

PUBLIC UTILITY DISTRICT No. 1 of Whatcom County

Agenda for the Regular Meeting of September 24, 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 minutes.)
 - a) Approval of the Minutes of the Regular Meeting of September 10, 2024
 - b) Approval of Claims for September 24, 2024
4. Public Comment (10 minutes – Individual speakers: 3 minutes.)
5. General Manager Report (10 minutes.)
6. Operations Report (10 minutes)
7. Old Business (30 minutes.)
 - a) Broadband Update
 - b) Adjudication Update
 - c) Geothermal Update
 - d) Strategic Plan Update
8. Public Hearing (30 minutes) Re: Washington State Ballot Initiative No. 2117 Concerning Carbon Tax Credit Trading
9. New Business (20 min.)
 - a) Action Item 1: Approval of The Shift In Focus Towards Securing The 25% State-Funded Match in Preparation for the Broadband Equity, Access, and Deployment (BEAD) Program
 - b) Action Item 2: Approval of Professional Services Agreement with Critical Insight
 - c) Resolution No. 859 A Resolution Of The Board Of Commissioners Of Public Utility District No. 1 Of Whatcom County ("District"), Opposing The Passage Of Washington State Ballot Initiative No. 2117 Concerning Carbon Tax Credit Trading
10. Commissioner Reports (10 minutes)
 - a) Upcoming Per Diem Requests
Commissioner Arnett: No off-list requests
Commissioner Lagestee: None as of publication
Commissioner Deshmane: None as of publication
11. Public Comment (10 minutes– Individual speakers: 3 min.)
12. Executive Session: Discussion Regarding Bargaining (30 Minutes)
13. Adjourn (Estimated 10:20 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/86941502205>

NOTE: IF ATTENDING VIA ZOOM WE WOULD APPRECIATE YOUR FULL NAME FOR THE COMMISSION RECORD THOUGH IT IS NOT REQUIRED

<p>Or telephone: Dial 1 (253) 215 8782 or 1 (253) 205 0468 Webinar ID: 869 4150 2205</p>

2024 BOARD OF COMMISSIONERS

JAIME ARNETT, PRESIDENT

ATUL DESHMANE, VICE PRESIDENT

TODD LAGESTEE, SECRETARY

Next Commission Meetings

October 8 & October 22, 2024 | 8:15 a.m. | Regular Meetings – District Office

1705 Trigg Road, Ferndale, WA 98248

or other location announced

Contact: Chris Heimgartner, General Manager (360) 384-4288 x 19

info@pudwhatcom.org

www.pudwhatcom.org

**MINUTES OF THE REGULAR
MEETING OF THE COMMISSION
September 10, 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 at the meeting included:

COMMISSION AND STAFF

Atul Deshmane	Commissioner
Jaime Arnett	Commissioner
Todd Lagestee	Commissioner
Jon Sitkin	Legal Counsel
Chris Heimgartner	General Manager
Aaron Peterson	IT/SCADA Technician
Andrew Entrikin	Director – Broadband and New Power Supply
Annette Smith	Director of Finance
Brian Walters	Assistant General Manager
Garrett Love Smith	Engineering Manager
Joseph Shay	Clerk of the Board / Records
Kurt Wank	Assistant General Manager
Rebecca Schlotterback	Contracts and Regulatory Compliance Manager
Stephanie Hooper	Accountant I
Paul Siegmund	Manager – Automation & Technology Services
Jon Littlefield	Electric Systems Supervisor
Devin Crabtree	Chief Water Operator

VISITORS

Robin Dexter	Citizen
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2. Approval of Agenda

ACTION:

Commissioner Lagestee made the motion to APPROVE THE AGENDA of September 10, 2024. Commissioner Deshmane seconded the motion. Motion passed unanimously.

3. Approval of Consent Agenda

- a) Approval of Meeting Minutes of the Regular Meeting of August 27, 2024; Commissioner Deshmane made motion to approve the minutes, Commissioner Lagestee seconded the motion, passed unanimously
- b) Approval of the Claims of September 10, 2024: Motion to approve the claims of September 10, 2024 was made separately as commissioners Deshmane and Lagestee had questions for clarification regarding 2 of the claims. Staff provided clarification of the claims. Commissioner Deshmane made motion to approve the claims, Commissioner Lagestee seconded the motion, the motion passed unanimously.

97009	ALL SEASON SPRAYING	632.20
7843	APPLIED INDUSTRIAL TECHNOLOGIES, INC	20.42
95193	AT&T MOBILITY	1,824.78
12861	CARLSON STEEL WORKS, INC	12.31
252241	CENTRAL WELDING SUPPLY	101.49
2565380	COBB, FENDLEY & ASSOCIATES, INC	43,496.81
1797921	CONSOR NORTH AMERICA, INC.	81,030.89
1986422	CRABTREE, DEVIN	439.46
241841	CULLIGAN NORTHWEST	149.70
2378146	EAGLE-EYE AERIAL SOLUTIONS, LLC	5,500.00
2495490	ENTRIKIN, ANDREW	4,845.86
2544116	ENVIRO-TECH DIVING, INC.	37,750.80
1864345	EXACT SCIENTIFIC SERVICES INC.	27.00
2117069	FERNDALE ACE HARDWARE	100.21
18649	FERNDALE CITY OF	406.13
1317405	FLOOR GUY INC, THE	2,700.00
176444	GATEWAY CONTROLS	49,441.60
1375120	GRANICH ENGINEERED PRODUCTS, INC.	9,357.89
21928	HARDWARE SALES, INC.	575.95
19377	HD FOWLER CO, INC	1,903.22
613069	HEALTH PROMOTIONS NORTHWEST	150.00
2495801	HEIMGARTNER, CHRIS	156.50
2561055	HOOPER, STEPHANIE	40.87
2355083	IVOXY CONSULTING LLC	6,498.75
1060873	KEMP WEST	32,635.00
2560976	NEL/SON DISTRIBUTING DBA NELSON-REISNER	1,603.92
15122	NORTH COAST ELECTRIC COMPANY	836.59
58229	NORTHWEST FIBER DBA ZIPLY FIBER	1,483.28
225322	P&P EXCAVATING, LLC	424,446.72

21291	PLATT ELECTRIC SUPPLY CO	1,694.43
2560909	PROSCAPES	565.76
22664	PUGET SOUND ENERGY, INC	3,238.04
22904	PUMPTECH	1,623.13
30816	REGENCE BLUE SHIELD	53,136.65
145390	RICOH USA	187.53
1744247	SMITH, ANNETTE	35.33
25638	SSC - SANITARY SERVICE COMPANY	631.93
263311	STAR RENTALS	1,708.88
409973	STERICYCLE ENVIRONMENTAL SOLUTIONS	60.20
2548264	STORMWIND LLC	4,500.00
88663	TEAMSTER LOCAL #231	779.00
117031	TECHNICAL SYSTEM INC - TSI	1,043.52
2572002	TOTH AND ASSOCIATES, INC	1,220.00
1916483	TUPPER MACK WELLS PLLC	4,490.00
1894499	ULINE, INC.	1,272.42
7296	UNITED RENTALS	17,648.48
126738	UNITED WAY OF WHATCOM COUNTY	637.00
53268	UTILITIES UNDERGROUND LOCATION	48.84
31448	WA PUBLIC UTILITY DISTRICTS ASSOCIATION	57.00
2586279	WAECO CONSTRUCTION LLC	278,329.94
31317	WASHINGTON DENTAL SERVICE	3,386.35
60302	WASHINGTON TEAMSTERS WELFARE	15,505.60
30517	WESTSIDE LUMBER	28.32
2321730	WHATCOM JANITORIAL	1,430.00
	GRAND TOTAL	\$ 1,101,426.70

4. **Public Comment** – None.

5. **General Manager’s Report** – General Manager Heimgartner briefed the commission on upcoming events and events staff and commissioners would be attending.

6. **Operations Report** – None

7. **Old Business**

a) **Broadband Update** – General Manager Heimgartner and Broadband Director Entrikin presented on the staff’s work on the county broadband expansion.

b) **Adjudication Update** – Legal Counsel reported on upcoming meeting and hearing dates and next steps regarding the upcoming adjudication

c) **Geothermal Update** – General Manager Heimgartner reported that studies are still in progress

d) **Strategic Plan Update** – Discussion was had Commissioners requested that special meetings be held to focus solely on the updating of the strategic plan

8. New Business

a) Budget Work Session – Finance Director Smith presented the commission with an overview of what is to come as the budget for 2025 is being assembled. The Commission offered suggestions to Finance Director Smith as to things they would like to see considered for the budget.

b) Action Item: Award of Bid to P&P Excavating for RW-M-7 D Station Flow and Control Project – Assistant General Manager Wank presented a synopsis of the bid to Commission and answered questions. Commission Lagestee made a motion to award the bid to P&P Excavating, Commissioner Deshmane seconded, motion passed unanimously.

9. Commission Reports

a) Upcoming Per Diem Requests – Commissioner Deshmane will be attending the Energy Northwest Board presentations on September 11, 2024

10. Public Comment – Robin Dexter spoke regarding information he would like to see included in the 2025 budget.

11. Executive Session

None.

12. Adjourn

There being no further business Commission President Arnett adjourned the meeting at 9:56 a.m.

Jaime Arnett, President/Commissioner

Atul Deshmane, Vice President/Commissioner

Todd Lagestee, 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/>



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

NOTICE IS HEREBY GIVEN that a public hearing will be held on Tuesday, September 24, 2024, at the offices of Public Utility District No. 1 of Whatcom County, Commissioner Meeting Room, 1705 Trigg Road, Ferndale, Washington, for the purpose of considering passage of a resolution opposing Initiative 2117, the ballot title of which is as follows:

Initiative Measure No. 2117 Concerning Carbon Tax Credit Trading.

This measure would prohibit state agencies from imposing any type of carbon tax credit trading, and repeal legislation establishing a cap and invest program to reduce greenhouse gas emissions.

Should this measure be enacted into law? Yes [] No []

The Board of Commissioners will hear from proponents and opponents of the proposed resolution prior to considering its passage affording an equal opportunity for expressing supporting or opposing views on Initiative 2117. Questions may be directed to Chris Heimgartner, the General Manager of Public Utility District No. 1 of Whatcom County, at chrish@pudwhatcom.org.

Action Memo

To: Commissioners Arnett, Deshmane and Lagestee
From: Andrew Entrikin, Director of Broadband & Power Supply
Date: September 24, 2024
Re: **Broadband Equity, Access, and Deployment (BEAD) Planning & Strategy**

Requested Action: SHIFT FOCUS TOWARDS SECURING THE 25% STATE-FUNDED MATCH IN PREPERATION FOR THE BROADBAND EQUITY, ACCESS, AND DEPLOYMENT (BEAD) PROGRAM. THIS WILL INVOLVE PRIORITIZING EFFORTS TO ALIGN WITH NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION'S (NTIA) GUIDELINES AND ENSURING THAT OUR STRATEGY IS WELL-POSITIONED TO MEET THE FUNDING REQUIREMENTS AND MAXIMIZE OUR CHANCES OF SUCCESS IN THE UPCOMING GRANT OPPORTUNITY.

Background:

What changed?

The National Telecommunications and Information Administration (NTIA) is driving the change by defining project areas and setting guidelines and submission requirements under the Broadband Equity, Access, and Deployment (BEAD) program.

How does this impact Whatcom PUD?

Whatcom PUD's publicly owned dark fiber model is not likely to win based on the scoring rubric outlined in the BEAD Initial Proposal Vol II.

Whatcom PUD is more likely to win if we focus on managing the 25% state-funded match and not on public ownership of the network. The following models would be considered:

- 1) Master Services Agreement (MSA) and Service Order Summary (SOS)
- 2) Indefeasible Right of Use Agreement (IRU)
- 3) Local Oversight Model

Next Steps:

Staff is looking for flexibility to take all three approaches depending on the project area. Where the current PUD model doesn't work, the PUD's role would primarily facilitate the allocation of funds, ensuring the grant resources are directed to the private partner responsible for the network's development, while maintaining compliance with the grant requirements.

Fiscal Impact: none.

Recommended Action: SHIFT FOCUS TOWARDS SECURING THE 25% STATE-FUNDED MATCH IN PREPERATION FOR THE BROADBAND EQUITY, ACCESS, AND DEPLOYMENT (BEAD) PROGRAM. THIS WILL INVOLVE PRIORITIZING EFFORTS TO ALIGN WITH NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION'S (NTIA) GUIDELINES AND ENSURING THAT OUR STRATEGY IS WELL-POSITIONED TO MEET THE FUNDING REQUIREMENTS AND MAXIMIZE OUR CHANCES OF SUCCESS IN THE UPCOMING GRANT OPPORTUNITY.

Action Memo

To: Commissioners Arnett, Deshmane, and Lagestee
From: Kurt Wank – Assistant General Manager
Date: September 24, 2024
Re: Professional Services Agreement with Critical Insight

Requested Action: APPROVE A PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH CRITICAL INSIGHT FOR CYBERSECURITY SUPPORT SERVICES, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.

Background: Whatcom PUD previously executed a Professional Consulting Services Agreement (“PSA”) with Critical Insight (Consultant) on December 13, 2018. The PSA expired on its own terms December 31, 2020.

As a public entity providing utility services, Whatcom PUD, like other public entities, may be subject to many types of cybersecurity attacks or efforts to hack into its digital systems, both administrative and utility systems related. The PUD has and will continue to seek and retain qualified consultants to assist staff in securing those systems. By necessity, this will be a continuous ongoing effort.

It is best practice to establish and maintain penetration testing programs and perform periodic security assessments of IT systems. Critical Insight works with many public entities and has vast expertise in providing such services.

Under the Agreement, the Consultant’s general scope of services will include the performance of tasks focused on maintaining and improving the cybersecurity of Whatcom PUD’s systems related to its electric and water operations and administrative services.

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

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

Recommended Action: Approve a Professional Consulting Services Agreement with Critical Insight for Cybersecurity Support Services, and authorize the General Manager to execute the Agreement.

**STANDARD AGREEMENT
FOR PROFESSIONAL CONSULTING SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____ 20__, by and between the **PUBLIC UTILITY DISTRICT NO. 1 of WHATCOM COUNTY**, 1705 Trigg Road Ferndale, WA 98248, hereinafter called the "Whatcom PUD", and Critical Insight, Inc. having an address of 500 Pacific Ave, Suite 650, Bremerton, WA 98337 hereinafter called "Consultant," for a project generally described as:

Consultant’s general scope of services will include the performance of tasks focused on maintaining, testing, and improving the cybersecurity of Whatcom PUD’s systems related to its electric and water operations.

WHEREAS, the Whatcom PUD wishes to obtain technical consulting services related to cybersecurity for its electric and water utilities; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Workers Compensation Insurance as required by law.

9.1 The foregoing insurance policies shall name Whatcom PUD as an additional insured. Consultant shall provide two (2) certificates of insurance and, if requested, copies of any policy to Whatcom PUD. Receipt of such certificate or policy by Whatcom PUD does not constitute approval by Whatcom PUD of the terms of such policy. Furthermore, the policy of insurance

required herein shall: (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to Whatcom PUD except upon forty-five (45) days prior written notice from the insurance company to Whatcom PUD; (iii) contain an express waiver of any right of subrogation by the insurance company against Whatcom PUD and Whatcom PUD's elected officials, employees, or agents; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Consultant which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to Whatcom PUD and Consultant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Consultant: Garrett Silver
Critical Insight, Inc.
500 Pacific Ave, Suite 650
Bremerton, WA 98337

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

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

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

term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties hereto execute this Agreement.

DISTRICT:

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

By: _____

Title: General Manager

Date signed: _____

CONSULTANT:

Critical Insight, Inc.

By: _____

Title: _____

Firm's EIN: _____

Date signed: _____

RESOLUTION NO. 859

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY (“DISTRICT”), OPPOSING THE PASSAGE OF WASHINGTON STATE BALLOT INITIATIVE NO. 2117 CONCERNING CARBON TAX CREDIT TRADING

WHEREAS, in 2021, the Washington State Legislature adopted Senate Bill 5216, a law known as the Washington Climate Commitment Act, which sets annual emission limits for major emitters, such as oil refiners and utilities, and establishes a market-based program (a cap and invest program) to reduce carbon pollution and achieve greenhouse gas limits set in Washington State Law; and

WHEREAS, Washington State has placed a ballot measure before the voters, and the official ballot measure title is “Initiative Measure No. 2117 concerns carbon tax credit trading” (“Initiative 2117”); and

WHEREAS, Initiative No. 2117 concerning carbon tax credit trading is scheduled to go before Washington State voters at the General Election on November 5, 2024; and

WHEREAS, Initiative 2117 would prohibit state agencies, counties and cities from implementing any type of carbon tax credit trading, also known as “cap and trade” or “cap and tax”, including the climate commitment act previously codified as chapter 70A.65 RCW. The Initiative 2117 prohibition would apply whether the resulting increased costs are imposed on fuel recipients or fuel suppliers; and

WHEREAS, Initiative 2117 would repeal sections of the 2021 Washington Climate Commitment Act as amended, including repealing the creation and modification of a “cap and invest” program to reduce greenhouse gas emissions by specific entities; and

WHEREAS, passage of Initiative No. 2117 by Washington voters could limit the District’s access to grants funded by the Climate Commitment Act, which assist with new infrastructure consistent with the District’s goals to reduce greenhouse gas emissions and address impacts from climate change set forth in the Climate Act Plan would be adversely impacted; and

WHEREAS, Initiative No. 2117 would limit the available grant funds for the District’s geothermal exploration project being conducted with the Nooksack Tribe; and

WHEREAS, RCW 42.17A.555(1) authorizes the Board of Commissioners of Public Utility District No. 1 of Whatcom County (“Commission”) to take action to express a collective decision, or to actually vote upon a motion, proposal, or ordinance, or to support or oppose a ballot measure so long as (a) the agenda includes the title and number of the ballot proposition; and (b) members of the public and Commission members are afforded an approximately equal opportunity to express an opposing view; and

WHEREAS, consistent with RCW 42.17A.555, the Commission considered Initiative No. 2117 at its Public Hearing on September 24, 2024, and during said Public Hearing, the Commission afforded members of the public and the Commission members an approximately equal opportunity for expression of a supporting or opposing view on Initiative No. 2117;

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY HEREBY RESOLVES:

Section 1. Statement in Opposition to Initiative No. 2117. The Commission hereby expresses its opposition to Initiative No. 2117 and encourages the citizens of Whatcom County, Washington, to reject Initiative No. 2117, a measure seeking to repeal sections of the 2021 Washington Climate Commitment Act and to bar state agencies from imposing any type of program involving the trading of carbon tax credits, at the November 5, 2024 General Election.

Section 2. This Resolution shall take effect and be in full force immediately upon passage by the Commission.

ADOPTED by the PUD Board of Commissioners this 24th day of September, 2024, and duly authenticated in open session by signatures of the Commissioners being present and voting in favor thereof.

Jaime Arnett, Commissioner

Atul Deshmane, Commissioner

G. Todd Lagestee, Commissioner