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2023 BOARD OF COMMISSIONERS

ATUL DESHMANE, PRESIDENT

CHRISTINE GRANT, VICE PRESIDENT

JAIME ARNETT, SECRETARY

PUBLIC UTILITY DISTRICT No. 1 of Whatcom County

Agenda for the Regular Meeting of March 28, 2023

8:15 a.m. at the PUD Office

(In-person, Zoom, & Teleconference)

1. Call to Order | Pledge of Allegiance (2 minutes)
2. Approval of Agenda (3 minutes)
3. Consent Agenda (5 minutes)
 - a) Approval of Minutes of the Special Meeting of March 8, 2023
 - b) Approval of the Minutes of the Regular Meeting of March 14, 2023
 - c) Approval of Claims for March 28, 2023
4. Public Comment (10 minutes – Individual speakers: 3 min.)
5. Old Business (10 minutes)
 - a) Broadband Program Update
 - i. Approve Amended Interlocal Agreement between Port/PUD and Whatcom County for Fiber/Broadband Coordination
 - b) Adjudication Update
6. New Business (20 minutes)
 - a) Lower Snake River Dams / Northwest River Partners Discussion
7. General Manager Report (10 minutes)
8. Operations Report (10 minutes)
9. Commissioner Reports (15 minutes)
10. Public Comment (10 minutes– Individual speakers: 3 min.)
11. Adjourn (9:30 AM estimated)

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/85053145972>

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

Webinar ID: 850 5314 5972

NOTE NEW START TIME: 8:15 AM

Next Commission Meetings

April 11 & April 25, 2023 | 8:15 a.m. | Regular Meetings – District Office

1705 Trigg Road, Ferndale, WA 98248

Contact: Ann Grimm, Commission Clerk at (360) 384-4288 x 27 • www.pudwhatcom.org

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MINUTES OF THE SPECIAL MEETING OF THE COMMISSION

March 8, 2023

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 9:00 a.m. by Commissioner Atul Deshmane. Said meeting was open to the public and notice thereof had been given as required by law. Those present included: Commissioner Christine Grant, Commissioner Jaime Arnett; Commissioner Atul Deshmane; and Legal Counsel Jon Sitkin. Staff: General Manager Chris Heimgartner; Brian Walters, Assistant General Manager; Ann Grimm, Executive Assistant; Mike Macomber, IT/SCADA Technician; and Aaron Peterson, IT/SCADA Technician.

Public attending: None

2. Adjourn to Executive Session:

Commission President Deshmane requested an Executive Session pursuant to RCW 42.30.110(1)(i) General Litigation matters. Estimated time for Executive Session was forty-five (45) minutes. The Commission President indicated that action may be taken after the adjournment of Executive Session. The Commission adjourned to Executive Session at 9:02 a.m.

Executive Session Adjourn

There being no further business for Executive Session, the Commission rejoined the Special Commission Meeting at 9:53 a.m.

3. Whatcom PUD Electric Expansion Feasibility Study

Commissioners and staff discussed the public release of the feasibility study, including a press release, communications plan and future open house.

ACTION: No action taken. Information only.

4. Adjourn

There being no further business for the special meeting, Commissioner Deshmane adjourned the special meeting at 10:29 a.m.

Atul Deshmane, President/Commissioner

Christine Grant, Vice President/Commissioner

Jaime Arnett, 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/2023-agendas-packets-meeting-minutes-recordings/>

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MINUTES OF THE REGULAR MEETING OF THE COMMISSION

March 14, 2023

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 Atul Deshmane. Said meeting was open to the public and notice thereof had been given as required by law. Those present included: Commissioner Christine Grant, Commissioner Jaime Arnett; Commissioner Atul Deshmane; and Legal Counsel Jon Sitkin. Staff: Assistant General Manager Brian Walters; Ann Grimm, Executive Assistant; Andrew Entrikin, Broadband Program Manager; Steve Jilk, In-House Consultant; Annette Smith, Director of Finance; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Paul Siegmund, Manager of Automation and Technology; Mike Macomber, IT/SCADA Technician; Traci Irvine, Accountant I; Garrett Love-Smith, Project Manager; and Kurt Wank, Director of Utility Operations.

Public attending:

Rick Maricle	Darrell Gray, NSEA
Mike Kaufman	Lauren Turner, Phillips66
Jack Wellman, PSE	Dave Olson

2. Approval of Agenda

No changes made.

ACTION: Commissioner Grant made the motion to APPROVE THE AGENDA OF MARCH 14, 2023. Commissioner Arnett second the motion. Motion passed unanimously.

3. Approval of Consent Agenda

- Approval of Meeting Minutes of the Special Meeting, February 23, 2023;
- Approval of Meeting Minutes of the Regular Meeting, February 28, 2023;
- Approval of the Claims of March 14, 2023:

VENDOR NAME	AMOUNT
ARISTA CORP	1,312.00
AT&T MOBILITY	897.59
BELLINGHAM HERALD	710.97
BIRCH EQUIPMENT COMPANY	4,991.05
BRIDGEVIEW AUTO PARTS	65.64
CDW/COMPUTER DISCOUNT WAREHOUSE	1,361.90
CENTRAL WELDING SUPPLY	144.73
CRABTREE, DEVIN	251.24
CULLIGAN NORTHWEST	154.91
EXACT SCIENTIFIC SERVICES INC.	27.00
FERNDALE ACE HARDWARE	65.88
FERNDALE CITY OF	514.47
GATEWAY CONTROLS	1,580.13
GDS ASSOCIATES (EES CONSULTING)	16,895.00
GLEASON, GUY G	28.67
HACKER, RONALD G	321.84
HARDWARE SALES, INC	239.34
HEALTH PROMOTIONS NORTHWEST	150.00

DRAFT

HEIMGARTNER, CHRIS	149.91
INDUSTRIAL SUPPLY, INC	576.91
K ENGINEERS, INC.	95.00
KCDA PURCHASING COOPERATIVE	117.14
LAPLAUNT, DAVID	49.81
MILLS ELECTRIC	82,481.00
NATIONAL SAFETY, INC.	267.64
NORTHWEST CASCADE, INC.	118.50
NORTHWEST FIBER DBA ZIPLY FIBER	1,441.90
NP INFORMATION SYSTEMS (3-D CORP)	252.42
NW INTERGOV'L ENERGY SUPPLY COOPERATIVE	15,257.00
NW REQUIREMENTS UTILITIES, INC.	1,305.00
PARAMOUNT SUPPLY COMPANY	17.95
PITNEY BOWES GLOBAL FINANCIAL SERVICES	151.04
PLATT ELECTRIC SUPPLY CO	9,868.98
PUD #1 OF WHATCOM COUNTY	44.44
PUGET SOUND ENERGY, INC	8,484.52
REGENCE BLUE SHIELD	45,798.72
REISNER DISTRIBUTION, INC	1,225.41
RICOH USA	238.83
S&P GLOBAL PLATTS	3,209.13
SMITH MECHANICAL	1,633.60
SOUND PUBLISHING	217.56
SSC - SANITARY SERVICE COMPANY	631.41
SULLIVAN PLUMBING	842.11
TEAMSTER LOCAL #231	616.00
UNITED WAY OF WHATCOM COUNTY	742.00
UTILITIES UNDERGROUND LOCATION	20.64
WASHINGTON DENTAL SERVICE	2,860.45
WASHINGTON TEAMSTERS WELFARE	26,546.80
WHATCOM FARMERS CO-OP	151.45
WHATCOM JANITORIAL	1,430.00
GRAND TOTAL	\$236,555.63

ACTION: Commissioner Arnett made the motion to APPROVE THE CONSENT AGENDA OF MARCH 14, 2023. Commissioner Grant second the motion. Motion passed unanimously.

4. **Public Comment** - No comment.

5. **Old Business**

a) **Broadband Program Update**

Entrikin said he expects to hear award announcements from the Washington State Broadband Office by the end of March regarding the three grant applications/funding opportunities submitted by the PUD.

Port/PUD Broadband Steering Committee – will be adding a staff member from Whatcom County. The Interlocal Agreement is in the process of being amended for this purpose.

Commissioner Deshmane commented on providing retail options for broadband.

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b) Adjudication Update

House Bill 1792 is now on the agenda for the House Committee on Agriculture and Natural Resources. WPUA's Bill Clarke will testify. Regarding the Budget Proviso – this past week, the State Department of Ecology (DOE) has provided edits, as well as the tribes. Sitkin continues to monitor.

6. New Business

a) Nooksack Salmon Enhancement Association Presentation

The District has been supporting fish habitat restoration projects with Nooksack Salmon Enhancement Association (NSEA) since 2010. This funding request for 2023 is \$20,000. Darrell Gray, NSEA Project Manager, provided an overview of 2022 activities and update for projects planned for 2023.

There is no fiscal impact to the District as funding has been allocated in the 2023 budget for this purpose.

ACTION: Commissioner Grant motioned to APPROVE FUNDING IN THE AMOUNT OF \$20,000 FOR NOOKSACK SALMON ENHANCEMENT ASSOCIATION TO SUPPORT WASHINGTON CONSERVATION CREW WORK ON HABITAT RESTORATION PROJECTS FOR 2023. Commissioner Arnett second the motion. Motion passed unanimously.

b) Award of Bid: Water Treatment Plant 1 – Pump #5 Variable Frequency Drive (VFD)

The District 2023 Capital Improvement Project list includes the installation of a new variable frequency drive (VFD) on the Plant 1 High Head 5 (RW-35). The installation of a VFD will assist water operations in the management of water flow to District customers, as well as increase the electrical efficiency of the plant. On March 3, 2023 the District received and publicly read aloud one (1) bid submitted for this project.

<u>Low Bidder:</u>	<u>Bid Amount</u>
Mills Electric Co.	\$513,146.50 (tax not inc.)

Engineer's Estimate \$722,469.82 (tax not inc.)

Staff recommends awarding the contract for the Plant 1 High Head 5 VFD to Mills Electric Co. Due to the total contract amount being less than the Engineer's Estimate of \$722,469.82 and the PUD's internal capital budget amount of \$650,000.00, there is no foreseen fiscal impact. This project is budgeted in the 2023 Capital Improvements Budget.

ACTION: Commissioner Grant made the motion to AWARD THE PLANT 1 HIGH HEAD 5 VFD CONTRACT TO MILLS ELECTRIC CO. AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT. Commissioner Arnett second the motion. Motion passed unanimously.

c) Call for Special Meeting

The District will hold a Special Commission Meeting to present a brief overview of the PUD's Electric System Expansion Feasibility Study and receive public comment. The meeting will be held on Thursday, April 13, 2023, at the Pioneer Park Pavilion, located at 2007 Cherry Street in Ferndale, from 4 PM to 6 PM. The agenda is forthcoming.

ACTION: Commissioner Grant made the motion to CALL FOR A SPECIAL MEETING ON APRIL 13, 2023, LOCATED AT PIONEER PARK PAVILION, 2007 CHERRY STREET,

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FERNDALE, FROM 4 PM TO 6 PM. Commissioner Arnett second the motion. Motion passed unanimously.

7. General Manager Report

- Walters is covering for Heimgartner. No report.
- Grant asked the following be passed along to Heimgartner – She is seeking status on the Interlocal Agreement with County for GIS assistance, and when the Request for Proposals regarding District’s renewable energy project will be ready.

8. Operations Report

- Walters reported Washington State announced results of its first greenhouse-gas allowance auction raised an estimated \$300 million. The Department of Ecology announced Tuesday it had sold all of its almost 6.2 million allowances, each representing one metric ton of greenhouse-gas emissions. The settlement price was \$48.50 per ton, more than double the starting price of \$22.20.

CLERK NOTE – Video Recordings: Following the Operations Report at 9:01 a.m. the Zoom platform and internet shut down unexpectedly. The Commission recessed until staff could reboot and continue on with the Zoom platform. As a result of the technical problems, there will be three video recordings: The second video begins *after* Arnett’s Commissioner Report. An additional technical interruption created a third video, which begins with Grant’s Commissioner Report.

9. Commissioner Reports

Arnett:

- Will attend WPUDA Committee Meetings and Commissioner Orientation Sessions.
- Completed her part on the Communications Plan for the Electric Expansion Feasibility Study release.
- Inquired about the Social Media Plan.

Jilk provided a brief update on the Watershed Management Board and Regional Water Supply Plan – on March 22, an update will be presented prior to the Planning Unit meeting. Deshmane commented that Water Use Efficiency should be included in the Five-Year Work Plan.

Grant:

- Completed her part on the Communications Plan for the Electric Expansion Feasibility Study release.
- Met with staff from the Port, PUD, Mt. Baker Ski Area and Representative Alex Ramel on the possibility of providing electric service to the area.
- Will be attending WPUDA committee meetings this week.

Deshmane:

- Completed his part on the Communications Plan for the Electric Expansion Feasibility Study release.
- Commented the effects of diesel (and snow) and possibly helping other ski areas that depend on diesel generators.
- He is interested in energy supply options and would like to begin attending monthly meetings with Public Power Council (Portland, OR) with Commission approval in advance.

10. Public Comment – None made.

11. Adjourn

There being no further business for the regular meeting, Commissioner Deshmane adjourned the regular meeting at 9:40 a.m.

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Atul Deshmane, President/Commissioner

Christine Grant, Vice President/Commissioner

Jaime Arnett, 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/2023-agendas-packets-meeting-minutes-recordings/>

Action Memo

To: Commissioners Arnett, Deshmane, and Grant
From: Andrew Entriikin, Broadband Manager
Date: 3/21/2023
Re: **Approve Amended Interlocal agreement between the Port of Bellingham, Public Utility District No. 1 of Whatcom County, and Whatcom County for Fiber Optic/Broadband Coordination**

Requested Action: APPROVE AMENDED INTERLOCAL AGREEMENT BETWEEN THE PORT OF BELLINGHAM, PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, AND WHATCOM COUNTY FOR FIBER OPTIC/BROADBAND COORDINATION.

Background: The Port and PUD established a broadband steering committee on July 13 2021. The purpose is to share and combine our respective skills and assets resulting in a countywide high speed system providing access to areas that are currently unserved or underserved to access high speed broadband. The cooperative efforts were intended to reduce the cost of related services over what would otherwise be achieved if the Parties acted independently.

The Port, PUD and County are now seeking to expand their cooperative relationship by pursuing the following initial joint agency initiatives:

- a) Build on and support the existing work the Port has done in the development of a strategic countywide broadband infrastructure plan that includes analysis and strategies, allows for the efficient utilization and expansion of existing infrastructure and strategic planning for the future development of new publicly owned infrastructure in support of residential, educational, commercial, industrial, general economic development, and agricultural activities with a goal of providing accessible and affordable high speed broadband service access to residences, businesses, schools, libraries, and medical facilities throughout unserved and underserved Whatcom County; and
- b) Pursue the development of a countywide, carrier grade, open access and non-discriminatory publicly owned dark fiber optic network. The network will be operated as an open access, multi-provider environment, such that private telecommunications providers are allowed access to the system, providing consumer choice, and competitive pricing for consumers; and
- c) Jointly seek funding for publicly owned broadband fiber optic infrastructure; and
- d) Develop operation, maintenance, and management plans of the publicly owned broadband fiber network

Fiscal Impact: None

Recommended Action: APPROVE AMENDED INTERLOCAL AGREEMENT BETWEEN THE PORT OF BELLINGHAM, PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, AND WHATCOM COUNTY FOR FIBER OPTIC/BROADBAND COORDINATION.

INTERLOCAL AGREEMENT BETWEEN THE PORT OF BELLINGHAM, PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY, AND WHATCOM COUNTY FOR FIBER OPTIC/BROADBAND COORDINATION

This **FIBER OPTIC / BROADBAND INTERLOCAL AGREEMENT** (hereafter the “**Agreement**”) is made and entered into this _____ day of _____, 2023, by and between the **PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY** (hereafter “the **PUD**”) and the **PORT OF BELLINGHAM** (hereafter “the **Port**”) and **WHATCOM COUNTY** (hereafter “the **County**”).

WHEREAS, there are areas of Whatcom County that are currently unserved and/or underserved with broadband services not meeting today’s residential, business, educational and other public service access needs; and

WHEREAS, RCW 53.08.370 grants authority to the Port to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate and maintain telecommunications facilities within or without the Port’s limits for its own use and/or for the provision of telecommunications services; and

WHEREAS, RCW 54.16.330 grants authority to the PUD to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate and maintain any telecommunications facilities within or without the PUD’s limits for its own use and/or for the provision of telecommunications services, and

WHEREAS, the Port and the PUD have the authority granted by the State of Washington to provide last mile and retail telecommunication services to the end user, as granted by the State of Washington, Chapter 293, Laws of 2021 and Chapter 294, Laws of 2021; and

WHEREAS, the parties will explore how to use their respective authority to maximize benefits to all of Whatcom County; and,

WHEREAS, the Port has developed a plan for constructing a publicly owned, open access dark fiber network throughout rural Whatcom County; and

WHEREAS, the PUD and the County are in support of the Port’s efforts to plan, engineer, design, finance and construct the fiber network throughout rural Whatcom County; and,

WHEREAS, the Port is seeking public partnership with the PUD and the County to provide opportunities to support the financing, operation, maintenance, and management of the fiber network, and utilization of the fiber network to provide mid mile infrastructure , or last mile infrastructure

WHEREAS, the PUD is seeking a public partnership with the Port and the County to develop, finance, operate, maintain, manage the fiber network and develop last mile infrastructure to residents, businesses, schools, and public safety agencies; and

WHEREAS, the PUD, in support of this broadband system and services development, offers technical expertise, potential funding support, operation, maintenance and last mile infrastructure; and

WHEREAS, the PUD owns and operates fiber infrastructure in Whatcom County for its own use in connecting its water and electric infrastructure, monitoring and managing said systems, and has expertise in maintaining fiber optic infrastructure; and

WHEREAS, on November, 2018, the Port and the PUD executed an Interlocal Agreement to engage in joint planning and a feasibility study for development of publicly owned, open access dark fiber network throughout rural Whatcom County; and

WHEREAS, the PUD recently received a Community Economic Revitalization Board (CERB) feasibility study grant to build off the 2018 report for development of last mile infrastructure; and

WHEREAS, the Port and the PUD are now seeking to expand their cooperative relationship by pursuing the following initial joint agency initiatives and potentially developing additional recommended initiatives (the “Joint Initiatives”) to:

- a) Build on and support the existing work the Port has done in the development of a strategic countywide broadband infrastructure plan that includes analysis and strategies, allows for the efficient utilization and expansion of existing infrastructure and strategic planning for the future development of new publicly owned infrastructure in support of residential, educational, commercial, industrial, general economic development, and agricultural activities with a goal of providing accessible and affordable high speed broadband service access to residences, businesses, schools, libraries, and medical facilities throughout unserved and underserved Whatcom County; and
- b) Pursue the development of a countywide, carrier grade, open access and non-discriminatory publicly owned dark fiber optic network. The network will be operated as an open access, multi-provider environment, such that private telecommunications providers are allowed access to the system, providing consumer choice, and competitive pricing for consumers; and
- c) Jointly seek funding for publicly owned broadband fiber optic infrastructure; and
- d) Develop operation, maintenance, and management plans of the publicly owned broadband fiber network; and

WHEREAS, the County provides public funding for broadband infrastructure and has an interest in ensuring digital equity across Whatcom County for access to economic opportunity, healthcare, education, and other community needs.

WHEREAS, the Port, the County, and the PUD believe that the establishment of a joint interagency steering committee to manage, oversee, develop recommendations, and direct actions related to the Joint Initiatives is an efficient utilization of public resources while

maintaining appropriate financial and final strategic decision making and/or oversight by the agencies; and

WHEREAS, Chapter 39.34, Revised Code of Washington provides for cooperation between local governmental entities through contractual agreement.

NOW, THEREFORE, it is agreed by and between the Port and the County and the PUD as follows:

1. Purpose. The purpose of this Agreement is to establish procedures whereby the Parties can combine, share, and use their respective skills and assets and authority granted to the Parties by the State of Washington, thereby reducing the financial and administrative costs. The goal of this Agreement is to plan for a countywide high speed broadband system providing access to areas that are currently unserved or underserved. The cooperative efforts enabled by this Agreement are intended to reduce the cost of related services over what would otherwise be achieved if the Parties acted independently.

2. Joint PUD/Port/County Steering Committee and Decisions:

2.1 Committee Establishment and Purpose. A joint PUD, County, and Port Broadband Steering Committee is created for the purpose of facilitating and providing joint decision making on a publicly owned rural broadband fiber network. This Steering Committee shall be known as the "Joint PUD/Port/County Rural Broadband Steering Committee" or the "Broadband Steering Committee".

2.2. Steering Committee Meetings. The Steering Committee shall establish its own rules of conduct, meeting schedule, and process for setting a meeting agenda and decision making. The Steering committee will meet on a monthly basis at a minimum unless deemed necessary to meet on a more or less frequent basis. The Steering Committee will make decisions as they pertain to joint tasks, projects, scope of works, funding, and policies for a broadband fiber network.

2.3 Steering Committee Composition/Members. The Steering committee shall consist of the following members:

PUD: General Manager and their staff designee.

Port: Executive Director and their staff designee.

County: Strategic Initiatives Manager or Deputy Executive

Support for facilitating the meeting and can carrying out any necessary tasks will be provided by staff.

2.4 Steering Committee Recommendations. The Steering Committee will make recommendations to the Port and PUD Commissioners and Whatcom County Councilmembers as necessary on policy level decisions and on such matters as financial commitments, retaining consultants, and construction projects that require action by the individual agency. The Steering

Committee does not have the authority to enter into binding contracts without the approval of the PUD, Port Commissions, and Whatcom County Council.

3. General Scope of Services. During the term of this Agreement, the Parties may seek to obtain grant assistance, engineering, design and/or consulting services agreements, public works, or other services agreements.

3.1 Outside Contracting for Services. In the event it becomes necessary to contract with a third party to provide for joint services of the type described in Section 3 of this Agreement, the Steering Committee shall either:

- a) Enter into a separate interlocal agreement for joint funding of the services, or
- b) Unanimously select one Party to contract for services at the sole cost of the contracting party

4. Compensation for Services. Unless otherwise agreed to by the Parties and approved pursuant to Whatcom County Purchasing Policies (Whatcom County Code 3.08), services provided by staff of either Party pursuant to this Agreement shall be at the cost of the Party providing the services. In the event a Party seeks to enter into a contract with another Party, a separate interlocal agreement shall be executed.

5. Contact Persons. The following persons, referred to as Contact Person(s), are responsible for the administration of this Agreement for each Party:

For the Port: Executive Director and their staff designee

For the PUD: General Manager and their staff designee

For the County: Deputy Executive and Strategic Initiatives Manager

or such other persons as may be specified from time to time in writing by either Party.

6. Treatment of Assets and Property. No fixed assets or personal or real property are anticipated to be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement, except that the Strategic Plans, and all drafts, work product, data, information, analysis or similar produced in relation to the Strategic Plans shall be deemed the property of the Parties to this agreement even if stored and retained by the Port, the County, or the PUD.

7. Term of Agreement. This Agreement shall be effective on the date of such recording ("Effective Date") and shall terminate on December 31, 2025.

8. Termination. The Port the County or the PUD may withdraw from this Agreement by providing thirty (30) days written notice to the other Parties.

9. Assignment. This Agreement shall not be assigned by any Party to any third Party without the prior written consent of the other Parties, which consent may be withheld for any reason or no reason.

10. Release and Indemnify. To the extent permitted by law, each Party agrees to release, defend, indemnify, and hold harmless the other Parties, its officers, agents, employees, and representatives (Port/PUD/County) from all claims, actions, suits, losses, harm, liabilities, damages, costs, and expenses, including but not limited to, reasonable attorneys' fees arising out of the negligent acts or omissions arising in connection with performance of this Agreement. Where negligence by all Parties is concurrent and contributes to a claim, the Parties shall be responsible and liable in proportion to the degree of their own negligence. Nothing in this Agreement shall be construed to preclude any Party from pursuing any remedy against a third Party.

11. Public Records Act. All records received by the Parties pursuant to this Agreement shall be a public record and therefore subject to the Public Records Act.

12. Miscellaneous Provisions.

a. Notices. Any notice, request, authorization, direction, or other communication as required under this Agreement shall be given in writing and shall be delivered in person or by first class United States mail, properly addressed and stamped with the required postage, to the intended recipient as follows:

Port of Bellingham
1801 Roeder Avenue
Bellingham, WA 98225
Attention: Rob Fix, Executive Director

Public Utility District No. 1 of Whatcom County
1705 Trigg Road / Post Office Box 2308
Ferndale, WA 98248
Attention: Chris Heimgartner, General Manager

Whatcom County
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Attention: Tyler Schroeder, Deputy Executive

Any Party may change its address specified above by giving the other Parties notice of such change in accordance with this Section. All notices, requests and authorization of directions or other communications by a Party shall be deemed delivered when mailed as provided in this Section or personally delivered to the other Parties.

b. Governmental Authority. This Agreement is subject to the rules, regulations, orders, and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over this Agreement, and/or the Parties, or either of them.

c. No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, nor to impose any partnership obligations or liabilities of any Party. Furthermore, no Party shall have any

right, power, or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Parties.

d. Nonwaiver. The failure of any Party to insist upon or enforce strict performance by the other Parties of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

e. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter contained herein. This Agreement supersedes all prior and contemporaneous agreements and understandings between the Parties with respect to such subject matter. This Agreement may be amended only by a subsequent writing signed by all Parties and expressly stating the intention to amend this Agreement.

f. No Specified Third-Party Beneficiaries. Except as otherwise specifically provided in this Agreement, there are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any rights or interest on anyone other than the Parties, their respective successors, assigns, and legal representatives.

g. Amendment. No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by all Parties.

h. Implementation. Each Party shall take such action (including, but not limited to, the execution, acknowledgement, and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

i. Invalid Provision. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

j. Applicable Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Washington, except to the extent such laws may be pre-empted by the laws of the United States of America.

k. Venue. The venue of any litigation arising out of this Agreement shall be in Whatcom County, State of Washington, or such other place as all Parties may agree to in writing.

l. Interpretation and Fair Construction of Contract. This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and shall not be construed either for or against either Party as the drafter.

m. Recordation. Upon execution of this Agreement, it shall be recorded with the office of its County Auditor pursuant to the requirements of RCW 39.34; PROVIDED, that any delay in effecting compliance with this Section shall not affect the stated term, expiration or renewal dates hereof.

IN WITNESS WHEREOF, the Port, the PUD, and the County have executed this Agreement as of the day and year according to the signatures below.

EXECUTED THIS _____ day of _____, 2023.

PORT OF BELLINGHAM:

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

Rob Fix
Executive Director

Chris Heimgartner
General Manager

WHATCOM COUNTY:

Satpal Sidhu
Whatcom County Executive

(SAMPLE FORM- MODIFY TO FIT CIRCUMSTANCE)

EXECUTED THIS _____ day of _____, 2023.

PORT OF BELLINGHAM:

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

Rob Fix
Executive Director

Chris Heimgartner
General Manager

WHATCOM COUNTY:

Satpal Sidhu
Whatcom County Executive