

**PUBLIC UTILITY DISTRICT No. 1
of Whatcom County**

Agenda for the Regular Meeting of November 12, 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 October 22, 2024
 - b) Approval of Claims for November 12, 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. New Business (30 minutes)
 - a) Action1: Approve Agreement for Professional Services with Drayton Archaeology
 - b) Resolution 1: Approval of Resolution No. 862 Authorizing Cancellation of Warrant No. 01198978 For Civicplus LLC
9. Commissioner Reports (10 minutes)
 - a) Upcoming Per Diem Requests
Commissioner Arnett: None as of publication
Commissioner Lagestee: None as of publication
Commissioner Deshmane: November 14 - Heritage Dinner at Nooksack Tribe - I want to thank the Tribe for their partnership with the PUD on geothermal and water resources.
November 15 - Grid Storage Conversation with PNNL - I want to explore the potential of grid storage in Whatcom County given our current infrastructure. I will report back to the commission on its potential.
10. Public Comment (10 minutes– Individual speakers: 3 minutes)
11. Executive Session: GM Performance Review and Water Rights Litigation (30 Minutes)
12. Adjourn (Estimated 10:20 AM)

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/83762409160>

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: 837 6240 9160</p>
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2024 BOARD OF COMMISSIONERS

JAIME ARNETT, PRESIDENT
ATUL DESHMANE, VICE PRESIDENT
TODD LAGESTEE, SECRETARY

Next Commission Meetings

November 19, 2024 8:15 a.m. (In Person Strategic Planning Session)

November 26, 2024 |8:15 a.m.| Regular Meeting

Meetings to be held at the 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
October 22, 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
Lisa Moeller	Director – HR & Communications
Mike Macomber	IT/SCADA Technician
Rebecca Schlotterback	Contracts and Regulatory Compliance Manager
Stephanie Hooper	Accountant I

VISITORS

Dave Olson	Citizen
Tyler McDevitt	Citizen
Rick Maricle	Citizen

2. Approval of Agenda

ACTION:

The clerk of the commission presented the commissioners with an updated commission packet with all action attachments included and the addition of Resolution No. 861 A Resolution Of The Board Of Commissioners Of Public Utility District No. 1 Of Whatcom County (“District”) Accepting And Appointing District General Legal Counsel. Commissioner Deshmane suggested that consideration of approval of Resolution No. 861 be moved to after executive session as the executive session directly pertains to the resolution. Commissioner Arnett seconded the suggestion to move the resolution and all commissioner voted in favor of the move. Commissioner Lagestee made a motion to approve the agenda. Commissioner Deshmane seconded the motion. The motion passed unanimously.

3. Approval of Consent Agenda

a) Approval of the Minutes of Regular Meeting of October 8 and Special Commission Meeting of October 21, 2024 & Approval of the Claims of October 22, 2024:

Commissioner Lagestee made a motion to approve the Consent Agenda as a whole including both the minutes and the claims. Commissioner Deshmane seconded the motion. The motion passed unanimously.

Claims of October 22, 2024:

BONNEVILLE POWER ADMINISTRATION	880,918.00
BROWN, KATHERINE	58.84
CARLSON STEEL WORKS, INC	92.65
CENTRAL WELDING SUPPLY	1,993.07
CHMELIK SITKIN & DAVIS	11,840.00
CIVIC GROUP	5,000.00
COMCAST	194.91
COMCAST - NWRC	300.00
EDGE ANALYTICAL LABORATORIES	415.00
ELECTRICAL RELIABILITY SERVICES	187,006.00
FERNDALE ACE HARDWARE	201.05
HARDWARE SALES, INC .	336.39
HEIMGARTNER, CHRIS	563.17
INTERNAL REVENUE SERVICE	21,738.97
LAGESTEE, TODD	1,522.67
MALLORY SAFETY & SUPPLY LLC	79.92
MASSMUTUAL RETIREMENT SVCS LLC	12,635.00
MILLS ELECTRIC	145,858.49
MOELLER, LISA	992.66
NORTH COAST ELECTRIC COMPANY	2,452.50
NORTHWEST CASCADE, INC.	165.50
PACIFIC SURVEY & ENGINEERING	2,010.00
PAYLOCITY	189.64
PAYROLL	249,736.64
PLATT ELECTRIC SUPPLY CO	196.11

PUD #1 OF WHATCOM COUNTY	1,250.00
PUGET SOUND ENERGY, INC	727.87
ROGERS MACHINERY COMPANY INC	141.44
TOTH AND ASSOCIATES, INC	6,528.75
WA FEDERAL VISA CARD MEMBER SERVICES	6,207.72
WA PUBLIC UTILITY DISTRICTS ASSOCIATION	50.00
WA ST AUDITOR'S OFFICE	6,427.46
WA ST DEPT OF REVENUE - EXCISE TAX	92,850.14
WA ST DEPT OF REVENUE - LEASEHOLD TAX	707.10
WESTERN CONFERENCE OF TEAMSTERS	3,580.50
WHATCOM COUNTY AUDITOR	102,070.48
WHATCOM COUNTY EXECUTIVE DEPT	44,332.00
GRAND TOTAL	\$1,791,370.64

4. Public Comment – None

5. General Manager’s Report – General Manager Heimgartner briefed the commission on upcoming events he will be attending and had attended since the last meeting.

6. Operations Report – Kurt Wank, Assistant General Manager reported that there are currently divers on site at plant 1 performing cleaning and maintenance of screens and replacing hoses.

7. Old Business

a) Broadband Update –Broadband Director Entrikin reported that the notice of funding opportunity for BEAD Grants will drop on November 12th. Applications for the grant will be due January 31st. The Commission decided to discuss the broadband expansion and BEAD grant application process further as part of their strategic planning meeting on November 19th.

b) Adjudication Update – Legal Counsel reminded the Commission of the timeline of the adjudication proceedings as was reported at previous meetings. The timeline has not changed as of the current meeting and a more thorough report will be presented to the Commission sometime in the first quarter of 2025 in executive session.

c) Geothermal Update – Broadband Director Entrikin reported that the Nooksack tribe has reached out and are planning to have a geothermal 101. The commissioners are invited to attend.

d) Strategic Plan Update – No new updates on the strategic plan.

8. New Business

a) Report 1: Draft 2025 Budget Presentation– Annette Smith, Director of Finance gave a lengthy and detailed report on the draft budget for 2025. Commissioners asked clarifying questions regarding the draft budget. The Director of Finance explained the timeline for finalization of the budget and asked that any comments, questions, or proposed changes be submitted by November 12th for inclusion in the second presentation of the budget to the commission on November 26th. A public hearing regarding the budget will also happen on November 26th. Final vote of approval of the 2025 budget will be on December 10th.

b) Action 1: Approval of Whatcom PUD Ten Year Resource Plan – Brian Walters, Assistant General Manager presented the Whatcom County PUD Ten Year Energy Resource Plan to the commission for review and approval. The Assistant General Manager reported that the PUD must submit an update of the plan to the Washington State Department of Commerce every two years. Commissioner Lagestee made a motion to approve the resource plan. Commissioner Deshmane seconded the motion. The motion passed unanimously.

c) Action 2: Whatcom PUD Employee Policies, Approval of Policy 1.13 Employee Recognition – The General Manager explained that the policy would allow for honoring employees dedication to the PUD through expenditure of funds. Commissioner Deshmane made a motion to approve the Employee Recognition Policy. Commissioner Lagestee seconded the motion. The motion passed unanimously.

9. Commission Reports/Per Diem Requests

a) Commission Reports –. Commissioner Lagestee reported that he will be attending the Energy Northwest Conference.

b) Upcoming Per Diem Requests – No requests submitted.

10. Public Comment – No public comment.

11. Executive Session

An executive session was called regarding litigation (possibility of condemnation) and performance review with potential action. No action was taken during executive session.

12. Resolution 1: Resolution No. 861 A Resolution Of The Board Of Commissioners Of Public Utility District No. 1 Of Whatcom County (“District”) Accepting And Appointing District General Legal Counsel

– After Executive Session Commissioner Deshmane made a motion to approve Resolution No. 861 retaining CSD Law and Mr. Jon Sitkin as Legal Counsel for the Whatcom PUD. Commissioner Lagestee seconded the motion. The motion passed unanimously.

13. Adjourn

There being no further business Commissioner Arnett adjourned the meeting at 11:08 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/>

Action Memo

To: Commissioners Arnett, Deshmane and Lagestee
From: Andrew Entrikin, Director of Broadband & Power Supply
Date: November 12, 2024
Re: Approve Agreement for Professional Services with Drayton Archaeology

Requested Action: APPROVE AGREEMENT FOR PROFESSIONAL SERVICES WITH DRAYTON ARCHAEOLOGY AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT.

Background:

The Point Roberts broadband project is working to finalize engineering plans. Most of the work will be overhead installation with limited associated ground-disturbing activities. However, sections of the proposed project will involve underground installation corridors of fiber optic conduit.

Drayton Archaeology ("Drayton") will compose a plan that will comply with GEO 21-02 through Whatcom County (the County) and if archaeological resources are encountered, through RCW 27.53 as administered by the Washington Department of Archaeology and Historic Preservation (DAHP). Drayton will review the project area for the probability of cultural resources, which will include a review of the recorded archaeological sites inventoried on the DAHP's Washington Information System for Architectural and Archeological Records Data (WISAARD) database.

Included with this memo is the Agreement for Professional Services, which includes Drayton's scope of services

Fiscal Impact: Grant funded. Drayton services will be fully reimbursable.

Recommended Action: APPROVE AGREEMENT FOR PROFESSIONAL SERVICES WITH DRAYTON ARCHAEOLOGY AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT.

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

**AGREEMENT FOR PROFESSIONAL SERVICES
(CHAPTER 39.80 RCW)**

Agreement #XX-00-XX

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

**PUBLIC UTILITY DISTRICT
NO. 1 OF WHATCOM COUNTY**
P.O. Box 2308
1705 Trigg Road
Ferndale, WA 98248

(“PUD”)

AND

Drayton Archaeology
PO Box 782
Blaine, 98231
360-739-3921
www.draytonarchaeology.com

(“Consultant”)

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- **TERM OF CONTRACT:** _____
 - **SCOPE OF WORK:** Pursuant to specific task orders as described in the general provisions herein. **See attached Exhibit “A”.**
 - **COMPENSATION:** The Consultant shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown herein: **See attached Exhibit “B”.**
 - **GENERAL PROVISIONS:** Work covered by this Agreement shall be performed in accordance with the General Provisions (which are attached hereto and form a part of this Agreement) and any attachments or schedules.
 - **ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the later of the dates indicated below. By signing below, each signatory represents that he or she has authority on behalf of his or her respective party to enter into this agreement, which shall be binding upon the parties according to its terms.

CONSULTANT

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

GENERAL PROVISIONS

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

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

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

2. Term of Agreement. The Consultant shall not begin work under the Agreement or any Task Order until the PUD has specifically authorized the Consultant to do so in writing. The time required for completion of all work under each Task Order and, if appropriate under a schedule for completion of phases of the work, shall be specified in each Task Order. The completion dates for Task Orders, or for phases of work under a Task Order, may be modified only upon written agreement of the parties hereto. The completion dates for Task Orders, or for phases of work under a Task Order may be, but are not required to be, extended in the event of a delay caused by change order work requested by the PUD, or if the Consultant's work is delayed by unavoidable circumstances beyond the control of the Consultant and which the Consultant could not reasonably have anticipated. This Agreement may be extended for multiple terms at the sole discretion of the PUD and subject to budget appropriations and Commission approval when required; if so extended, all of the terms and conditions herein shall apply to such extension.

3. Compensation and Payment. The Consultant shall be compensated on the basis of

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

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

3.2 If a Task Order specifies that the work is to be performed on a fixed fee basis, the Consultant shall be paid the amount of the fixed fee as consideration for full and satisfactory performance of the work regardless of the Consultant's cost to perform the work. The PUD shall have sole authority for determining when all work has been satisfactorily performed by the Consultant. The fixed fee amount comprises all of the Consultant's payment for the work and includes without limitation all costs of salaries, overhead, non-salary expenses (including, but not limited to, travel, reproductions, telephone, supplies, and fees of outside consultants), as well as the Consultant's profits. The Consultant's payment for the work shall not exceed the specified amount unless first authorized by the PUD in writing.

3.3 The Consultant shall obtain the prior

written approval of the PUD for any charges for additional services by the Consultant, the additional services of others retained by Consultant, or the furnishing of additional supplies, materials or equipment. The Consultant shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

4. **Payment of Subconsultants.** At the time of project completion or as a condition of any payment hereunder, the Consultant agrees to certify to the PUD that all employees (including without limitation any union fees and any benefit plans), and subconsultants have been paid in full. Final payment or any partial payment may be preconditioned upon receipt of such certification by the PUD; the PUD may, in its sole discretion, withhold payment until receipt of such certification. The Consultant shall be solely responsible for the performance and payment of any and all subconsultants. All such subconsultants shall possess all licenses and insurance as required by this Agreement and/or the laws of the State of Washington.

5. **Termination.** This Agreement may be terminated by either party upon seven (7) days' written notice should one party fail to perform in accordance with its terms through no fault of the other. In the event the party that fails to perform is the Consultant, the determination of "fail to perform in accordance with its terms" shall be in the sole judgment of the PUD. In the event of termination, the Consultant shall be compensated for satisfactory services performed to the termination date by reimbursement of the Consultant's actual costs directly related to the project plus normal overhead and reasonable profit, less damages caused by Consultant's breach. The PUD shall have sole authority for determining when all work has been satisfactorily performed by the Consultant. In no case, however, shall such reimbursement exceed the agreed upon fee as approved and amended by the PUD. Any work product generated by the Consultant prior to such termination shall be the sole property of the PUD, and the Consultant agrees to provide the PUD with all such materials. If the accumulated payment made to the Consultant prior to notice of intent to terminate exceeds the total amount that would be due as set forth herein above, then no final payment shall be due, and the Consultant shall promptly reimburse the PUD for the excess paid.

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

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

6. **Deviations from Scope of Work.** The PUD may at any time issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affects any other provision of this Agreement, the Consultant shall immediately notify the PUD and take no further action concerning those written directions until such time as the parties have executed a written change order. No additional work shall be performed or charges incurred unless and until the PUD approves in writing the change order and the increased cost thereof. Any work done in violation of this paragraph shall be at the sole expense of the Consultant. Additionally, the PUD reserves the right to modify the amount spent for identified project tasks within the scope of work, provided that the Contract Amount, as may be modified under Paragraph 3.3, is not exceeded.

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

7. **Insurance.** Consultant, concurrently with the execution of this Agreement, shall provide the PUD with evidence that Consultant has obtained and is maintaining the insurance listed as follows:

7.1 **Workers' Compensation Insurance** as required by law.

7.2 Employers' Liability Insurance (bodily injuries) with a limit of One Million Dollars (\$1,000,000) per occurrence with an insurance company authorized to write such insurance in all states where the Consultant will have employees located in the performance of its work covering its common law liability to such employees.

7.3 Commercial General Liability Insurance with limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate and Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or on behalf of Consultant with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and/or property damage.

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

7.5 Except with regard to the Professional Liability Insurance and Workers' Compensation Insurance, each of the policies required herein shall name the PUD as an additional insured by way of a policy endorsement. Furthermore, each 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 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 and its elected officials, employees, or agents; (iv) expressly provide that the defense and indemnification of the PUD as an "additional insured" will not be effected by any act or omission by Consultant 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; (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another; and (vii) provide for coverage for damage to the PUD's property caused by the Consultant.

7.6 With regard to the Professional Liability Insurance, policy shall be issued on a claims made form, with the following additional terms applying to the policy: (i) coverage shall be maintained for a minimum of six (6) years after Contract completion, with evidence of the same

provided to the PUD annually, (ii) the Retroactive Date must be shown and must be before the date of this Contract or commencement of Work hereunder, (iii) if the policy is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the date of the Contract or commencement of Work hereunder, the Consultant must purchase "extended reporting" coverage for a minimum of six (6) years after completion of the Contract work.

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

7.8 The Consultant shall maintain the insurance in effect at all times that it is performing work under this Agreement. Failure to obtain and/or maintain such insurance shall be grounds for the PUD to find the Consultant in default and terminate the Agreement accordingly. Alternatively, the PUD may at its option purchase such insurance and deduct the reasonable expense therefore from payments made to or owing to the Consultant.

7.9 If the Consultant maintains broader coverage and/or higher limits than the minimums set forth above, the PUD requires and shall be entitled to such broader coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage listed herein shall be available to the PUD.

8. Consultant Not an Agent or Employee of the PUD. In performing work and services hereunder, the Consultant and Consultant's employees, agents, and representatives shall be acting as independent Consultants and shall not be deemed or construed to be partners, employees or agents of the PUD in any manner whatsoever. No employee of the Consultant shall be considered an employee of the PUD even while performing work required under this Agreement. Furthermore, the Consultant shall not hold itself out as, nor claim to be, an officer or employee of the PUD by reason hereof and will not make any claim, demand or application to or for any right or

privilege applicable to an officer or employee of the PUD.

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

10. **Compliance with Applicable Law.** The Consultant shall comply with all the PUD's resolutions and all federal, state, and local laws, regulations and ordinances that are applicable to the work performed pursuant to this Agreement. Both parties mutually agree to re-negotiate scope, budget, and schedule should a change in any of the applicable PUD's resolutions, federal, state or local laws, regulations or ordinances during the performance of the work affect the cost of performing the work. The Consultant shall register (and shall require the same of all subconsultants), as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to the PUD.

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

- Arising out of any negligent act or omission of Consultant, its directors, officers, subconsultants, agents and/or employees (collectively "Consultant") in connection with the work performed pursuant to this Agreement; provided, however, that in the event of concurrent negligence of the Consultant and the PUD, then this defense and indemnification shall apply only to the extent of the Consultant's negligence; and/or
- Arising from a breach of this Agreement by Consultant; and/or
- Arising out of or due to any failure on the part of Consultant to perform or comply with any rule, ordinance or law to be kept and performed.

The PUD will inform Consultant of any such claim

or demand that alleges liability based in whole or in part on any act or omission of Consultant, its directors, officers, agents, or employees. Thereafter the Consultant shall (i) reasonably cooperate in the defense of such claim and (ii) pay the PUD's defense of such claim as incurred, whether or not such claim is ultimately successful. In this regard, the PUD will reasonably cooperate with Consultant in allowing Consultant to jointly select, with the PUD, attorneys to defend the PUD and Consultant provided that Consultant confirms its obligation to pay the PUD's defense costs.

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

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

Consultant

PUD

12. **Work Product Confidentiality.** Any reports, documents, questionnaires, records, information or data given to or prepared or assembled under this Agreement which the PUD requests to be kept confidential shall not be made available by the Consultant to any individual or organization without prior written approval of the PUD except as may be ordered by a court of competent jurisdiction. The provisions of this section shall survive the expiration or earlier termination of this Agreement. No reports, records, questionnaires, or software programs provided by the PUD or

other documents produced in whole or in part by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

13. Public Disclosure Request.

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

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

15. Electronic File Compatibility. All electronically transmitted output must be compatible with existing PUD software and shall be provided to the PUD in a CAD or other appropriate electronic format. All CAD deliverables shall be consistent with the PUD's

standard CAD layering system, as provided by the PUD to the Consultant. Consultants shall check with the PUD for software application, system compatibility and preferred file type.

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

17. Federal Restrictions on Lobbying.

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

18. Federal Debarment and Suspension. The Consultant certifies, that neither it nor its "principals" (as defined in 49 CFR.29.105) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Contractor will include this clause without modification in all lower tier transactions, solicitations, proposals, agreements, contracts, and subcontracts. Where the offeror/consultant or any lower tier participant is unable to certify to this statement it shall attach an explanation to this Agreement. The PUD reserves the right to require Consultant to replace a subconsultant or lower tier participant who cannot meet the foregoing certification requirement.

19. **Subletting or Assigning of Agreement.**

The Consultant shall not sublet or assign any of the work covered by this Agreement without the express written consent of the PUD.

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

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

22. **Jurisdiction.** This Agreement is made and delivered in the State of Washington and shall be construed and enforced in accordance with the laws thereof. Jurisdiction and venue of any dispute hereunder shall be solely and exclusively in the Superior Court of the State of Washington in and for Whatcom County. In the event of a dispute arising out of or under this Agreement, the substantially prevailing party shall be entitled to its reasonable attorneys' fees and costs.

23. **Pollution.** PUD acknowledges that the Consultant is not responsible for the creation or presence of contamination or pollution, if any, at

the property except to the extent that such a discharge, release or escape is caused by the Consultant's acts or omissions. For the purpose of this clause, contamination or pollution shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant, contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. The Consultant will promptly notify the PUD of contamination or pollution, if identified. Notwithstanding the foregoing, the PUD does not waive any cause of action for damages resulting from the PUD's reliance on any misrepresentation (made either knowingly or negligently) by the Consultant with regard to the presence of any contamination or pollution.

24. **Consultant Work.** Consultant's work shall meet or exceed the standard for similar services performed by similarly licensed professionals performing work in Whatcom County, Washington.

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

26. **Compliance with Grant and/or Loan Terms and Conditions.** In the event the Consultant is made aware of grant and/or loan terms and conditions by the PUD, the Consultant shall comply with any and all conditions, terms and requirements of any federal, state or other grant and/or loan that wholly or partially funds the Consultant's work or services hereunder

27. **Signing Authority.** Anyone signing this Agreement by said signature certifies that he/she has the authority to execute said document on behalf of the Consultant and that his/her signature is binding upon the firm or corporation.

EXHIBIT A

TASK ORDER FORM

Public Utility District No. 1 of Whatcom County
Agreement for Professional Services
Task Order # ___ - ___

PROJECT NAME

PUD Project #

PUD Billing Code:

This work order is issued pursuant to the Agreement for Professional Services # ___ - ___ - ___ dated ___ between the Public Utility District No. 1 of Whatcom County and _____ whose address is _____. Unless otherwise specified below, the performance of services hereunder and the payment therefore shall be subject to the terms and conditions of said Agreement.

(A) Scope of Work:

The cultural resource review will consist of a Desktop Review, which will include relevant environmental, geological, historical, land-use, precontact, and ethnographic summaries. The desktop review will assess the probability of encountering cultural resources. This proposal also includes a monitoring plan for areas perceived to be in higher probability locations for encountering cultural materials or deposits. The plan will include relevant maps for where on-site monitoring/pre-testing (if any) would be recommended. Drayton will also compose an inadvertent discovery plan (IDP) for the project.

(B) Deliverables:

1.1 Conduct background research using DAHP's WISAARD database and other relevant records, as needed, of previously conducted investigations and previously recorded sites within/near the project area. 1.1.1 The background review will address ethnographic scoping and research into Tribal affiliations (for use in determining Traditional Cultural Property likelihood). 1.1.2 Conduct a review of previous CRM reviews and recorded Archaeological and Historic Properties in the vicinity and the implications for the current project as it relates to the probability of encountering resources 1.2 Tabulate previously conducted archaeological surveys and recorded sites within a 0.25 to one-mile radius based on background review for consultation and reporting. 1.3 Generate maps for the review. 1.4 Compose narratives based on a review of previously recorded sites to inform the probability of encountering resources and provide context for consultation and planning. 2 Monitoring Plan & Inadvertent Discovery Plan (IDP) 2.1 Compose a monitoring plan that will detail specific areas of the project area where a monitor should be on-site during ground-disturbing activities. 2.2 Compose an IDP that addresses the varying types of archaeological materials that may be encountered during construction activities when an archaeologist is not present (for precontact and historic deposits), how to proceed if resources are encountered, important contact information, and what to do if human remains are unearthed. 3 Reporting Upon completion of the cultural resource review, Drayton will: 3.1 Draft a report for your review and comment. This will include critical recommendations that may include pre-testing areas of high cultural sensitivity, having an on-site monitor while installation is happening, or using the IDP in areas that are less culturally sensitive. 3.2 Upon your approval, submit the report disseminating the results to all agencies and concerned parties for official review; and 3.3 Provide a period for comments to inform the final reporting.

Note: All CAD deliverables shall be consistent with the PUD's standard CAD layering system, as provided by the PUD to the Consultant. Consultants shall check with the PUD for software application, system compatibility and preferred file type.

(C) Schedule:

(D) Fee Basis:

Services to be billed on a Time and Materials Basis not to exceed \$5,000 as summarized below, and per the attached cost breakdown.

Task	Not-To-Exceed Dollar Amount
1.0 Desktop Monitoring Plan	\$2,000
2.0 IDP	\$1,000
3.0 Prepare Maps	\$1,000
Reporting/Editing/Meeting	\$1,000
Reimbursable Expenditures	\$5,000
TOTAL	\$5,000

CONSULTANT

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

EXHIBIT B

CONSULTANT'S FEE SCHEDULE

Cost Estimate for Composing a Monitoring Plan & Desktop Review for Whatcom PUD Broadband, Point Roberts, Whatcom County										
LABOR	Principal	Deputy PI	Proj Manager	Field Director	Tech III CC	Tech II	Tech I	Admin	Hours	Totals
Desktop/Monitoring Plan	1	0	1	0	12	0	2	2	18	\$ 1,576.89
IDP	1	0	0	0	4	0	0	0	5	\$ 496.98
Prepare Maps	0	0	0	0	1	0	5	0	6	\$ 403.52
Reporting/Editing/Meeting	4	0	1	0	0	0	0	1	6	\$ 783.19
Total Hours	6	0	2	0	17	0	7	3	35	\$ 3,260.58
Hourly Price	\$148.50	\$125.00	\$121.99	\$106.48	\$87.12	\$72.12	\$63.28	\$67.20		
Labor Price Total	\$ 891.00	\$ -	\$ 243.98	\$ -	\$ 1,481.04	\$ -	\$ 442.96	\$ 201.60		\$ 3,260.58
									*Cost Estimate	\$ 3,260.58

Action Memo

To: Commissioners Arnett, Deshmane, and Lagestee
From: Stephanie Hooper, Accountant I
Date: November 12, 2024
Re: Approve Resolution No. 862 – Cancellation/Reissue of Warrant

Requested Action: APPROVE RESOLUTION NO. 862 AUTHORIZING CANCELLATION OF WARRANT NOS. 01198978 FOR CIVICPLUS LLC., 01202582 FOR CSD, AND, 01202591 FOR MILLS ELECTRIC

Background:

Warrant No. 01198978 was issued on September 03, 2024 in the amount of \$4,784.37 to CivicPlus LLC. The warrant was issued to cover our Social Media Archiving Subscription. The check has not been received in two months' time and we believe that it is missing in the mail. I do request the commission's cancellation of said warrant and approval of issuing a new warrant to ensure that CivicPlus LLC receives payment. The district has notified the County that the Warrant has not been tendered and has asked the County to cancel and disregard the Warrant. A new Warrant will be issued.

Warrants No. 01202582 for CSD, and, 01202591 for Mills Electric were issued as part of the claims approved by the PUD Commission on October 22, 2024. Whatcom County has been working with KeyBank to implement a positive pay system for their banking starting on January 1, 2025. A positive pay system requires that the person or agency using the bank submits a list of pre-approved checks that will be made for payment to the bank before the checks are ran and mailed. If a check is not on the preapproved list or the bank does not receive a list of checks for the run that has been sent out those checks will be automatically void and rejected by KeyBank. KeyBank implemented the positive pay system November 4th through the 6th 2024 without informing Whatcom County and therefore did not receive a list of preapproved checks for any of warrants submitted by Whatcom County, including those for the PUD. All warrants issued by Whatcom County on behalf of the PUD, which were presented to the bank at the beginning of November, were denied by the bank. The PUD finance staff is working with our vendors to see which of them are allowed by their respective banks to attempt redeposit of an rejected check. KeyBank stopped the positive pay system as of November 6, 2024 and is working with Whatcom County and the PUD to resolve the issues early implementation has caused. The PUD has asked the County to void and reissue the warrants to CSD and Mills Electric.

Fiscal Impact: No fiscal impact.

Recommended Action: Approve Resolution No. 862 authorizing cancellation of warrant nos. 01198978 for Civicplus LLC., 01202582 for CSD, and, 01202591 for Mills Electric

RESOLUTION NO. 862

**RESOLUTION BY THE BOARD OF COMMISSIONERS
OF PUBLIC UTILITY DISTRICT NO.1 OF WHATCOM COUNTY (DISTRICT) AUTHORIZING
THE CANCELLATION
OF WARRANT NOS. 01198978, 01202582, and 01202591**

WHEREAS, the warrants referenced in Exhibit A (the "Warrants") were issued on the basis of services provided to PUD No. 1 of Whatcom County by CivicPlus, LLC., CSD, and Mills Electric.

WHEREAS, following the Commission's authorization of the issuance of the Warrant, the County's Administrative Services Department ("County") printed the original Warrant for CivicPlus on September 03, 2024. The district notified the County that the Warrant was missing in the mail and has asked the County to cancel and disregard the Warrant; a new Warrant will be issued.

WHEREAS, following the Commission's authorization of the issuance of the Warrants on October 22, 2024, the County's Administrative Services Department ("County") printed the original Warrants on October 29, 2024 for CSD and Mills Electric. The district notified the County that error made by the County's Bank (KeyBank) the warrants were denied by KeyBank and could not be deposited and the district has asked the County to cancel and disregard the Warrants; new Warrants will be issued.

WHEREAS, the County has provided the Warrant that was issued on September 03, 2024, and the Warrant has not been tendered to CivicPlus, the District does now wish to cancel the Warrant, as provided by law; and will issue a new one.

WHEREAS, the County has provided the Warrants that were issued on October 29, 2024, and the Warrants have not been tendered to CSD or Mills Electric, the District does now wish to cancel the Warrants, as provided by law; and will issue new warrants.

NOW THEREFORE BE IT RESOLVED that the district hereby cancels the warrants listed in Exhibit A.

ADOPTED by the Commission of Public Utility District No.1 of Whatcom County at its regular meeting held on the 12th day of November, 2024.

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

Jaime Arnett, President/Commissioner

Atul Deshmane, Vice President/Commissioner

Todd Lagestee/Commissioner

RESOLUTION NO. 862

Exhibit A
Cancellation of Warrant

Warrant No.	Warrant Date	Vendor	Amount
01198978	09/03/2024	Civic Plus LLC	(\$4,784.37)
01202582	10/22/2024	CSD	(\$11,840.00)
01202591	10/22/2024	Mills Electric	(\$145,858.49)