unanimously.

d) State Auditor's Audit Report

Finance Director Smith reported that the State Auditor's Office (SAO) recently completed the Financial and Accountability audits and exit conference was held on January 16, 2024 for audit years spanning 2021 and 2022. The SAO reports, again, showed the District had no material deficiencies and is operating within the appropriate policies and guidelines. This represents the 9th clean audit covering 17 years of operations.

The Financial and Accountability reports from the state auditor's office will be available on the website: <https://www.pudwhatcom.org/the-commission/financial-documents/> after January 25.

ACTION: No action requested, information only.

e) FCS Group Rate Study Presentation

In June of 2022, the District selected FCS Group as the firm to conduct a rate study and cost of service analysis. FCS previously 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. Finance Director Smith provided highlights of the study which focused on the Industrial Water and Grandview utility. The study reviewed 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>.

ACTION: No action requested, information only.

8. Operations Report

- Wank reported on District's response to the extreme winter weather, snow, and effects of frazil ice and turbidity conditions in the river during the last week and a half. The operations crew did an excellent job in keeping the water flowing.

Commissioner Reports

Arnett asked about the new Per Diem Request form; Sitkin has not had a chance to further review.

Grant:

- Attending the Energy Northwest meeting and will also be meeting with the lobbyist this week;
- Asked for a per diem for a last-minute general membership meeting of the Whatcom Democrats she was asked to attend.

Deshmane:

- Requested Per Diem for an upcoming Department of Ecology webinar on adjudication;
- Commented on the WPUDA meetings he attended last week concerning BEAD funding, hiring a Deputy Director, and the Foster fix legislation;
- Commented on the Columbia River basin negotiating settlement discussion;
- Commented on recent Public Power Council and WPUDA meetings which discussed the Lower Snake River Dams and settlement. At WPUDA, there are commissioners who are in favor of breaching the Lower Snake River Dams and the majority who are not in favor, or partial to the settlement agreement. Deshmane stated that Whatcom PUD is more on the left of the issue, for reasonable pathways to breaching the dams.

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Arnett:

- Attended the January WPUA meetings via Zoom; and appreciated the FCS Rate Study presentation to WPUA.

9. Public Comment – None made.

10. Executive Session

Commissioner Arnett requested an Executive Session. Sitkin said estimated time to adjourn was 10:30 a.m., if not extensions would be requested. After a short break, the Commission adjourned to Executive Session at 10:03 a.m.

Regular Meeting Rejoin: At 10:05 a.m. the Commission rejoined the regular meeting and Sitkin announced they were going into 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 adjourn for Executive Session was 10:30 a.m. The Commission adjourned to Executive Session at 10:07 a.m.

- At 10:30 a.m. an additional thirty (30) minutes was requested;
- At 11:00 a.m., an additional ten (10) minutes was requested;

Executive Session Adjourn

There being no further business for Executive Session, the Commission rejoined the Regular Commission Meeting at 11:13 a.m.

11. Adjourn

There being no further business for the regular meeting, Commissioner Deshmane adjourned the regular meeting at 11:14 a.m.

Jaime Arnett, President/Commissioner

Atul Deshmane, Vice President/Commissioner

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: Kurt Wank – Director of Utility Operations
Date: February 13, 2024
Re: Professional Services Agreement with K Engineers Inc

Requested Action: APPROVE PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH K ENGINEERS FOR ELECTRICAL CONSULTING SERVICES, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.

Background: In September of 2019, the Commission approved the Standard Agreement for Professional Consulting Services with K Engineers 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.

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.

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

Recommended Action: APPROVE PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH K ENGINEERS FOR ELECTRICAL CONSULTING SERVICES, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.

**STANDARD AGREEMENT
FOR PROFESSIONAL ENGINEERING 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 "District" or “Whatcom PUD”, and **K ENGINEERS INC**, having an address of 208 Third Street Lynden, WA 98264, hereinafter called "Engineer" or “KEI”, for projects generally described as:

To provide various professional engineering services for the purpose of assisting the District in studying, identifying, planning, designing and implementing projects associated with Whatcom PUD’s mid and low voltage electric systems & equipment including electric facilities associated with the PUD’s industrial water treatment plants.

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

WHEREAS, the selection of engineering firms, and the Engineer herein, were made after the completion of a process that complied with all provisions of Federal, State, and local laws concerning selection of professional services; and

WHEREAS, KEI does offer to provide such professional engineering services.

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

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

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

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

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

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

4. **Compensation and Payment.** The Engineer shall be compensated on the basis of hours worked and expenses incurred by the Engineer, or on the basis of rates established for specific tasks, all at the rates shown attached hereto as Exhibit A. The Engineer shall obtain the prior written approval of the District for any charges for additional services by the Engineer, the additional services of others retained by the Engineer, or the furnishing of additional supplies, materials or equipment. The Engineer shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

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

5. **Compliance with Laws.** All Federal, State and local laws applicable in the rendering of the services by the Engineer shall be in compliance with in all respects by the Engineer, as

shall all rules and regulations of the District and any other governmental agency. The Engineer shall register, as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to the District.

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

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

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

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

- a. Comprehensive general liability policy covering all claims for personal injury (including death) and/or property damage arising out of the Engineer's services. The limits of liability shall be not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate unless the District approves in writing a lesser limit.
- b. Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or on behalf of the Engineer. The limits of liability shall be not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate unless the District approves in writing a lesser limit.
- c. Workers Compensation Insurance as required by law.

9.1 The foregoing insurance policies shall name the District as an additional insured. The Engineer shall provide two (2) certificates of insurance and, if requested, copies of any policy to the District. Receipt of such certificate or policy by the District does not constitute approval by Whatcom PUD of the terms of such policy. Furthermore, the policy of insurance required herein shall: (i) be written as a primary policy; (ii) expressly provides that such insurance may not be materially changed, amended or canceled with respect to the District except upon forty-five (45) days prior written notice from the Engineer to the District; (iii) contains an express waiver of any right of subrogation by the insurance company against the

District and the District 's elected officials, employees, or agents; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of the Engineer which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to the District and the Engineer.

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

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

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

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

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

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

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

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

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

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

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

20. **Litigation/Arbitration.** In the event either party herein finds it necessary to bring an action against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs and attorneys’ fees incurred by the other party, and in the event any judgment is secured by such prevailing party all such costs and attorneys’ fees of collection shall be included in any such judgment. In the event of any dispute arising between the parties to this Agreement, any such dispute shall be submitted to binding arbitration as provided herein. The parties shall select an independent and unbiased arbitrator who is not affiliated directly or indirectly with either party within ten (10) days after any party demands arbitration. If the parties fail to select or cannot agree upon an arbitrator within this time, then they shall make application to the Superior Court of Whatcom County, pursuant to RCW 7.04A *et seq.*, for an order appointing an arbitrator. Such application may be made at any time after the ten (10) day period has expired. Upon application to the court for an arbitrator, the Court shall select an arbitrator who shall render his/her decision no later than sixty (60) days after his/her appointment. If the arbitrator requests a hearing prior

to rendering his/her decision, such hearing shall be held in Whatcom County, Washington within thirty (30) days of the arbitrator's appointment. The arbitrator's decision shall be binding on both parties. Each party shall bear its own expenses associated with the arbitration but shall share equally the costs of the arbitrator. RCW Chapter 7.04A and Rules 5.2 through 5.4 of the Mandatory Arbitration Rules for Superior Court ("MAR") shall govern the arbitration. In the event of any inconsistencies between the Binding Arbitration Clause, RCW Chapter 7.04A, and MAR 5.2 through 5.4, the terms of the Binding Arbitration Clause shall take precedence over RCW Chapter 7.04A and MAR 5.2 through 5.4; and RCW Chapter 7.04A shall take precedence over MAR 5.2 through 5.

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

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

Engineer: Steve TeVelde
K Engineers Inc.
208 Third Street
Lynden, WA 98264

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

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties hereto execute this Agreement.

DISTRICT:

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

By: _____

Title: General Manager

Date signed: _____

ENGINEER:

By: _____

Title: _____

Firm's EIN: _____

Date signed: _____

AGENDA ITEM #7b
February 13, 2024

Action Memo

To: Commissioners Arnett, Deshmane, and Grant
From: Stephanie Hooper, Accountant I
Date: February 13, 2024
Re: Approve Resolution No. 845 – Cancellation and Reissue of Warrant

Requested Action:

APPROVE RESOLUTION NO. 845 AUTHORIZING CANCELLATION AND REISSUE OF WARRANT FOR BRANOM INSTRUMENT COMPANY.

Background:

Warrant No. 1182400 was issued on December 27, 2023 in the amount of \$630.66 to Branom Instrument Company. Branom notified the District that the Warrant has not been received/deemed lost in the mail, and the County has verified it has not been tendered. The District notified the County that the Warrant was lost and has asked the County to cancel and disregard the Warrant. A new Warrant will be issued in the next check run.

Fiscal Impact:

No fiscal impact.

Recommended Action:

APPROVE RESOLUTION NO. 845 AUTHORIZING CANCELLATION AND REISSUE OF WARRANT FOR BRANOM INSTRUMENT COMPANY.

RESOLUTION NO. 845

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

WHEREAS, the warrant referenced in Exhibit A (the “Warrant”) was issued on the basis of an invoice (the “Invoice”) received from Branom Instrument Company (“Branom”) for computer equipment;

WHEREAS, following the Commission’s authorization of the issuance of the Warrant, the County’s Administrative Services Department (“County”) printed Warrant No. 1182400 on December 27, 2023. The warrant was deemed lost in the mail and has not been tendered. As such, the District has notified the County that the Warrant was lost, has asked the County to cancel and disregard the Warrant. A new warrant will be issued on the next Claims Request.

WHEREAS, the County has provided the Warrant that was issued on December 27, 2023, and the Warrant having not been tendered to the County, the District does now wish to cancel Warrant No. 1182400, as provided by law; and,

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

ADOPTED by the Commission of Public Utility District No.1 of Whatcom County at its regular meeting held on the 13th day of February, 2024.

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

Jaime Arnett, President/Commissioner

Christine Grant, Secretary/Commissioner

Atul Deshmane, Vice President/Commissioner

Resolution No. 845: Exhibit A
Cancellation of Warrant

Warrant No.	Warrant Date	Vendor	Amount
1182400	12/27/23	Branom Instrument Company	(\$630.66)

Action Memo

To: Commissioners Arnett, Deshmane, and Grant
From: Stephanie Hooper, Accountant I
Date: February 13, 2024
Re: Approve Resolution No. 846 – Cancellation of Warrant

Requested Action:

APPROVE RESOLUTION NO. 846 AUTHORIZING CANCELLATION OF WARRANT FOR PITNEY BOWES GLOBAL FINANCIAL SERVICES.

Background:

Warrant No. 1182421 was issued on December 27, 2023 in the amount of \$201.66 to Pitney Bowes Global Financial Services. The warrant was mailed to the wrong address and returned to the District. The District has notified the County that the Warrant has been returned and has asked the County to cancel and disregard the Warrant. A new Warrant will not be issued. Payment was issued by credit card to avoid late fees.

Fiscal Impact:

No fiscal impact.

Recommended Action:

APPROVE RESOLUTION NO. 846 AUTHORIZING CANCELLATION OF WARRANT FOR PITNEY BOWES GLOBAL FINANCIAL SERVICES.

RESOLUTION NO. 846

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

WHEREAS, the warrant referenced in Exhibit A (the “Warrant”) was issued on the basis of an invoice (“the Invoice”) received from Pitney Bowes Global Financial Services LLC for the postage machine lease;

WHEREAS, following the Commission’s authorization of the issuance of the Warrant, the County’s Administrative Services Department (“County”) printed Warrant No. 1182421 on December 27, 2023. The warrant was mailed to the wrong address and returned to the District. As such, the District has notified the County that the Warrant was returned, has asked the County to cancel and disregard the Warrant. A credit card payment was issued to pay the invoice.

WHEREAS, the County has provided the Warrant that was issued on December 27, 2023, and the Warrant having not been tendered to the County, the District does now wish to cancel Warrant No. 1182421, as provided by law; and

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

ADOPTED by the Commission of Public Utility District No.1 of Whatcom County at its regular meeting held on the 13th day of February, 2024.

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

Jaime Arnett, President/Commissioner

Christine Grant, Secretary/Commissioner

Atul Deshmane, Vice President/Commissioner

Resolution No. 846: Exhibit A
Cancellation of Warrant

Warrant No.	Warrant Date	Vendor	Amount
11182421	12/27/23	Pitney Bowes Global Financial Services	(\$201.66)