

# DRAFT

## PUBLIC UTILITY DISTRICT No. 1 of Whatcom County

Agenda for the Regular Meeting of February 27, 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 February 13, 2024
  - b) Approval of the Minutes of the Special Meeting of February 21, 2024
  - c) Approval of Claims for February 27, 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
  - e) Per Diem Compensation Policy Update
7. New Business (20 min.)
  - a) Approval of Change Order No. 01 – P & P Excavating D Station Line Stop Project
  - b) Award Contract: FlowServe for Plant 1 Intake Pump Replacement
  - c) Approval of Master Fiber Lease Agreement and Service Order Summary
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)(g) To review the qualifications and/or performance of a public employee(s) (estimated 60 minutes)
12. Adjourn (Estimated 10:30 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/87335951925>

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

**Webinar ID:** 873 3595 1925

**Next Commission Meetings**

March 12 & 26, 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)

# DRAFT

AGENDA ITEM #3a  
February 27, 2024

## MINUTES OF THE REGULAR MEETING OF THE COMMISSION

February 13, 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. Staff: Chris Heimgartner, General Manager; Assistant General Manager Brian Walters; Andrew Entrikin, Broadband Program Manager; Ann Grimm, Executive Assistant; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Mike Macomber, IT/SCADA Technician; Aaron Peterson, IT/SCADA Technician; Paul Siegmund, Manager of Automation and Technology; Garrett Love-Smith, Project Manager; Kurt Wank, Director of Utility Operations; and Stephanie Hooper, Accountant I.

Public attending:  
Dave Olson  
Rick Maricle

### 2. Approval of Agenda

Executive Session was added: RCW 42.30.110(1)(g) To review the qualifications and/or performance of a public employee.

**ACTION:** Commissioner Grant made the motion to APPROVE THE AGENDA FEBRUARY 13, 2024 AS AMENDED. Commissioner Deshmane second the motion. Motion passed unanimously.

### 3. Approval of Consent Agenda

- a) Approval of Meeting Minutes of the Regular Meeting of January 23, 2024;
- b) Approval of the Claims of February 13, 2024:

| VENDOR NAME                                     | AMOUNT    |
|---|-----------|
| ALUMICHEM CANADA INC (formerly WATERHOUSE ENV.) | 63,204.20 |
| ARBITRAGE GROUP INC.                            | 500.00    |
| AT&T MOBILITY                                   | 1,801.51  |
| BELLINGHAM HERALD                               | 310.90    |
| BHAM WHATCOM CHAMBER OF COMM & INDUSTRY         | 356.00    |
| BIRCH EQUIPMENT COMPANY                         | 12,163.48 |
| BRANOM EQUIPMENT                                | 630.66    |
| CENTRAL WELDING SUPPLY                          | 101.12    |
| CESCO NEW CONCEPT CHEMICAL PRODUCTS             | 113.90    |
| CHEMTRAC, INC.                                  | 2,255.00  |
| CHMELIK SITKIN & DAVIS                          | 37,629.74 |
| CORNERSTONE MANAGEMENT, INC.                    | 756.50    |
| CULLIGAN NORTHWEST                              | 267.57    |
| DIMPLEX THERMAL SOLUTIONS INC.                  | 10,348.79 |
| ESRI  | 2,617.26  |
| FERGUSON ENTERPRISES, INC                       | 5,603.11  |
| FERNDALE ACE HARDWARE                           | 120.70    |
| FERNDALE AUTO PARTS                             | 36.27     |
| GATEWAY CONTROLS                                | 1,583.04  |

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|  |                     |
|--|---------------------|
| GRANICH ENGINEERED PRODUCTS, INC.          | 4,362.32            |
| GUARDIAN SECURITY SYSTEMS, INC             | 96.89               |
| HARDWARE SALES, INC                        | 156.65              |
| HDR ENGINEERING, INC.                      | 5,232.84            |
| HEALTH PROMOTIONS NORTHWEST                | 150.00              |
| HOOPER, STEPHANIE                          | 56.01               |
| IVOXY CONSULTING LLC                       | 53,970.70           |
| KCDA PURCHASING COOPERATIVE                | 366.69              |
| LES SCHWAB TIRE CENTER                     | 1,052.65            |
| LITHTEX NW LLC                             | 111.86              |
| MILLS ELECTRIC                             | 1,084.71            |
| NELSON=REISNER                             | 1,604.35            |
| NORTH COAST ELECTRIC COMPANY               | 138.03              |
| NORTHWEST CASCADE, INC.                    | 257.00              |
| NORTHWEST FIBER DBA ZIPLY FIBER            | 1,453.39            |
| NP INFORMATION SYSTEMS (3-D CORP)          | 269.82              |
| P&P EXCAVATING, LLC                        | 29,172.89           |
| PITNEY BOWES GLOBAL FINANCIAL SERVICES LLC | 300.98              |
| PLATT ELECTRIC SUPPLY CO                   | 3,030.43            |
| PORTAL WAY FARM & GARDEN                   | 18.47               |
| PROSCAPES INC                              | 564.72              |
| PUBLIC POWER COUNCIL                       | 330.00              |
| PUD #1 OF WHATCOM COUNTY                   | 36.53               |
| PUGET SOUND ENERGY, INC                    | 7,586.81            |
| PUMPTECH                                   | 1,122.55            |
| REGENCE BLUE SHIELD                        | 40,289.71           |
| RICOH USA                                  | 272.71              |
| SALISH VILLAGE TRAVEL CENTER               | 15.77               |
| SMITH MECHANICAL                           | 1,098.85            |
| SSC - SANITARY SERVICE COMPANY             | 639.04              |
| STAR RENTALS                               | 1,705.78            |
| STERICYCLE ENVIRONMENTAL SOLUTIONS         | 57.52               |
| TEAMSTER LOCAL #231                        | 616.00              |
| TYLER TECHNOLOGIES-INCODE                  | 19,060.98           |
| UNITED WAY OF WHATCOM COUNTY               | 707.00              |
| UTILITIES UNDERGROUND LOCATION             | 14.52               |
| WA ST AUDITOR'S OFFICE                     | 2,780.00            |
| WASHINGTON DENTAL SERVICE                  | 2,892.80            |
| WASHINGTON TEAMSTERS WELFARE               | 13,567.40           |
| WHATCOM FARMERS CO-OP                      | 655.61              |
| WHATCOM JANITORIAL                         | 2,860.00            |
| <b>GRAND TOTAL</b>                         | <b>\$340,160.73</b> |

**ACTION:** Commissioner Grant made the motion to APPROVE THE CONSENT AGENDA OF FEBRUARY 13, 2023. Commissioner Deshmane second the motion. Motion passed unanimously.

**4. Public Comment** – None made.

**5. General Manager’s Report**

- There was a pump failure at Plant 1 over the weekend. Heimgartner declared an emergency so the crew could begin repairs.
- WPUA Annual Conference is April 17 – 19 at Skamania Lodge.

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- March 1<sup>st</sup> date is planned for candidates' interviews for the Assistant General Manager position. A Special Meeting will be called:

**ACTION:** Commissioner Deshmane made the motion to hold a Special Meeting on March 1, at 11:00 a.m., located at the District Office. Commissioner Grant second the motion. Motion passed unanimously.

- Tyler Schroeder has been hired by the Port of Bellingham to replace their Economic Development Director.
- Contract has been signed with Crina Hoyer – work will begin on the Commissioner Retreat.
- Heimgartner provided information on *Aeromine Technologies* which uses aerodynamics in wind-energy technology. He suggested this might be a technology that WPUA would want to support.

## 6. Old Business

### a) Broadband Program Update

- Kick-off meeting is planned with Cobb Fendley regarding the Point Roberts Broadband Project;
- Whidbey Tel has received a “middle-mile” grant for the Point Roberts project and is also interested in leasing fiber from the PUD;
- Washington State Broadband Office (WSBO) has set project area boundaries as “census blocks;”
- Ziplly Fiber is working on bringing fiber to the Glacier area/east county;
- Telecom Franchise Agreement pending approval from the County Council on February 20; hearing is set for March 5.

### b) Adjudication Update

- Sitkin discussed a reference table that has been developed which lists issues/topics for the local rules court with other local agencies, attorneys and tribes.
- Senate Bill 5828 concerning a new judge for Whatcom County looks favorable to pass both House and Senate.
- Filing of the adjudication is still scheduled for April.

### c) Geothermal Update

- Commissioner Grant was in Olympia at the end of January and gave a quick update.

## 7. New Business

### a) Approve Professional Services Agreement with K Engineers

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.

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.

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

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### b) **Approve Resolution No. 845 – Cancellation and Reissue of Warrant**

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. There is no fiscal impact to the District.

**ACTION:** Commissioner Deshmane made the motion to APPROVE RESOLUTION NO. 845 AUTHORIZING CANCELLATION AND REISSUE OF WARRANT FOR BRANOM INSTRUMENT COMPANY. Commissioner Grant second the motion. Motion passed unanimously.

### c) **Approve Resolution No., 846 – Cancellation of Warrant**

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. There is no fiscal impact to the District.

**ACTION:** Commissioner Deshmane made the motion to APPROVE RESOLUTION NO. 846 AUTHORIZING CANCELLATION OF WARRANT FOR PITNEY BOWES GLOBAL FINANCIAL SERVICES. Commissioner Grant second the motion. Motion passed unanimously.

## 8. **Operations Report** – No report today.

## 9. **Commissioner Reports**

Deshmane:

- Noted friend and Clallam PUD Commissioner Waddell passed away.
- Discussed “virtual power plants” and “resilience hubs”;
- Requested up to two per diems for series of meetings next week with County Council members and the Mayor of Bellingham.
- Deshmane asked for approval of a particular expense.

**ACTION:** Commissioner Arnett made the motion to accept this expense receipt. Commissioner Deshmane attested it was true. Commissioner Grant second the motion. Motion passed unanimously.

Grant:

- Attended the Energy Northwest meeting and met with the lobbyist in Olympia;
- Energy Northwest is asking for \$25 million from the state legislature to get their small nuclear reactor project off the ground.,
- Discussed Energy Northwest’s board of directors’ members – most are PUD Commissioners; it has been recommended they branch out on this list.
- Discussed the use of artificial intelligence (AI) for the District.

Arnett:

- Will be traveling to Olympia today for the WPUA Day on the Hill and committee meetings;
- Will be attending the next Watershed Management Board Meeting.

## 10. **Public Comment** – None made.

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## 11. Executive Session

Commissioner Arnett requested an Executive Session pursuant to RCW 42.30.110(1)(g) to review the qualifications and/or performance of a public employee. Estimated adjournment time from Executive Session was 9:45 a.m. The Commission adjourned to Executive Session at 9:20 a.m.

- At 9:37 a.m. an additional twelve (12) minutes was requested;
- At 9:48 a.m., an additional eight (8) minutes was requested;

### Executive Session Adjourn

There being no further business for Executive Session, the Commission rejoined the Regular Commission Meeting at 9:54 a.m.

## 12. Adjourn

There being no further business for the regular meeting, Commissioner Arnett adjourned the regular meeting at 9:55 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/>

# DRAFT

AGENDA ITEM #3b  
February 27, 2024

## MINUTES OF THE SPECIAL MEETING OF THE COMMISSION

February 21, 2024

### 1. Call to Order

The special meeting of the Board of Commissioners of Public Utility District No. 1 of Whatcom County was called to order at 2:00 p.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 Jaime Arnett, Commissioner Christine Grant; Commissioner Atul Deshmane; Chris Heimgartner, General Manager and Legal Counsel Jon Sitkin. Staff: Ann Grimm, Executive Assistant.

Public attending: None

### 2. Adjourn to Executive Session:

Commission President Arnett requested an Executive Session pursuant to 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 that no action is anticipated after the adjournment of Executive Session. The Commission adjourned to Executive Session at 2:03 p.m.

- At 2:28 p.m., an additional 15 minutes was requested.

#### Executive Session Adjourn

There being no further business for Executive Session, the Commission rejoined the Special Commission Meeting at 2:45 p.m.

### 3. Adjourn

There being no further business for the Special Meeting, Commissioner Arnett adjourned the special meeting at 2:45 p.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-agendas-packets-meeting-minutes-recordings/>

## Action Memo

**To:** Commissioners Arnett, Deshmane and Grant  
**From:** Jon Sitkin  
**Date:** February 27, 2024  
**Re:** **Review Commissioner Per Diem Compensation Policy**

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**Requested Action:**

Review and consider any potential revisions to Commission Per Diem Compensation Policy.

**Background:**

The Commission and District staff have requested a review of the current District Per Diem policy and procedure, including the review a form for submission of Per Diem requests. Prior Commissions decided that District staff would not be required to make judgment calls as to whether the meeting was for the benefit of the District.

Presently, in Section 7 of the Per Diem Policy in the Commission Policy on Governance and Management, concerning payment of per diem, the common, external groups (WPUDA, Energy NW, etc.) are on a pre-approved list of eligible per diem meetings. See also Resolution 797. On March 14, 2023, the Public Power Council was added as a pre-approved meeting. There are procedures for other meetings to be approved.

Historically, the Commission has considered two approaches to review of Per Diem requests made by the Commission as follows:

- A. Limit per diem to only those meetings established in the Policy. The Commission may review this Policy at any time. Staff review is limited to the pre-approved list and avoids Staff being required to make these judgement calls. This must be done by the Commission by establishing a pre-approved list as set in a Draft Policy. This is the adopted approach;
- B. Commissioners per diem requests as part of the regular agenda or as part of the consent agenda. If on the consent agenda, a Commissioner would have to request to have the item removed from the consent agenda to discuss any submitted requests.

Other approaches may be developed in the course of discussion.

Resolution 844 increased the per diem to \$168.00 per the Office of Financial Management. The per diem compensation in any given year is limited to 22,540.00 adjusted for inflation.

Procedural issues, in addition to a form, to consider are the timing and deadline for submission of per diem requests, and the close out of requests for the prior year.



**Fiscal Impact:**

None anticipated. Commissioner Per Diem compensation is part of the annual budget approved by the Commission.

**Attachments:**

District Policy on Governance and Management – See Section 7

Resolution No. 797

Draft Per Diem Request Form

**Recommended Action:**

Discussion and direction to staff and District counsel for drafting an updated policy.

# Policy on Governance and Management

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

FINAL

Approved: Resolution No. 768

January 28, 2020

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## **Section 1. INTRODUCTION**

### **1.1 Public Utility Districts Authorized.**

During the heart of the great depression, the people of this state facilitated rural utility service through the creation of Public Utility Districts (commonly known as PUDs). At the general election in 1930, the people passed their first-ever voter approved initiative to the legislature. That initiative approved the creation of PUDs, and was then legislatively documented as Chapter 1, Laws of 1931, and later codified in the Revised Code of Washington (RWC) as Title 54.

Public Utility Districts are nonprofit, locally regulated municipal corporations that are created by a vote of the people. RCW 54.04.020; 54.12.010. Unlike private utilities, public utility districts are run by an elected, nonpartisan board of Commissioners who are directly accountable to the voters. Under state law, the purpose of PUDs is “to conserve the water and power resources of the State of Washington for the benefit of the people thereof, and to supply public utility service, including water and electricity for all uses.” Section 1, Chapter 1, Laws of 1931.

### **1.2 PUD No. 1 of Whatcom County.**

Public Utility District No. 1 of Whatcom County (District) was created by a vote of the people of Whatcom County in 1936. The original desire of the citizens was to take over the Puget Sound Power and Light operations in Whatcom County and replace the investor-owned utility with a publicly owned electric utility. For a number of reasons this did not happen with the foremost being the start of World War II. By the time the war ended, no one was up to the legal fight that was likely to ensue if the process went forward.

When a petroleum company came to Whatcom County looking for a refinery site in 1952, Puget Sound Power & Light was unable to supply the energy or obtain additional energy in the market at the time. Through an arrangement with other PUDs in Washington State, PUD #1 of Whatcom County was able to obtain the energy that permitted the building of the refinery at Cherry Point. In the process, the PUD gained an electric customer and became a functional utility in 1953.

Currently, the PUD supplies one electrical customer and the PUD’s two water intake plants an average of 27 MWh of energy purchased from Bonneville Power Administration (BPA). The electricity flows over 15 miles of transmission/distribution lines and through three substations. The PUD’s electric system peak usage is 29.6 MWs.

The PUD first provided water service in the early 1960’s. Today, the PUD operates two water systems that provide industrial grade (non-potable) water to the Cherry Point Industrial Area businesses and provide irrigation water to approximately 50 customers and fire protection to the Grandview Industrial Park service area. The source of this water is from the Nooksack River. Another water system from groundwater provides potable water for a large light-industrial park at Grandview/Interstate 5. The PUD treats/delivers approximately 5.4 billion gallons of water per year.

### 1.3 PUD Management.

Title 54 RCW governs the operation of public utility districts and dictates the relative roles of a district's commission and its district manager. The powers of the district are exercised through the elected board of the commissioners.

#### **RCW 54.12.010: Exercise of power by commissioners—Number—Districts—Terms—Vacancies—Adjustment of boundaries.**

*A public utility district that is created as provided in RCW 54.08.010 shall be a municipal corporation of the state of Washington, and the name of such public utility district shall be Public Utility District No. . . . . of . . . . . County.*

*The powers of the public utility district shall be exercised through a commission consisting of three members in three commissioner districts, and five members in five commissioner districts.*

*(1) If the public utility district is countywide and the county has three county legislative authority districts, then, at the first election of commissioners and until any change is made in the boundaries of public utility district commissioner districts, one public utility district commissioner shall be chosen from each of the three county legislative authority districts.*

*(2) If the public utility district comprises only a portion of the county, with boundaries established in accordance with chapter 54.08 RCW, or if the public utility district is countywide and the county does not have three county legislative authority districts, three public utility district commissioner districts, numbered consecutively, each with approximately equal population and following precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, subject to appropriate change by the county legislative authority if and when it changes the boundaries of the proposed public utility district. One commissioner shall be elected as a commissioner of each of the public utility district commissioner districts.*

*(3) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district. Only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire public utility district may vote at a general election to elect a person as a commissioner of the commissioner district.*

*(4) The term of office of each public utility district commissioner other than the commissioners at large shall be six years, and the term of each commissioner at large shall be four years. Each term shall be computed in accordance with RCW 29A.60.280 following the commissioner's election. All public utility district commissioners shall hold office until their successors shall have been elected and have qualified and assume office in accordance with RCW 29A.60.280.*

*(5) A vacancy in the office of public utility district commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the public utility district commission for a period of sixty days unless excused by the public utility district commission. Vacancies on a board of public utility district commissioners shall be filled as provided in chapter 42.12 RCW.*

*(6) The boundaries of the public utility district commissioner districts may be changed only by the public utility district commission or by a court order issued pursuant to RCW 29A.92.110, and shall be examined every ten years to determine substantial equality of population in accordance with chapter 29A.76 RCW. Except as provided in this section, RCW 29A.92.110, RCW 54.04.039, or in the case of an intervening census, the boundaries shall not be changed more often than once in four years. Boundaries may only be changed when all members of the commission are present. Whenever territory is added to a public utility district under RCW 54.04.035, or added or withdrawn under RCW 54.04.039, the boundaries of the public utility commissioner districts shall be changed to include the additional or exclude the withdrawn territory. Unless the boundaries are changed pursuant to RCW 54.04.039, the proposed change of the boundaries of the public utility district commissioner district must be made by resolution and after public hearing. Notice of the time of the public hearing shall be published for two weeks before the hearing. Upon a referendum petition signed by ten percent of the qualified voters of the public utility district being filed with the county auditor, the county legislative authority shall submit the proposed change of boundaries to the voters of the public utility district for their approval or rejection. The petition must be filed within ninety days after the adoption of resolution of the proposed action. The validity of the petition is governed by the provisions of chapter 54.08 RCW.*

#### **1.4 Purpose for Governance and Management Policy.**

The purpose of this Policy is to assure that the District's service to the residents and businesses in Whatcom County are consistent with law and sound management principles.

## **Section 2. THE DISTRICT COMMISSION AND GENERAL MANAGER**

### **2.1 Commission.**

The Whatcom PUD is a countywide district. The District is governed by a three-member Commission. RCW 54.12.010 (“The powers of the PUD shall be exercised through a Commission consisting of three members in three commissioner districts.”)<sup>1</sup> As such, other than to vote on matters that come before the Board of Commissioners, no individual commissioner has any particular authority unless so empowered by the Board of Commissioners. One public utility district commissioner shall be chosen from each of the three county legislative authority districts.

The term of office for each Commissioner is six years. Each term shall be computed in accordance with RCW 29A.20.040. All public utility district commissioners shall hold office until their successors shall have been elected and have qualified and assume office in accordance with RCW 29A.20.040. A vacancy in the office of public utility district commissioner shall occur as provided in chapter 54.12 RCW. Vacancies on a board of public utility district commissioners shall be filled as provided in chapter 42.12 RCW.

The boundaries of the public utility district commissioner districts are established pursuant to RCW 54.12.010 (1) and may be changed only by the public utility district commission. The boundaries of the public utility district commissioner districts shall be examined every ten years to determine substantial equality of population in accordance with chapter 29A.76 RCW.<sup>2</sup>

### **2.2 Commission’s Purpose.**

The District Commission’s purpose is to:

- 2.2.1 Identify and define the purpose, values and vision of the District and communicate them in the form of policies.
- 2.2.2. Adopt strategic plans, comprehensive plans, facility plans, budgets, rates, and charges for the District’s utility services.
- 2.2.3. Hire, evaluate and terminate the General Manager.
- 2.2.4 Ensure accountability for financial oversight by a Commission-delegated member’s participation in the year-end financial exit audit performed by the State Auditor.

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<sup>1</sup> See also *Steinbock v. Ferry County PUD No. 1*, 165 Wn. App. 479,491 (2011).

<sup>2</sup> See also RCW 54.12.010(6).



## **2.3 Commission Leadership.**

The Commission's governance primarily focuses on:

- 2.3.1 Strategic leadership more than administrative detail.
- 2.3.2 Encouragement of diversity in viewpoints.
- 2.3.3 Recognition of Commission and General Manager Roles.
- 2.3.4 Collaborative decision-making.
- 2.3.5 A focus on the future, with recognition of the District's history.
- 2.3.6 Being proactive rather than reactive.
- 2.3.7 Undertake and implement the District's Strategic Plan's programs, projects and initiatives as a mechanism to assure organizational consensus and commitment to the District's priorities, and to balance the needs/wants of the community.

Specifically, the Commission will direct and evaluate the organization through the careful establishment of written policies reflecting the Commission's values and vision. The Commission's major policy focus will be on the District's long-term impacts outside the organization, not on the administrative or programmatic means of achieving those effects.

## **2.4 General Manager.**

### **Manager – Appointment – Compensation – Duties. RCW 54.16.100.**

The commission, by resolution introduced at a regular meeting and adopted at a subsequent regular meeting, shall appoint and may remove at will a District manager, and shall, by resolution, fix his or her compensation.

The manager shall be the chief administrative officer of the District, in control of all administrative functions and shall be responsible to the commission for the efficient administration of the affairs of the District placed in his or her charge. The manager shall be an experienced executive with administrative ability. In the absence or temporary disability of the manager, the manager shall, with the approval of the president of the commission, designate some competent person as acting manager. This designation to be confirmed by the Commission at the next regular commission meeting.

The manager may attend all meetings of the commission and its committees, and take part in the discussion of any matters pertaining to the duties of his or her department, but shall have no vote.

The manager shall carry out the orders of the commission, and see that the laws pertaining to matters within the functions of the District are enforced; keep the commission fully advised as to the financial

condition and needs of the District; prepare an annual estimate for the ensuing fiscal year of the probable expenses of the District, and recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made during the ensuing fiscal year, with an estimate of the costs of the development work, extensions, and additions; certify to the commission all bills, allowances, and payrolls, including claims due contractors of public works; recommend to the commission compensation of the employees of his or her office, and a scale of compensation to be paid for the different classes of service required by the District; hire and discharge employees under his or her direction; and perform such other duties as may be imposed upon the manager by resolution of the commission.

It is unlawful for the manager to make any contribution of money in aid of or in opposition to the election of any candidate for public utility commissioner or to advocate or oppose any such election.

The Commission from time to time may delegate additional authority to the General Manager pursuant to a resolution passed by the commission.

At the District, the “Manager” has the title of “General Manager”.

## **2.5 General Manager as Chief Administrative Officer.**

2.5.1 **General.** By law, the General Manager is the chief administrative officer of the District. The Commission will instruct the General Manager through written policies, normally in the form of resolutions, motions or minute entries, that define the goals and objectives the District is to achieve, and describe the authority of the General Manager.

## **2.6 General Manager Authority.**

- 2.6.1 The General Manager is authorized make all decisions, take all actions, establish all practices and develop all activities to achieve the goals set forth by the Commission, in establishing policies for the District.
- 2.6.2 The General Manager must bring to the Commission’s attention circumstances that affect the goals established by the Commission and may request the Commission to take appropriate actions.
- 2.6.3 The Commission may change its direction to the General Manager at any time, thereby expanding or limiting the authority of the General Manager (except where specifically provided by law).

### **Section 3. MEETINGS AND AGENDA**

#### **3.1 Open Public Meeting Act.**

The Commission acts only through open meetings in compliance with the state Open Public Meeting Act. Chapter 42.30 RCW. All meetings are either regular or special. Regular meetings are fixed as to date, time and place by the Commission and posted on the District's web page at [www.pudwhatcom.org](http://www.pudwhatcom.org).

Special Meetings will be noticed in accordance with RCW 42.30.080. The notice of a special meeting shall specify the time and place of the special meeting and the business to be transacted. This notice may take the place of an agenda for special meetings.

In the event of a natural disaster, attack or notice of imminent attack, where it becomes imprudent, inexpedient or impossible to conduct the affairs of the District at the regular or usual place, the Commission may meet at any place within or without its territorial limits on the call of the Commission President or any two members of the Commission. After any emergency relocation, the affairs of the District shall be conducted at such emergency temporary location for the duration of the emergency. RCW 42.14.075.

#### **3.2 Commission's Actions.**

All proceedings of the Commission are by motion or resolution, recorded in the Commission's minute books. Those minute books are public records available to the public. RCW 54.12.090.

#### **3.3 Commission Agenda.**

The agenda for a Commission meeting identifies in general terms the topics that may be considered by the Commission. The Agenda is typically developed and managed as follows:

- 3.3.1 The Agenda will consist of:
  - 1. Call to Order | Pledge of Allegiance
  - 2. Approval of Agenda
  - 3. Public Comment
  - 4. Consent Agenda
    - a. Approval of Claims
    - b. Approval of Minutes
    - c. Other
  - 5. Old Business
  - 6. New Business
  - 7. General Manager Report
  - 8. Commissioner Reports
  - 9. Adjourn

- 3.3.2 The General Manager shall prepare and issue an agenda for each regular Commission Meeting in collaboration with the Board President in advance of the meeting.
- 3.3.3 Additional agenda items may be added by a Commissioner after the publication of the agenda.
- 3.3.4 Items may be placed on either the Action Agenda section or on the Consent Agenda. An item placed on the Consent Agenda may be moved to the Action Agenda section at the request of any Commissioner member during a Commission Meeting and prior to the motion to approve the Consent Agenda. The moved item will be placed on the Action Agenda section for further discussion.

**3.4 Commissioner Attendance at Meetings.**

- 3.4.1 Commissioners will inform the President, General Manager or Assistant to the General Manager if they are unable to attend any Board meeting.
- 3.4.2 The minutes will show the Commissioner as having an absence with notice.
- 3.4.3 The Board may allow teleconferencing to substitute for actual in-person attendance at meetings.
- 3.4.4 Board members on teleconference shall be deemed present at the Board Meeting.

**3.5 Media Representation at Board Meetings.**

All meetings of the Board are public meetings open to all members of the public, including the media, without any conditions upon attending. RCW 42.30.040.

- 3.5.1 Videotaping, photographs, and/or audio recordings of the open portions of such meetings are all allowed by any person, unless such activity interferes with the orderly conduct of the meeting, pursuant to RCW 42.30.050. The President shall oversee the orderly conduct of the meeting.

## **Section 4. COMMISSION OFFICERS**

### **4.1 Commission President.**

The President of the Commission shall:

- 4.1.1 Ensure that the Commission jointly and consistently adheres to its own rules and policies, and those imposed upon it by the laws of the State of Washington.
- 4.1.2 Ensure that the deliberation is fair, open and thorough, but also timely, orderly, cordial, professional and kept to the point. The President of the Commission shall preside over and facilitate all Commission Meetings in accordance with this Policy.
- 4.1.3 Schedule and coordinate evaluations of the General Manager.
- 4.1.4 Preside over and facilitate Commission meetings.
- 4.1.5 Have no authority to supervise or administratively direct the General Manager.
- 4.1.6 Assume responsibility of the Commission that is not specifically assigned to another commission member.
- 4.1.7 Be authorized to delegate his or her authority, but remains accountable for its use.
- 4.1.8 Call Special Meetings of the Commission in the event of a business need as provided for in RCW 42.30.080.

### **4.2 Commission Vice-President.**

The Vice-President of the Commission shall:

- 4.2.1 Perform such duties of the President as delegated by the President.
- 4.2.2 Have all the power and duties as the President in the absence or inability of the President to act.
- 4.2.3 Have all the authority and duties of the Secretary in the absence or inability of the Secretary to act, when not acting as the President.

### **4.3 Commission Secretary.**

The Secretary of the Commission shall:

- 4.3.1 Attest all contracts, bonds, deeds, leases and other instruments and documents duly authorized by the Commission unless otherwise delegated by the Commission.
- 4.3.2 Perform all duties incident to the office of Secretary as may from time to time be required by law or assigned to such office by motion, rule or resolution of the Commission.
- 4.3.3 Have all the authority and duties of the President in the absence or inability of both the President and Vice-President to act.

## **Section 5. BOARD REPRESENTATION**

**5.1** The Commission as a body speaks for the District. If a Commissioner appears on behalf of the District before the public or any member of the public, another governmental agency, a community organization, or through the media for the purpose of commenting on an issue, the Commissioner needs to state the majority position of the Board, if any, on such issue. The General Manager may speak on behalf of the District based on direction received from the Commission or in the absence of the Commission, the Commission chair. An individual Commissioner may speak on behalf of the District based on action taken by or direction received from the Board of Commissioners.

5.1.2 Personal opinions and comments which differ from the Board majority may be expressed if the Commissioner clarifies that his/her statements do not represent the District's position.

**5.2** The Board of Commissioners, acting in their official capacity as an elected body, shall not take an official stand or position related to the support or opposition of any candidate(s) running for political office.

5.2.1 This does not preclude individual Commissioners from exercising their individual right to support or oppose a candidate.

## **Section 6. CONFIDENTIALITY**

**6.1** Commissioners should keep confidential all written materials and verbal information provided to them during Executive Sessions. Some of the reasons for this include, to ensure that the District's position is not compromised, and to ensure a confidence in a free exchange of Commissioner views in an Executive Session, among other reasons.

6.1.1 Confidentiality also includes information provided to Commissioners outside of Executive Sessions when the information is considered to be exempt from disclosure under the Revised Code of Washington, which includes without limitation all attorney-client privileged communications.

**6.2** If the Board, in Executive Session, has provided direction or consensus to the General Manager or Legal Counsel on proposed terms and conditions for any type of issue, all contact to parties outside the District on said terms and conditions should be done by the General Manager, the General Manager's designated staff representative or the District's Legal Counsel.

6.2.1 Commissioners may not use District information, particularly confidential information, for individual gain or to promote the interest of any individual, group, or entity. Commissioners have the duty to protect the confidentiality of privileged and private District records and information. The unauthorized disclosure of confidential records or information is a violation of this responsibility. The Board, not an individual Commissioner, has the authority to disclose information or records of the District. This restriction also applies when the District is involved in any type of contract negotiations, disciplinary procedures, or other District business.



## **Section 7. COMMISSIONER COMPENSATION – PER DIEM**

This section establishes guidelines for the District under which per diem compensation will be paid for performance or services or duties on behalf of the District, and, to allow for educational opportunities for Commissioner to inform themselves and the full Board on issues related to District business.

RCW 54.12.080 authorizes payment, at the rate established by law, to each Commissioner for each day or portion of a day in attendance at an official meeting of the District Commission or in performance of other official services or duties on behalf of the District.

It is a function of the Board of Commissioners to identify and approve services that Commissioners are authorized to perform on behalf of the District and receive compensation, and to allow for educational opportunities for Commissioners to inform themselves and the full Board of issues related to District business.

**7.1** Commissioners of the District shall be entitled to receive the per diem compensation as outlined in RCW 54.12.080 for the following activities:

- 7.1.1 Attendance at all regular and special meetings of the Board.
- 7.1.2 Attendance at the Washington Public Utility Districts Association (WPUDA) regularly scheduled annual, quarterly and special meetings, conferences and seminars, and committee meetings thereof.
- 7.1.3 Attendance at meetings for which a Commissioner has been appointed by the Board as the Representative or Alternate Representative for and by the District, such as Energy Northwest, Whatcom County Council of Governments, and Whatcom County EDI Board.
- 7.1.4 Attendance at regular or special meetings of WRIA 1 Watershed Management Board and Committees thereof including:
  - Planning Unit
  - Watershed Management Board/WRIA 1 Salmon Recovery Board
  - Management Team Meetings
- 7.1.5 Attendance at regular or special meetings of the Ag Water Board and Watershed Improvement Districts thereof including:
  - Bertrand Watershed Improvement District
  - North Lynden Watershed Improvement District
  - Laurel Watershed Improvement District
  - South Lynden Watershed Improvement District
  - Sumas Watershed Improvement District
  - Drayton Watershed Improvement District

- 7.1.6 Attendance at regular or special meetings of the following agencies/entities:
- Whatcom County Council Meetings and Committee Meetings
  - Port of Bellingham Commission Meetings
  - Partnership for a Sustainable Economy (Small Cities Partnership)
  - Bellingham/Whatcom Chamber of Commerce
- 7.1.7 Attendance at other meetings of agencies or individual organizations including but not limited to seminars and conferences not specifically called out above by an individual Commissioner will be considered only if the Commission has identified a specific purpose for such attendance as it relates to his/her performance of official business and/or duties on behalf of the District.
- 7.1.8 Attendance at a scheduled in-person meeting with the General Manager specifically to prepare for a scheduled Board Meeting or for a meeting in which a Commissioner is appointed representative or appointed alternate.
- 7.1.9 Travel time when a separate day of travel is required because of the location and scheduling of the meeting or activity.

**7.2** Compensation for attendance at other meetings or functions not specifically addressed above may be provided if approved in advance by the Commission, or the following conditions are satisfied:

- 7.2.1 At a regular Commission Meeting or at the next regular Commission Meeting, a Commissioner will provide notice to the Board of his/her planned meeting attendance at meetings and the purpose of such attendance occurring after this meeting, allowing other Commissioners to object to such meetings being on behalf of the District, and
- 7.2.2 At the next regular Commission Meeting following the individual Commissioner's attendance at such meeting, the Commissioner will provide the Board with a report of such meeting attended, for which per diem pay will be requested by the Commissioner.

Upon satisfaction of the forgoing conditions, the meeting per diem for attendance will then be processed for payment.

### **7.3 Commissioner Expense Reimbursement.**

- 7.3.1 In addition to the above allowances, Commissioners shall receive reimbursement of reasonable and necessary expenses incurred in attending activities, meetings and events as outlined in Washington State Per Diem Rates for meals and lodging. Travel reimbursement will be based on the current Internal Revenue Service rate.

**Section 8. TRAINING, ORIENTATION**

The Commission shall ensure that its skills are sufficient to assure excellence in governance of the District subject to available resources, new Commission members should participate in training and orientation in Commission governance, policies and procedures, an orientation on the District's Strategic Plan, Water and Electric Systems and all District comprehensive plans. With other Commissioners, receive training on the Open Public Meetings Act and District Public Records Retention, along with skills of effective communication and decision-making.

## Section 9. COMMISSION CODE OF CONDUCT

### 9.1 Commissioners are Trustees.

Holding public office and maintaining the public trust requires high ethical standards. Washington law provides that those holding public office is synonymous with public trust and that a public officer's relationship with the public is that of a fiduciary.<sup>3</sup> Commissioner duty is to the interests of the District's residents and ratepayers. This duty of loyalty supersedes any conflicting duty or loyalty such as that to advocacy or interest groups and membership on other Boards or staffs. It also supersedes the personal interest of any Commission member acting as a consumer of the District's activities. Additionally;

### 9.2 State Code of Ethics.

The State of Washington has adopted a "Code of Ethics" that applies to all municipal officers. Chapter 42.23 RCW. The declared purpose of the Code of Ethics is to make uniform the laws of the State concerning the transaction of business by municipal officers in conflict with the proper performance of their duties in the public interest, and to promote the efficiency of local government by prohibiting certain instances and areas of conflict while at the same time sanctioning, under sufficient controls, certain other instances and areas of conflict. RCW 42.23.010. The obligations under the state's ethics laws, and other laws impacting local officials, include:

- 9.2.1 Commission members are strictly prohibited by law from entering into or engaging in any activity defined by Chapter 42.23 RCW as a conflict of interest with their duties as a District Commissioner.
- 9.2.2 At the first regular meeting of each year and in a public forum/as needed, each Commissioner shall acknowledge their obligation to disclose any conflicts of interest as defined in Chapter 42.23 RCW.
- 9.2.3 This Policy incorporates the **District's Conflict of Interest Code and Code of Ethics Policy** adopted by the Commission. Consistent with that Policy, Commissioners shall conduct themselves with civility and respect at all times with one another, with staff, and with members of the public.
- 9.2.4 Commission members will adhere to District policy on appropriate use of District Resources.
- 9.2.5 Commission members will become familiar with their individual and joint obligations pertaining to the District's directive on reporting alleged improper governmental action, including actions required of the Commission regarding employee complaints of alleged

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<sup>3</sup> *Northport v. Northport Townsite Co.*, 27 Wash. 543, 54-50 (1902)

improper governmental actions and/or employee claims of retaliation for reporting alleged improper governmental actions.

- 9.2.6 Commission members understand that all records (including but not limited to letters, memoranda, e-mail and/or interactive computer or electronic information), the subject of which relates to the conduct of the District or the performance of any District function, are public records and may also be subject to disclosure under the Washington Public Records Act, Chapter 42.56 RCW. Any such public record shall be provided to the Public Records Officer for including in the District's records management program.
- 9.2.7 Commission members will refrain from accepting a gratuity, compensation or reward because he or she is a District Commissioner, subject to District policy. See the **District's Conflict of Interest Code and Code of Ethics Policy**.
- 9.2.8 Commission members shall work with staff through the General Manager and shall not attempt to or exercise individual authority over District staff, except as explicitly set forth and authorized in Commission policies.
- 9.2.9 In interactions with public, press or other entities, Commission members must recognize the same limitation and the inability of any Commission member to speak for the Commission except to repeat explicitly stated and adopted Commission decisions. Commission members are at liberty to exercise their individual freedom of expression, as long as the exercise of this freedom does not put the District at a legal disadvantage or conflict with the Commissioners fiduciary duties to the District. For example, a Commissioner may express their individual views, and may only express a position of the District on an issue or proposal if the Board of Commissioners has formally expressed such a position.

### **9.3. Washington's Open Public Meetings Act.**

Under Washington's Open Public Meetings Act, Commission members:

- 9.3.1 Shall not meet outside of Commission-called public meetings in violation of the Open Public Meetings Act. See Chapter 42.30 RCW;
- 9.3.2 Understand that the requirements of the Washington Open Public Meetings Act applies to communication via telephone, e-mail, instant messaging or other forms of electronic communications. Any exchange of communication between any two Commission members may constitute an official meeting of the Commission and be in violation of the Act.
- 9.3.3 May send information to other members of the Commission on an informational basis only; however, replies and/or exchanges of communication regarding District business must not occur outside of an official public meeting of the Commission. Any such e-mail

sent for informational purposes as described above, shall be copied to the District General Manager. Commissioners will not “reply” to any e-mail received by another member of the Commission.

- 9.3.4 Shall respect the confidentiality appropriate to issues regarding national security, personnel, real estate transaction, proprietary matters, and attorney-client privileged communications including those requirements listed under RCW 42.30.110, executive session and including any other confidential information gained by reason of the Commissioner’s position. See RCW 42.23.070 (4) (“No municipal officer may disclose confidential information gained by reason of the officer’s position, nor may the officer otherwise use such information for his or her personal gain or benefit.”)

#### **9.4 Commission Access to Public Records.**

- 9.4.1 The District has a duty to comply with appropriate public records requests as required by the Washington Public Records Act, chapter 42.56 RCW.

- 9.4.2 Because of the special status conferred upon the Commission as elected representatives, the following protocols are established:

- 9.4.2.1 A Commission member request to inspect District documents that do not meet the criteria of a “public record” under RCW 42.56 and/or which may be confidential in nature, shall be forwarded directly to the General Manager, who will provide the requested files, as allowed by law, for review on District premises.

- 9.4.2.2 No confidential or original documents shall be taken from District premises except with the authorization of the General Manager.

- 9.4.2.3 Commission members shall adhere to the same confidentiality requirements applicable to employees when dealing with the District’s records and other documents. District employee personnel files will not be subject to Commission review, consistent with the District’s directive relating to Employee Records Confidentiality and Access.

- 9.4.2.4 Access to District public records may be achieved by providing a “Request for Public Records” to the General Manager. If a Commissioner receives a request for records (either verbal, in writing or electronically) from any person or entity, the Commissioner shall immediately forward such request to the District’s public record officer.

## **Section 10. COMMISSION, NOT COMMISSIONER ACTION**

### **10.1 General.**

The Commission acts through a majority of its members. Only decisions of the Commission acting as a body are binding upon the General Manager, the Legal Counsel, the District Auditor, or District Treasurer.

### **10.2 Commissioner Communications.**

- 10.2.1 Decisions or instructions of individual Commission members are not binding on the General Manager, Legal Counsel, or other District staff except in instances when the Commission has specifically authorized such exercise of authority.
- 10.2.2 In the case of Commission members requesting information or assistance without Commission authorization, the General Manager, Legal Counsel, or other District staff must refuse such requests that may be a conflict of interest between the District and the Commissioner requesting the information or assistance.
- 10.2.3 Commission member may communicate directly with District employees or contractors. However, the Commission as a body and the Commission members individually will never give direction to persons who report directly or indirectly to the General Manager, with the exception of the Legal Counsel.
- 10.2.4 The Commission and its members will refrain from evaluating either formally or informally, the job performance of any District employee other than the General Manager.

## **Section 11. MANAGEMENT, LEGAL COUNSEL AND AUDITOR/TREASURER**

### **11.1 General Manager.**

The General Manager is responsible for the following:

- 11.1.1 All operations of the District, as well as the business affairs of the District.
- 11.1.2 Achieving the results established by the Commission within the appropriate and ethical standards of business conduct set by the Commission.
- 11.1.3 Enforcing District resolutions, administering directives, staff policies and procedures, hiring and terminating all employees, attending meetings of the Commission and reporting on the general affairs of the District, and keeping the Commission advised as to the current and future business needs of the District.
- 11.1.4 Ensuring the smooth continuous operation of the District in the event of the planned or unplanned absence of the General Manager. As required under RCW 54.16.100, the General Manager shall designate a competent person as Acting General Manager when absent. On an annual basis, the General Manager shall provide to the Commission a written designation of the order of positions to perform in this capacity.
- 11.1.5 Interacting with the public and other utilities and government agencies, pursuant to policies and direction adopted by the Commission.
- 11.1.6 Performing other responsibilities as may be appropriate, directed by the Commission.
- 11.1.7 The General Manager shall provide a timely communications report to the Commission and Staff.

### **11.2 Evaluating the General Manager's Performance.**

- 11.2.1 The General Manager's job performance shall be evaluated by comparing the District's operations and results and the General Manager's performance to the policies and direction established by the Commission. The Commission shall evaluate the General Manager's performance on an annual basis.
- 11.2.2 The General Manager shall propose performance criteria prior to acceptance of the budget for the following twelve months that represents his or her reasonable interpretation of achieving the goals identified by the Commission. The Commission shall accept or modify the criteria.



### **11.3 Legal Counsel.**

11.3.1 The District Legal Counsel provides legal advice and counsel to the District and to the Commission. The Legal Counsel reports both to the Commission and to the General Manager.

The Commission is ultimately responsible for hiring (or contracting for) and terminating Legal Counsel. As a general practice, the Commission with the General Manager may participate jointly in hiring and terminating District Legal Counsel.

The District's Legal Counsel shall advise the Commissioners regarding potential conflict of interest issues or other ethical matters. District's Legal Counsel shall provide assistance to individual Commissioners in complying with applicable statutes and laws only when such advice does not conflict with the District's Legal Counsel's obligations to the District or to specific direction of the Commission.

11.3.2 With respect to the Commission, the District's Legal Counsel shall: Provide advice or counsel whenever required by the Commission.

11.3.3 Inform the Commission of material legal issues impacting the District or the Commission known to the District's Legal Counsel.

11.3.4 When necessary, act independently of the General Manager.

11.3.5 The District's Legal Counsel shall not provide legal counsel to Commission members except as it relates to their role as District Commission members.

### **11.4 Auditor and Treasurer.**

11.4.1 The District Auditor (not Washington State Auditor) and the District Treasurer (Treasurer) serve in the capacity set forth by Title 54 of the Revised Code of Washington.

11.4.2 Under Resolution Number 3, dated 24 April 1937, the Commissioners of PUD No. 1 of Whatcom County duly appointed the Auditor of Whatcom County as a competent person to perform such duties. The Auditor of Whatcom County is hereby appointed Auditor and Treasurer of Public Utility District No. 1 of Whatcom County with the powers and duties prescribed by Chapter 1, Laws of Washington for 1931 and such other duties as are now or hereafter may be prescribed by the rules and regulations of this Commission.

11.4.3 Under Resolution Number 202, dated 26 September 1968, that any two or more of the duly elected, qualified and acting Commissioners of Public Utility District No. 1 of Whatcom County be and they are hereby authorized to approve payments on warrants of the District of any claim voucher for materials furnished, services rendered or labor performed for or in on behalf of the District.

## **Section 12. BUDGET AND PROCUREMENT**

### **12.1 General.**

By resolution, the Commission shall set for the authority of the General Manager to manage and expend District funds in accordance with financial policies and budgetary limits. Procurement of goods and services shall take place in accordance with applicable legal requirements in a fair, competitive, and inclusive manner to maximize the benefit to the District's ratepayers.

### **12.2 Financial Policies.**

The Commission, by resolution, shall adopt financial policies that provide guidance to the General Manager in managing the finances of the District and in developing budgets, financial plans and rates. At a minimum, these policies shall 1) provide for sufficient liquidity relative to the District's risk profile, 2) provide for adequate coverage to meet debt covenants, 3) establish criteria for debt and rate – financed capital expenditures, 4) require that budgets be developed based on conservative and prudent assumptions consistent with standard industry practice, and 5) establish budgetary and procurement controls over expenditures.

### **12.3 Budgetary Authority.**

The Commission, by resolution, shall approve the District's budget prior to the start of each calendar year in accordance with Chapter 54 RCW. The General Manager shall manage the District's operations within the approved budget levels consistent with authority levels set for in the District's financial policies.

### **12.4 Procurement Authority.**

The Commission, by resolution, shall establish procurement authorities and guidelines for the General Manager consistent with state laws and regulations. The General Manager shall establish procurement controls that provide reasonable assurance that the procurement of goods and services are made for valid business purpose and within authorized budget levels.

It is District policy that procurement decisions be made free from actual or perceived conflicts of interest consistent with the District's Code of Ethics.

It is District policy that due diligence and prudent judgement be exercised in the making of procurement decisions, including conducting a risk assessment. If the General Manager reasonably determines that a procurement activity presents, regardless of the size of the financial commitment, either: (i) a unique and significant operational risk to the District; or (ii) a significant impact to customers, the General Manager shall inform the Commission.

**RESOLUTION No. 768**

**A RESOLUTION OF THE COMMISSION OF  
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY,  
ADOPTING A POLICY ON GOVERNANCE AND MANAGEMENT**

**WHEREAS**, the Board of Commissioners of Public Utility District No. 1 of Whatcom County (Commission) values the responsibilities and authorities granted it through the legislature in the form of laws codified in large part under Title 54 RCW; and

**WHEREAS**, Commission recognizes the responsibilities placed upon it by the citizens of Whatcom County in guiding the District through the use of established policies, values and vision for the betterment of its customers and the community in which it services; and

**WHEREAS**, the Commission understands that effective board governance can be accomplished through strategic leadership, collaborative decision-making, and the recognition of appropriate board-staff relationships; and

**WHEREAS** annually, the Governance and Management Policy will be reviewed to ensure appropriate laws, fiduciary responsibilities, Commission and staff-delegated authorities are now in alignment with Commission expectations and business needs.

**NOW, THEREFORE BE IT RESOLVED**, that the Commission of Public Utility District No. 1 of Whatcom County adopts the Policy on Governance and Management attached hereto as Exhibit A as part of this resolution.

**ADOPTED** by the Commission of Public Utility District No. 1 of Whatcom County at a regular open meeting held this 28<sup>th</sup> day of January 2020.

\_\_\_\_\_  
Jeffrey R. McClure, President

\_\_\_\_\_  
Michael J. Murphy, Vice-President

ATTEST: \_\_\_\_\_  
Atul Deshmane, Secretary

**RESOLUTION NO. 797**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF  
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY  
(THE “DISTRICT”) ESTABLISHING AN APPROVAL PROCESS  
FOR PAYMENT OF PER DIEM COMPENSATION,  
AMENDING SECTION 7 OF RESOLUTION NO. 768**

**WHEREAS**, the legislature established the salaries and per diem compensation to be paid to commissioners in RCW 54.12.080; and

**WHEREAS**, the Washington Office of Financial Management (“OFM”) adjusts the salary and per diem rate every five (5) years to account for inflation by issuing a notice (“Notice”), as required under RCW 54.12.08; and

**WHEREAS**, OFM issued a Notice of Public Utility District Commission Dollar Threshold Adjustment published in the Washington State Register and effective July 1, 2018; and

**WHEREAS**, the current Notice established a new dollar per diem threshold of one hundred and twenty-eight dollars (\$128) per day with a new annual per diem compensation limit of seventeen thousand nine hundred and twenty dollars (\$17,920); and

**WHEREAS**, RCW 54.12.080 states that the per diem compensation paid during any one year to a commissioner shall not exceed the limit established by OFM; and

**WHEREAS**, the Commission wishes to amend Resolution 768, section 7 related to authorized per diem and the process for approval of per diem compensation as set forth below; and

**WHEREAS**, the Commission finds that the meetings and events listed in Exhibit A sections 7.1.1-7.17 are for the benefit of the District and attendance by a Commissioner at these meetings or events are for a District purpose and/or are necessary for the performance of the Commissioner’s official duties.

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

The Commission adopts the Commissioner Per Diem Compensation Policy amendments to Article 7, sections 7.1 and 7.2 as set forth in Exhibit A attached hereto.

**ADOPTED** by the Board of Commissioners of Public Utility District No. 1 of Whatcom County at a regular meeting thereof held this 10<sup>th</sup> day of August 2021.

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

ATTEST:

\_\_\_\_\_  
Christine Grant, Secretary/Commissioner

\_\_\_\_\_  
Atul Deshmane, President/Commissioner

\_\_\_\_\_  
Mike Murphy, Vice President/Commissioner

**APPROVED: AUGUST 10, 2021**

## EXHIBIT A

### Commissioner Per Diem Compensation Policy

**PURPOSE:** To establish the guidelines for Whatcom County Public Utility District No. 1 (the “District”) under which per diem compensation will be paid for performance of services or duties on behalf of the District.

#### **Section 7.1 Commissioner Compensation- Per Diem**

RCW 54.12.080 authorizes payment to each Commissioner for each day or portion of a day in attendance at an official meeting of the District commission or in performance of other official services or duties on behalf of the District.

It is a function of the Board of Commissioners (“Board”) to identify and approve services that Commissioners are authorized to perform on behalf of the District and receive compensation. The Board accomplishes this by establishing a list of the pre-approved meetings that are determined to be for the benefit of the District as required by RCW 54.12.080.

7.1 Commissioners of the District shall be entitled to receive the per diem compensation as outlined in RCW 54.12.080 for the following activities in the amount established in RCW 54.12.080:

7.1.1 Attendance at all regular and special meetings of the Board.

7.1.2 Attendance at the Washington Public Utility District Association annual conference and seminars, and committee meetings thereof.

7.1.3 Attendance at meetings for which a Commissioner has been appointed by the Board as the representative or alternate representative for and by the District.

7.1.4 Attendance at a regular or special meeting of the following meetings approved by the Board in advance:

1. WRIA 1 Planning Unit
2. WRIA 1 Watershed Management Board/WRIA 1 Salmon Recovery Board
3. WRIA 1 Management Team meetings
4. Bertrand Watershed Improvement District
5. North Lynden Watershed Improvement District
6. Laurel Watershed Improvement District
7. South Lynden Watershed Improvement District
8. Sumas Watershed Improvement District
9. Drayton Watershed Improvement District
10. Ag Water Board
11. Whatcom County Council Surface Water Work Sessions

7.1.5 Up to one in person meeting per week with the General Manager specifically to prepare for a Board meeting or a scheduled meeting for which a Commissioner is appointed representative or appointed alternate.

7.1.6 Per Diem Compensation for attendance at other meetings not specifically addressed above may be provided if approved in advance by the Commission at a regular commission meeting when a Commissioner advises the Commission of his/her planned attendance, the purpose of such meeting allowing other Commissioners to object to such meetings being on behalf of the District or the furtherance of the Commissioners duties.

7.1.7. Travel time when a separate day of travel is required because of the location and scheduling of the activity.

#### **7.2 Process and Procedure for Per Diem review and approval.**

7.2.1 Per Diem compensation paid during any one year to a Commissioner shall not exceed the limit established by OFM based on the Notice in effect at the time of approval.

7.2.2 Per Diem requests shall be submitted to the General Manager and/or Finance Director on forms approved by the General Manager, but shall at a minimum include the date, location, entity/committee or board meeting for which the request is submitted. Any request for Per Diem must be submitted by the 16<sup>th</sup> day of the month for the preceding month. Any per diem requests submitted after that date shall be denied.

7.2.3 The role of the District staff is to confirm that the meeting for which a per diem request is submitted by a Commissioner is limited to whether the meeting or event is listed on the preapproved list under Sections 7.1.1-7.1.7 above.



**Per Diem Request Form  
for  
Meeting or Event Attendance**

**Commissioner:** \_\_\_\_\_

**Date of Request:** \_\_\_\_\_

**1. Name of Meeting/Event:** \_\_\_\_\_

**Reason for Attendance:** \_\_\_\_\_

**Date of Event:** \_\_\_\_\_

**Approved by Commission Consent Agenda:**

|                          |     |
|--------------------------|-----|
| <input type="checkbox"/> | Yes |
| <input type="checkbox"/> | No  |

**2. Name of Meeting/Event:** \_\_\_\_\_

**Reason for Attendance:** \_\_\_\_\_

**Date of Event:** \_\_\_\_\_

**Approved by Commission Consent Agenda:**

|                          |     |
|--------------------------|-----|
| <input type="checkbox"/> | Yes |
| <input type="checkbox"/> | No  |

**3. Name of Meeting/Event:** \_\_\_\_\_

**Reason for Attendance:** \_\_\_\_\_

**Date of Event:** \_\_\_\_\_



## Action Memo

**To:** Commissioners Arnett, Deshmane, and Grant  
**From:** Garrett Love-Smith, Project Manager  
**Date:** February 27, 2024  
**Re:** Approve Change Order No. 01 – P & P Excavating D Station Line Stop Project

**Requested Action:**

APPROVE CHANGE ORDER NO. 01 FOR THE D-STATION LINE STOP PROJECT AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER TO EXECUTE THE CHANGE ORDER.

**Background:**

Change Order No. 01 regards the D-Station Line Stop Project (CIP RW-44) and the associated Construction Contract with the prime contractor P&P Excavating LLC. The proposed change order covers the additional labor hours, materials, and leased equipment needed to complete the Project. The expansion of the project scope is due to the current water line alignment not being able to accommodate a line stop because the actual pipe materials were different than specified in the original design drawings. It also covers the additional materials and labor associated with a new bypass line that will be used to feed BP during the construction process of this project and the future expansion of D-Station.

**Change in Scope:**

The above discussed items represent a change in the project scope for P&P Excavating's Construction Contract which has resulted in the change order request by P&P Excavating.

**Additional Cost for Change Order No. 01:**

The additional cost not to exceed amount for P&P Excavating completing work under Change Order No. 01 is \$154,510.43. The revised total amount for the Construction Contract is as follows:

|   |                     |
|---|---------------------|
| Original Contract Amount                                      | \$129,610.00        |
| <b>Change Order No. 01</b>                                    | <b>\$260,265.00</b> |
| Subtotal  | \$389,875.00        |
| Sales tax (8.6%)  | \$33,529.25         |
| <b>Total Amended Contract Amount</b><br>(Including Sales Tax) | <b>\$423,404.25</b> |

STAFF RECOMMENDS APPROVING CHANGE ORDER NO.01 FOR THE D-STATION LINE STOP PROJECT CONSTRUCTION SCOPE AND COST INCREASE.

**Fiscal Impact:** The capital project has been included in the approved 2023 Budget as CIP RW-44.

**Recommended Action:** APPROVE CHANGE ORDER NO.01 FOR THE D-STATION LINE STOP PROJECT AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER TO EXECUTE THE CHANGE ORDER.

## Action Memo

**To:** Commissioners Arnett, Deshmane, and Grant  
**From:** Kurt Wank – Director of Utility Operations  
**Date:** February 27, 2024  
**Re:** Award Contract to FlowServe for Water Treatment Plant 1 Intake Pump No.1 Replacement

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**Requested Action:**

AWARD THE CONTRACT TO FLOWSERVE FOR WATER TREATMENT PLANT 1 INTAKE PUMP NO.1 REPLACEMENT AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE CONTRACT.

**Background:**

District Staff identified repairs that were critical to the performance of Intake Pump 1 and Intake Pump 5 at Water Treatment Plant 1 (WTP1) in 2023. Upon the pumps being pulled and inspected by FlowServe, it was determined that they were beyond repair. Upon receiving the quote, it was decided to replace Intake Pump 5 in 2023 and replace Intake Pump 1 in 2024, due to budget constraints. FlowServe provided the District with a quote (cost and timeline) to replace Intake Pump 1, which met the PUD's requirements. FlowServe is on the PUD's Small Works Roster.

Intake Pump 1 Installation: \$121,522.00 (without sales tax)

Price includes purchase and installation of Intake Pump 1. Staff recommends awarding the Contract for WTP1 Intake Pump 1 replacement to FlowServe.

**Fiscal Impact:**

This project is budgeted for in the 2024 Capital Improvements Projects Budget line item RW-48

**Recommended Action:**

AWARD THE CONTRACT TO FLOWSERVE FOR WATER TREATMENT PLANT 1 INTAKE PUMP NO.1 REPLACEMENT AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE CONTRACT.

## Action Memo

**To:** Commissioners Arnett, Dushman and Grant  
**From:** Andrew Entrikin  
**Date:** February 27, 2024  
**Re:** Master Optical Fiber and Related Telecommunications Facilities Lease Agreement and Service Order Summary

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**Requested Action:** APPROVAL OF MASTER OPTICAL FIBER AND RELATED TELECOMMUNICATIONS FACILITIES LEASE AGREEMENT AND SERVICE ORDER SUMMARY WITH INTERNET SERVICE PROVIDERS, FOR AND ON BEHALF OF THE PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY AND AUTHORIZE THE GENERAL MANAGER OR HIS/HER DESIGNEE, TO EXECUTE THE AGREEMENT.

**Background:** Over the next year Whatcom PUD will complete its project to enable gig-speed broadband for more than 1,200 homes in the Point Roberts community. As a result, the area will have access to services comparable to the largest urban areas in Washington State.

In October 2023, the Washington State Broadband Office (WSBO) awarded a \$3.15 million dollar grant to Whatcom PUD for its last-mile fiber construction project. Whatcom County provided a project match of \$350,000.

In 2024 the PUD intends to enter into a Master Optical Fiber and Related Telecommunications Facilities Lease Agreement with the local incumbent license exchange carrier (ILEC), Whidbey Telecom and other Internet Service Providers (ISP's). The PUD will design, build and maintain the fiber-to-the-premise system and in exchange, the ILEC/ISP will pay the PUD a monthly recurring charge (MRC) per connection. This model allows for a level playing field for all internet service providers to compete and offer services to Point Roberts constituents.

ISP's want to utilize the public/private partnership model and are looking to sign up to provide services to the areas served by the project. Prior to the PUD's effort, the incumbent provider offered services over a copper system at speeds below 25/3 Mbps.

The Point Roberts project timeline states the design is expected to be completed by the end of the summer and will overlap with obtaining permitting approvals. Construction is expected to start in late 2024 and finish by the second quarter of 2025.

**Fiscal Impact:** No fiscal impact. Funds are designated in the 2024 Budget.

**Recommended Action:** APPROVAL OF MASTER OPTICAL FIBER AND RELATED TELECOMMUNICATIONS FACILITIES LEASE AGREEMENT AND SERVICE ORDER SUMMARY WITH INTERNET SERVICE PROVIDERS, FOR AND ON BEHALF OF THE PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY AND AUTHORIZE THE GENERAL MANAGER OR HIS/HER DESIGNEE, TO EXECUTE THE AGREEMENT.

**MASTER OPTICAL FIBER AND RELATED TELECOMMUNICATIONS FACILITIES  
LEASE AGREEMENT**

This **MASTER OPTICAL FIBER AND RELATED TELECOMMUNICATIONS FACILITIES LEASE AGREEMENT** (“Lease”) by and between the **PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY**, a Washington public utility district, (hereinafter referred to as the “PUD” or “OWNER”), and \_\_\_\_\_, a \_\_\_\_\_ corporation, organized under the laws of the State of Washington, (hereinafter referred to as the “Company”) (collectively the PUD and the Company are referred to herein as the “Owner”) is effective as of the date it is fully executed by the Parties following approval of the PUD Commission in open session (the “Effective Date”).

**RECITALS:**

**WHEREAS**, the PUD owns and maintains an optical fiber system within the boundaries of the PUD for the purposes of providing wholesale telecommunication services boundaries of the PUD and generally described in **Exhibit A** attached hereto and located in the area described and/or depicted in **Exhibit B** attached hereto, and related telecommunications facilities, if any applicable to this lease, are described in **Exhibit C**, attached hereto [if no facilities are listed in Exhibit C then no facilities are subject to this lease other than the optical fiber system described and depicted in **Exhibits A and B**], (collectively the fiber system and related telecommunication facilities, if any, are defined below as the “PUD System”); and

**WHEREAS**, the Company represents that it is authorized and lawfully registered in the State of Washington and Whatcom County to engage in the business of providing telecommunication services to the general public and internet service providers within the boundaries of the PUD, and will not be the end user of the PUD’s optical fiber and facilities leased to it.

**NOW, THEREFORE**, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the Parties do hereby agree as follows:

**1. Overview.**

1.1 Overview. This Lease states the terms, covenants, and conditions by which the PUD will lease to the Company portions of the PUD System and provide associated services, identified and detailed in a to be executed Service Order. This Lease and the associated Service Order is intended to cover any and all facilities and services to be provided by the PUD to the Company. The Services to be provided by the PUD shall be specifically identified in a Service Order, but may generally consist of those Services identified in **Exhibit D**. The form of a Service Order is set forth in **Exhibit E**. The Company may only use the fiber and facilities authorized by and subject to this Lease and the associated Service Order, and only for authorized and lawful purposes. In the event of any inconsistency between a Service Order and this Lease, the terms and provisions of this Lease shall control, except for the identification of the portions of the PUD System and Services identified in a Service Order which shall control in the event of a conflict.

1.2 Exhibits. The Exhibits to this Lease are as follows:

A. The Narrative description of the portion of the PUD System that is subject

to this Lease.

B. A general depiction and/or specific description of the location of the PUD System that is subject to this Lease.

C. A general description of the facilities that are subject to this lease, if any. If no such facilities are identified, then no related telecommunication facilities are subject to this lease.

D. Services that the PUD may provide will be set forth in a subsequent Service Order.

E. The form of a Service Order.

F. PUD Current Rates and Fees, subject to change. Upon the future adoption of a new rate and fee schedule by the Commission, the Company and this Lease shall be subject to those rates and fees as adopted by the Commission, and shall be part of this Lease without the requirement of an amendment.

## 2. PUD System And Services:

2.1 The PUD System consists of the following:

2.1.1 Fiber. The PUD System is generally described in **Exhibit A** attached hereto and located in the area described and/or depicted in **Exhibit B** attached hereto. The optical fiber subject to this Lease that the PUD may make available to the Company shall be set forth in the to-be-executed associated Service Order. Those strands of dark fiber made available to the Company pursuant to this Lease and an executed Service Order are referred to herein as "Leased Fiber".

2.1.2 Optical Fiber Specifications: Optical fiber within the System that meets the following minimum specifications measurable by Optical Time Domain Reflectometer ("OTDR"):

| Parameter                  | Specifications | Units        |
|----------------------------|----------------|--------------|
| Maximum attenuation,       | 1310nm (A1)    | .50 dB/km    |
| Maximum attenuation,       | 1550nm (A2)    | .40 db/km    |
| Cladding diameter          | 125 +-3        | nm           |
| Cutoff Wavelength          | 1250 +-100     | nm           |
| Zero dispersion wavelength | 1310 +-12      | nm           |
| Maximum dispersion"        | (1285-1330nm)  | 3.5 ps/nm km |

Reference: EIA RS-455 test method

2.1.3 Facilities: Facilities that are subject to this Lease, if any, are identified in **Exhibit C**.

2.1.4 Services. Any additional services that may be available to the Company shall be specified in a Service Order and shall be charged at the then-current rates (See **Exhibit F**) adjusted on an annual basis as established by the Commission for the PUD.

### **3. Payment, Use, And Terms (Service Order).**

3.1 The Company covenants and agrees to accept and pay for, and the PUD agrees to provide the PUD System and services specified in each Service Order at the rates set forth in Exhibit F as may be amended by action of the PUD Commission for the term specified therein. In the event a Service Order has not been signed and delivered to the PUD within ninety (90) days from the execution hereof, this Lease shall automatically terminate.

3.2 Renewal. This Lease shall automatically renew for successive terms of one (1) year each as to the fiber and facilities specified in each Service Order unless terminated earlier, by notice in writing delivered by either Party to the other thirty (30) days prior to the end of the term specified, including any renewal term. The same terms, covenants, and conditions as specified in this Lease shall apply to all renewal terms, unless otherwise specifically modified by the Parties in writing.

3.3 Upon termination of this Lease for any reason, the Company's rights for use of the PUD's fiber and facilities, and the obligation of the PUD to provide services to the Company, shall immediately cease.

3.4 The Company's use of the portions of the PUD's System shall include the provision of telecommunication services within the PUD boundaries. The PUD reserves the right to limit the manner in which any portion of its System and facilities are used to protect the technical integrity of the System.

### **4. Additional Terms Regarding Fiber System.**

4.1 The Company shall comply with the minimum requirements for broadband download and upload speeds set by the State of Washington Broadband Office or RCW 43.330.056, whichever is greater.

### **5. Testing And Acceptance Of PUD System.**

5.1 The Company shall have the right at its expense to test the leased fiber any time three (3) days prior to the commencement of use for compliance with the technical specifications set forth in Section 2.1.2 above. Upon completion of testing, the Company shall either send an acceptance notice to the PUD acknowledging the acceptance of the Leased Fibers as tested included an identification of all of the Lease Fiber that was tested and the results of said test ("Acceptance Notice"), or notify the PUD that the Leased Fibers do not comply with the technical specifications identifying which Leased Fibers did not meet the applicable specifications ("Rejection Notice"). By sending an acceptance notice, the Company acknowledges and confirms that it has had the opportunity to test the fiber and that the Leased

Fibers listed in the notice comply with the applicable technical specifications. If the Company fails to provide any notice within the three (3) days provided, then the Company shall be irrevocably deemed to have accepted the fibers and performed all tests that it desired.

5.2 In the event the result of any test performed in accordance with Section 5.1 herein shows that the fiber(s) are not operating in accordance with the technical specifications, within a reasonable period of time following receipt of a Rejection Notice, the PUD shall take reasonably action consistent with its business judgment to bring the fiber(s) into compliance with the applicable technical specifications that were not met and shall notify the Company when the PUD believes that the fiber(s) comply with the technical specifications. The Company shall have ten (10) days following such notice to retest the fiber(s) and again notify the PUD that the fiber(s) are accepted or do not comply in accordance with the procedures set forth in section 5.2. If following said notice, the PUD is unable or chooses not to bring the fiber(s) into compliance, this Lease and all applicable Service Orders shall then terminate as to such fiber(s).

5.3 In no event shall the unavailability, incompatibility, delay in installation, or other impairment of any of the Company's interconnection facilities, including Company's suppliers (e.g., a local access telephone service provider) be used as a basis for rejecting any fiber(s).

## **6. Fiber System Maintenance.**

6.1 All maintenance and repair to the Leased Fiber and system facilities identified in a Service Order (other than equipment or facilities installed by the Company), including, but not limited to, conduit, inner-duct, poles and equipment, shall be the responsibility of the PUD; provided, however, the PUD shall retain the right to subcontract for maintenance and repair. Maintenance shall be performed in accordance with standard industry practices and PUD standards.

6.2 For routine and scheduled work affecting service on the System, the PUD will make reasonable efforts to schedule maintenance that will result in as little disruption of service as reasonably possible, during off peak hours, and at such times and dates that will provide the Company with ten (10) business days' notice. The PUD will provide notice to the Company by the method as determined by the PUD, unless an alternative method is specified in the applicable Service Order.

6.3 Emergency repair or maintenance work required to be performed by the PUD arising from unscheduled disruption of service or from the imminent threat of disruption of service may be conducted at any time without prior notice.

6.4 In the event of unscheduled disruption of service, or emergency, the Parties shall notify the other Party as provided in the Notice paragraph herein at Section 28, below.

6.5 Each Party shall maintain the capability to accept process and dispatch personnel on trouble reports without delay after the performance of appropriate tests and attempts to isolate the trouble remotely. If testing and remote trouble isolation procedures are ineffective, each Party will assist the other in efforts to isolate the trouble. If the trouble is isolated to a Party's facilities, equipment or switching equipment, such Party shall take all necessary steps to clear the trouble and restore the services as quickly as possible.

## 7. Fees And Payment Terms.

7.1 All applicable fees and charges, including without limitation, power usage fees, rack fees, early disconnect charges, and other non-recurring charges, shall be based on the rate schedule established by the Commission for the PUD and commenced as specified in each Service Order. The current rates and fee schedule is set forth in **Exhibit E**, and are subject to change by the Commission.

7.2 Invoicing. The PUD shall bill the Company monthly, in advance, for all fees and charges, provided power charges shall be added to each invoice as usage occurs. All amounts shall be due within thirty (30) days of invoice.

7.3 Fee Adjustment. Rates, fees and charges may be adjusted or modified from time-to-time as specified by the Commission or in each Service Order, but may not be reduced without the approval of the Commission for the PUD.

7.4 Taxes. The Company shall pay when due, in addition to all of the rates and charges set forth herein, all applicable taxes, franchise, license and permit fees, including without limitation all leasehold excise taxes (hereinafter collectively referred to as "Taxes") assessed against it for the conduct of its business as a telecommunications service provider arising out of the use of the Leased Fibers during the Term of this Lease. The Company shall indemnify, defend, and hold the PUD harmless from any such taxes assessed against the Company, including all penalties, interest and costs and reasonable attorney's fees, resulting from the failure to pay any such taxes, or resulting from any proceeding contesting the imposition of any such taxes.

Provided that the Company is not in arrears for any payment due to the PUD in the event of any refund, rebate, reduction, or abatement to the Company of any such taxes, the Company shall be entitled to receive the entire benefit of such refund, rebate, reduction, or abatement.

7.5 The Company shall pay all applicable leasehold excise taxes or taxes imposed in lieu of leasehold excise tax, and shall reimburse the PUD for any B&O or other tax assessed against the PUD for providing the Fiber, Facilities and/or Services to the Company herein. In the event the PUD is any way prohibited by law from requiring the Company to pay any such tax and by reason thereof the PUD does pay any such tax, then, and in that event, the PUD shall be entitled to increase the amount of the rate and/or fees payable by the Company to the PUD by the amount of any tax so paid and by the amount of any increased tax required to be paid.

7.6 Past Due Amounts. All past due amounts due pursuant to the provisions of this Lease shall bear interest at the rate of twelve percent (12%) per annum, and the Company shall reimburse the PUD for any actual expenses incurred in collecting any past due amounts including attorney's fees and expenses.

## 8. Limitation Of Liability / Indemnification.

8.1 ONLY ACTUAL DAMAGES. NOTWITHSTANDING ANY PROVISION OF THIS LEASE TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL COSTS, LIABILITIES, OR DAMAGES, WHETHER FORESEEABLE OR



NOT, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY'S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS LEASE.

8.2 Mutual Indemnification. To the extent permitted by law, each Party hereby agrees to defend and indemnify the other and their respective managers, members, officers, commissioners, and employees from and against, and assume liability for, any injury, loss, damage to, or claim by any third party for personal injury or damage to tangible property (collectively the "Claims"), to the extent and in proportion that such Claims arise from the negligent act or omission or willful act of the indemnifying Party or its officers, employees, servants, affiliates, agents, contractors, licensees, invitees, or vendors.

8.3 LIMITED WAIVER OF IMMUNITY UNDER WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, AND OTHER SIMILAR INDUSTRIAL INSURANCE SCHEMES. For purposes of the foregoing indemnification provision, and only to the extent of Claims against each other under such indemnification provision, each Party specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, the United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligation under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the Parties hereto.

## 9. **Force Majeure.**

9.1 Neither Party shall be liable to the other for any failure of performance under this Lease due to causes beyond its control (except for the fulfillment of payment obligations as set forth herein), including, but not limited to: acts of God, fire, flood, earthquake, pandemics, epidemics, or other catastrophes; material or facility shortages or unavailability not resulting from such Party's failure to timely place orders therefore; lack of transportation; the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions; national emergencies; insurrections; riots, wars; or third party strikes, lockouts, work stoppages or other labor difficulties (collectively, "Force Majeure Events"). The Company shall not pay for services not rendered during a Force Majeure Event.

## 10. **Events Of Termination Other Than Default.**

10.1 Condemnation. If at any time during the Term of this Lease, all or any significant portion of the PUD System subject to this Lease and associated Service Order shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, either Party may elect to terminate this Lease upon giving the other Party sixty (60) days prior written notice. In the event this Lease is terminated in accordance with this section, both Parties shall be entitled to participate in any condemnation proceedings to seek to obtain compensation via separate awards for the economic value of their respective interest in the System.

10.2 Damage or Destruction of System. If at any time during the Term of this Lease, all or any significant portion of the PUD System subject to this Lease and associated Service Order or that portion of the entire PUD fiber optic system shall be damaged or destroyed beyond feasible repair such that the PUD cannot provide the PUD System and/or Services to

the Company, both Parties shall be entitled to seek to recover the economic value of their respective interest in the PUD System as follows:

- (i) under any insurance policy carried by either Party or any third Party; or
- (ii) seek recovery from any third party which may be legally responsible for causing such damage or destruction.

10.3 Catastrophic Outage: If at any time during the Term of this Lease the ability of the PUD System to transmit telephone, telecommunications and video services shall be interrupted or degraded below a minimum of .25 DBM (Decibels per Millivolt) attenuation per splice as established by OTDR (Optical Time Domain Reflectometer):

- (i) in the case of a Force Majeure Event, for thirty (30) consecutive days; or
- (ii) in the case of a non-Force Majeure Event, for five (5) consecutive days,

then either Party may elect to terminate this Lease without liability upon giving thirty (30) days written notice to the other Party.

#### **11. No Assignment.**

This Lease and the Company's rights herein may not be transferred, assigned or subleased by the Company.

#### **12. Waiver Of Terms Or Consent To Breach.**

No term or provision of this Lease shall be waived and no breach excused, unless such waiver or consent shall be in writing and signed by a duly authorized officer of the Party claimed to have waived or consented to such breach. Any consent by either Party to, or waiver of, a breach by the other Party shall not constitute a waiver of or consent to any subsequent or different breach. If either Party shall fail to enforce a breach of this Lease by the other Party, such failure to enforce shall not be considered consent to or a waiver of said breach or any subsequent breach for any purpose whatsoever.

#### **13. No Restriction On The PUD.**

Nothing in this Lease shall restrict the PUD in the conduct of its business, and the PUD may use the remainder of the PUD System, without limitation, for any purpose whatsoever.

#### **14. Compliance With Law.**

Each Party agrees that it will perform its respective rights and obligations hereunder in accordance with all applicable local, state and federal laws, rules and regulations.

#### **15. Relocation Of The Facilities.**

The Company recognizes that, from time to time, the PUD may elect or be required to relocate the PUD System or a portion thereof. The PUD shall be responsible for all costs incurred in relocating the PUD System when such decision to relocate is solely determined by the PUD and shall use reasonable efforts to do so in a manner that will not cause any material interruption in the Company's use thereof; provided, however, that nothing herein limits the PUD from

obtaining any third party funds for such relocation or assessing the Company the cost of the relocation when such relocation is reasonably necessary to provide the portion of the PUD System pursuant to this Lease, provided further that such costs may be recovered in the applicable PUD rates and fees. The PUD agrees to give the Company at least three (3) weeks prior written notice of any elected relocation. The Company shall have no claims for damages of any kind or nature against the PUD for disruption of service arising from any cause, including relocation. The PUD shall deliver to the Company updated drawings with respect to the relocated Fibers, including Route Miles specified in the drawings, within ninety (90) days following the completion of such relocation. Relocation pursuant to this section shall not affect the Term of the lease of the fiber and facilities affected by such relocation, provided the Company may elect to terminate this lease as to the fiber and facilities affected, by notice in writing provided to the PUD no later than ten (10) days following the receipt by the Company of the notice from the PUD regarding the planned relocation.

**16. Insurance.**

The Company shall at all times during the Term of this Lease, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers authorized to do business in the state(s) of operation. The Company shall require its subcontractors and agents to maintain the same insurance:

A. Commercial General Liability Insurance covering claims for bodily injury, death, personal injury or property damage (including loss of use) occurring or arising out of the license, use or occupancy of any premises in connection with this Lease by the Company, including coverage for premises-operation, products/completed operations and contractual liability with respect to the liability assumed by the Company hereunder. The limits of insurance shall not be less than:

|                               |              |
|-------------------------------|--------------|
| Each Occurrence               | \$ 2,000,000 |
| General Aggregate             | \$ 3,000,000 |
| Products/Completed Operations | \$ 2,000,000 |
| Personal & Advertising Injury | \$ 2,000,000 |

B. Workers' Compensation Insurance with statutory limits as required in the State of Washington; and providing coverage for any employee entering onto any premises in connection with this Lease, even if not required by statute. Employer's Liability or "Stop Gap" insurance with limits of not less than \$100,000.00 for each accident.

C. Comprehensive Automobile Liability Insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used in connection with this Lease, with limits of at least \$1,000,000 per occurrence for bodily injury and property damage.

D. Any other insurance coverages specifically required of the Company pursuant to the PUD's rights-of-way, franchises, leases, or other agreements with Whatcom County, railroads, or other third parties.

E. The insurance policy or policies providing the foregoing insurance coverages shall name the PUD as an additional insured by way of a policy endorsement, shall provide to the PUD certificate(s) of insurance and, if requested by the PUD, a copy of any policy providing

any portion of such required coverage. Receipt of such certificate or policy by the PUD does not constitute approval by the PUD of the terms of such policy. Furthermore, the policy of insurance required herein (or each such policy, if more than one) shall (i) be written as a primary and non-contributory policy; (ii) expressly provide that such insurance may not be materially changed, amended, or canceled with respect to the PUD except upon forty-five (45) days' prior written notice from the insurance company to the PUD; (iii) contain an express waiver of any right of subrogation by the insurance company against the PUD; (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 the PUD which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; and (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another.

F. Casualty Loss. Each Party agrees that neither Party nor each Party's managers, members, shareholders, officers, commissioners, directors, employees, insurance carriers, or casualty policies shall be responsible to the first (1st) Party for any property loss or damage done to the first (1st) Party's property, whether real, personal, or mixed, occasioned by reason of any fire, storm, or other casualty whatsoever, where such loss has arisen, directly or indirectly, in whole or in part, from this Lease. It shall be each Party's sole responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the other Party, third party, or act of nature. In this regard, each Party hereby releases and discharges the other Party and such other Party's managers, members, shareholders, officers, commissioners, directors.

During the term hereof, or during any renewal term, the PUD may increase the required limits of coverage otherwise specified herein, to amounts consistent with the limits of coverage required by the PUD in subsequent or pending fiber optic leases. Said increase shall take effect following written notice by the PUD to the Company, on the termination or renewal date of the policies then in effect.

## 17. **Default.**

17.1 Monetary Default. If the Company fails to make a timely payment of the any rates, fees, or other charges or any other amount it is obligated to pay, including interest or reimbursements due on all past due amounts, within thirty (30) days after written notice from the PUD, then the Company shall be in Default without further action required, and the PUD at its sole option may (i) terminate this Lease upon written notice, in which event the PUD (a) shall have no further duties or obligations hereunder; or (b) pursue all legal remedies it may have relating to such default.

17.2 Non-Monetary Default. If either Party ("Defaulting Party") fails to perform a nonmonetary obligation and such failure shall continue for a period of thirty (30) days after the other Party shall have delivered written notice of such failure, (unless in the case of nonmonetary default such failure cannot be reasonably cured within such thirty (30) day period, and the Defaulting Party is diligently pursuing such cure), then the Defaulting Party shall be in default hereunder and the other Party at its sole option may (a) terminate this Lease upon written notice, in which event the other Party shall have no further duties or obligations hereunder; or (b) pursue all legal remedies it may have relating to such default.

17.3 Company Bankruptcy Declared a Default. If the Company shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated as bankrupt or insolvent, or shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if any involuntary petition proposing the adjudication of the Company as bankrupt or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition shall not be discharged or denied within ninety (90) days after the filing thereof, or if a receiver, trustee or liquidator of the Company of all or substantially all of the assets of the Company shall be appointed in any proceeding brought by the Company, and shall consent to or acquiesce in such appointment, then the PUD, at its sole option, may immediately terminate this Lease upon written notice.

**18. Relationship Not A Partnership Or An Agency.**

The relationship between the Company and the PUD shall not be that of partners or agents for one another and nothing contained in this Lease shall be deemed to constitute a partnership, joint venture, or agency agreement between the Parties hereto. The Company and the PUD in performing any of their obligations hereunder shall be independent contractors or independent parties and shall discharge their contractual obligations as such and at their own risk.

**19. No Third-Party Beneficiaries.**

This Lease is for the sole benefit of the Parties hereto and their respective permitted successors and assigns, and shall not be construed as granting rights to any person or entity, other than the Parties hereto, including, but not limited to, any customer of the Company, or imposing on either Party obligations to any person or entity other than a Party.

**20. Severability.**

In the event any term, covenant, or condition of this Lease, or the application of such term, covenant, or condition, shall be held invalid as to any person or circumstances by any court having jurisdiction, all other terms, covenants, and conditions of this Lease and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant, or condition is not separable from all other terms, covenants, and conditions of this Lease.

**21. Governing Law / Venue / Arbitration.**

21.1 This Lease shall be interpreted in accordance with the laws of the State of Washington and venue for any action brought hereunder shall be in Whatcom County, Washington.

21.2 Arbitration. Except for claims arising under Section 21.3 below, in the event of any other dispute arising between the Parties, 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 either party may apply 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. This paragraph shall be referred to herein as the "Binding Arbitration Clause."

21.3 The foregoing Binding Arbitration Clause, 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 5.4.

## **22. Use Of The System/Ownership / No Right To Lien.**

22.1 Subject to the terms of this Lease and any associated Service Order, the Company shall have exclusive control over its provisioning of telephone, telecommunications, or other services including, without limitation, sales and marketing, electronics maintenance and monitoring, and billing and collection.

22.2 The Company hereby certifies that it will not be the "end user" of the fiber and facilities leased hereby, but is in the business of providing telecommunication services, that it is authorized to provide telecommunication services within the territory covered by the Service Order, and that such services can be provided on fiber optic cable systems such as that owned by the PUD.

22.3 At no time during the term of this Lease shall the Company obtain legal ownership of the PUD System, nor allow any portion of the PUD System to be made subject to any encumbrance, lien, or security interest by any third party or itself. If such a lien, right, or claim is asserted, the Company will promptly and diligently undertake its removal at the sole cost of the Company. If the Company fails to act to remove such lien or claim any encumbrance of such security interest, the PUD may take any action it deems reasonable including commencement of a lawsuit against any party asserting the lien, encumbrance of security interest, and the Company shall reimburse the PUD for all the PUD's actual incurred expenses, including legal fees incurred by the PUD. The Company shall reimburse the PUD for such costs within ten (10) business days of receipt of an invoice from the PUD. Further, the Company shall pay to the PUD all the PUD's actual expenses including legal fees and staff time incurred in collecting such invoice, if it remains unpaid for ten (10) business days after the Company's receipt of said invoice from the PUD.

22.4 Nothing in this Lease or any Service Order shall be deemed or construed to prohibit the PUD from leasing, licensing, or entering into similar agreements or arrangements with other persons or entities respecting the PUD, subject to the Company's rights with respect to the portion of the PUD System leased by the Company as set forth herein and any associated Service Order.

## **23. Counterparts.**

This Lease may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the Parties hereto may execute this Lease

by signing any such counterparts.

**24. Title.**

The Company agrees that all right, title, and interest in the PUD System provided by the PUD hereunder shall at all times remain exclusively with the PUD.

**25. Entire Agreement.**

This Lease together with any executed Service Order constitutes the entire Agreement between the Company and the PUD with respect to the subject matter hereof; all prior agreements, representations, statements, negotiations, and undertaking are hereby superseded.

**26. Representations, Warranties, And Acknowledgements.**

26.1 Representations and Warranties of Company. The Company represents and warrants that, for all purposes, including, without limitation, for purposes of Section 541(d) of the Bankruptcy Code, as follows:

A. The Company is duly organized, validly existing, and in good standing under the laws of the State of Washington and is registered to do business in the State of Washington.

B. This Lease is a valid and legally binding obligation of the Company and is enforceable against the Company in accordance with its terms, except when enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to the enforcement of creditors rights, generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

C. Neither the execution and delivery of this Lease, acceptance of the PUD System leased to the Company hereby, nor provision of the Company services to any third party will violate, conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under (i) Company's organizational documents; (ii) any contract, agreement, mortgage, deed of trust, or other instrument or obligation to which either Company is a party or by which Company is bound; or (iii) any applicable law or regulation or any order, decree, writ, or injunction of any court or governmental body.

D. No consent from, or other approval of, any governmental entity or agency, or any other person or entity, is necessary in connection with the execution, delivery, or performance of this Lease.

E. The undersigned has full authority to execute this Lease on behalf of the Company.

F. The Company has the financial, technical, and management expertise and experience to fully perform all of the Company's obligations under this Lease.

**27. Public Records And Confidentiality.**

The Company acknowledges that all records as defined by the Washington Public Records Act (RCW 42.56 *et seq*) (the "PRA") submitted to the PUD are subject to the PRA and are open to public inspection and copying to the extent required by the law.

If the PUD receives a request for disclosure related to any records provided to the PUD by the Company, the PUD shall make reasonable efforts to notify the Company of such request

together with a copy of the request. Upon receipt of such notice, the Company shall I have five (5) working days after the date of said notice to provide a written response to the PUD, stating the statutory or other legal authority identifying the record(s) it claims as exempt from disclosure, and specify by citation to the statutory or other legal authority which is the basis for the claimed exemption. The PUD shall retain the right to determine whether it is required to release or disclose such records under applicable law. If, after considering the Company's written response, the PUD determines that it is required to release or disclose all or some portion of the record asserted to be exempt from disclosure, the PUD shall provide the Company written notice to that effect a minimum of five (5) business days prior to releasing or disclosing the information; thereafter the PUD may release or disclose said information unless prohibited by court order. The Company agrees that the PUD shall not be liable for any loss or damage from disclosure of information arising out of a good faith effort to comply with the PRA and agrees nothing herein shall be considered a waiver of the PUD's immunity thereunder.

**28. Notices.**

Any written notice under this Lease shall be deemed properly given if sent by email to the email address below or by registered or certified mail, postage prepaid, or by nationally recognized overnight delivery service or by facsimile to the address specified below, unless otherwise provided for in this Lease:

If to the COMPANY:

COMPANY NAME

ATTN: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

FAX: \_\_\_\_\_

If to PUD:

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

ATTN: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

FAX: \_\_\_\_\_

A Party's contact information may be revised and updated from time-to-time by notice in writing to the other Party by letter, facsimile, or electronic transmission.



**IN WITNESS WHEREOF**, the Parties hereto have caused this Lease to be executed by their respective duly authorized representatives as of \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY,  
a Washington Public Utility District**

By \_\_\_\_\_  
CHRIS HEIMGARTNER  
Its: GENERAL MANAGER

\_\_\_\_\_ [THE COMPANY]

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

ATTEST:

By \_\_\_\_\_  
\_\_\_\_\_  
Its: Secretary

**EXHIBITS- TO BE ADDED**

## Service Order Summary

The fiber and facilities and the fees and charges, and term of service covered by and subject to the Master Optical Fiber and Facilities Lease (herein the “Lease”) between Public Utility District No. 1 of Whatcom County (herein the “PUD”) and (herein the "COMPANY”), dated the month of \_\_\_\_\_ day of\_\_\_\_, 2024 are set forth below.

1. Fiber lease facilities charges and co-location fees shall commence on the turn-up date specified.
2. One-time non-recurring fees shall be paid on signing, or at the PUD's option within thirty (30) days of invoice.
3. All termination dates are subject to extension in accordance with the automatic renewal provisions of the Master Lease.
4. Power charges shall be based on units of 5 amps each.
5. All charges are due within thirty (30) days from invoice, and all past due amounts shall bear interest at the rate of twelve percent (12%) per annum.
6. Fiber System Specifications:
  - a. Optical Fiber Specifications: Optical fiber within the System will meet the specifications set forth below and measurable by optical time domain reflectometer (“OTDR”):

| <b>Parameter</b>           | <b>Specifications</b> | <b>Units</b> |
|----------------------------|-----------------------|--------------|
| Maximum attenuation        | 1310nm (A1)           | .50 dB/km    |
| Maximum attenuation        | 1550nm (A2)           | .40 db/km    |
| Cladding diameter          | 125 +-3               | nm           |
| Cutoff Wavelength          | 1250 +-100            | nm           |
| Zero dispersion wavelength | 1310 +-12             | nm           |
| Maximum dispersion         | (1285-1330nm)         | 3.5 ps/nm km |

Reference: EIA RS-455 test method

- b. The COMPANY shall have the right at its expense to test the Leased Fibers any time three (3) days prior to the commencement of use for compliance with the technical specifications set forth above. Upon completion of testing, the COMPANY shall either send an acceptance notice to the PUD acknowledging the acceptance of the Leased Fibers as tested, or notify the PUD that the Leased Fibers do not comply with the technical specifications. By sending an acceptance notice, the COMPANY acknowledges that the Lease Fibers listed in the notice comply with the applicable technical specifications. If the COMPANY fails to provide any notice within the three (3) days provided, then the COMPANY shall be deemed to have accepted the fibers.

## Service Order Summary

- c. In the event the result of any test performed in accordance with Section 6.2 herein shows that the fiber(s) are not operating in accordance with the technical specifications, the PUD shall promptly take action that is reasonable to bring the fiber(s) into compliance and shall notify the COMPANY when the PUD believes that the fiber(s) comply with the technical specifications. The COMPANY shall have ten (10) days following such notice to retest the fiber(s) and again notify the PUD that the fiber(s) are accepted or do not comply in accordance with the procedures set forth in section 6.2. If following said notice, the PUD is unable or chooses not to bring the fiber(s) into compliance, this Lease shall then terminate as to such fiber(s).
- d. In no event shall the unavailability, incompatibility, delay in installation, or other impairment of any of the COMPANY's interconnection facilities, including COMPANY's suppliers (e.g., a local access telephone service provider) be used as a basis for rejecting any fiber(s).
- e. This Service Order Summary replaces the previous Service Order Summary dated the month of \_\_\_\_\_ day of \_\_\_\_, 2024, and contact information herein supersedes the information provided in previous Orders.
- f. In the event of any conflict between this Service Order Summary and the Lease, the Lease shall control in all respects.

### **Company Contact Information**

For Billing:

ATTN: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

For Maintenance and Operations:

ATTN: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

## Service Order Summary

| Run Description | Termination Date | Turn-Up Date | Run Length (miles) | Strands | NRC Charge | Mo. Rate per strand/mi | Mo. charge per strand | Total Monthly Strand Charge | Mo. Leasehold Tax | Mo. Retail Tax | Mo. B&O Tax | Total Mo. Charge |
|-----------------|------------------|--------------|--------------------|---------|------------|------------------------|-----------------------|-----------------------------|-------------------|----------------|-------------|------------------|
|                 |                  |              |                    |         |            |                        |                       |                             | 0.1284            |                |             |                  |
|                 |                  |              |                    |         |            |                        |                       |                             |                   |                |             |                  |

| Run Description | Termination Date | Turn-Up Date | Run Length (feet) | Strands | NRC Charge | Mo. Rate per strand/ft | Mo. charge per strand | Total Monthly Strand Charge | Mo. Leasehold Tax | Mo. Retail Tax | Mo. B&O Tax | Total Mo. Charge |
|-----------------|------------------|--------------|-------------------|---------|------------|------------------------|-----------------------|-----------------------------|-------------------|----------------|-------------|------------------|
|                 |                  |              |                   |         |            |                        | \$20                  |                             | 0.1284            |                |             |                  |
|                 |                  |              |                   |         |            |                        |                       |                             |                   |                |             |                  |

| Co-Location Fees by Location | Termination Date | Turn-Up Date | Rack Units | Cost Per Rack Unit | Half Racks | Cost Per Half Racks | Racks | Cost Per Rack | Total Monthly Charges |
|------------------------------|------------------|--------------|------------|--------------------|------------|---------------------|-------|---------------|-----------------------|
|                              |                  |              |            |                    |            |                     |       |               | 0.1284                |
|                              |                  |              |            |                    |            |                     |       |               |                       |

Monthly Subtotal of charges\_\_\_\_\_

# Service Order Summary

The undersigned represents that he/she is duly authorized to sign on behalf of the Company:

[COMPANY]:

Public Utility District No. 1 of Whatcom County

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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