

REVISED DRAFT

PUBLIC UTILITY DISTRICT No. 1 of Whatcom County

Agenda for the Regular Meeting of October 10, 2023

8:15 a.m. at the PUD Office

(In-person, Zoom, & Teleconference)

1. Call to Order | Pledge of Allegiance
2. Approval of Agenda (3 minutes)
3. Consent Agenda (5 min.)
 - a) Approval of the Minutes of the Regular Meeting of September 26, 2023
 - b) Approval of Claims for October 10, 2023
4. Public Comment (10 minutes – Individual speakers: 3 min.)
5. General Manager Report (10 min.)
6. Old Business (20 min.)
 - a) Broadband Program Update
 - b) Adjudication Update
7. New Business
 - a) Approve Resolution No. 834 – Authorizing Point Roberts Broadband Fiber Optic Network Agreements
 - b) Approve Professional Services Agreement with Performance Information Technologies
 - c) Projects Update
8. Operations Report (10 minutes)
9. Commissioner Reports (10 minutes)
 - a) Upcoming Per Diem Requests
10. Public Comment (10 minutes– Individual speakers: 3 min.)
11. **Executive Session:** RCW 42.30.110(1)(i): Potential Litigation – Water Rights and General (30 min.)
12. Adjourn (Estimated 10:30 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/83549801875>

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

Webinar ID: 835 4980 1875

Next Commission Meetings

October 24 & November 14, 2023 | 8:15 a.m. | Regular Meetings – District Office

1705 Trigg Road, Ferndale, WA 98248

or other location announced

Contact: Ann Grimm, Commission Clerk (360) 384-4288 x 27

www.pudwhatcom.org

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MINUTES OF THE REGULAR MEETING OF THE COMMISSION

September 26, 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 Atul Deshmane, Commissioner Christine Grant; Commissioner Jaime Arnett and Legal Counsel Jon Sitkin. Staff: Chris Heimgartner, General Manager; Assistant General Manager Brian Walters; Andrew Entrikin, Broadband Program Manager; Ann Grimm, Executive Assistant; Annette Smith, Director of Finance; Rebecca Schlotterback, Manager of Contracts and Regulatory Compliance; Aaron Peterson, IT/SCADA Technician; Mike Macomber, IT/SCADA Technician; Traci Irvine, Accountant I; Garrett Love-Smith, Project Manager; and Kurt Wank, Director of Utility Operations.

Public attending:

Dave Olson, Citizen

Jack Wellman, Puget Sound Energy

2. Approval of Agenda

ACTION: Commissioner Grant made the motion to APPROVE THE AGENDA OF SEPTEMBER 26, 2023. Commissioner Arnett second the motion. Motion passed unanimously.

3. Approval of Consent Agenda

- a) Approval of Meeting Minutes of the Special Meeting of September 11, 2023;
- b) Approval of Meeting Minutes of the Regular Meeting of September 12, 2023;
- c) Approval of Meeting Minutes of the Special Meeting of September 19, 2023;
- d) Approval of the Claims of September 26, 2023:

VENDOR NAME	AMOUNT
ALL SEASON SPRAYING	1,744.12
ALUMICHEM CANADA INC (formerly WATERHOUSE ENV.)	62,891.80
BONNEVILLE POWER ADMINISTRATION	580,514.00
CENTRAL WELDING SUPPLY	96.48
CESCO NEW CONCEPT CHEMICAL PRODUCTS	148.95
CHMELIK SITKIN & DAVIS	20,456.00
COMCAST	191.61
COMCAST - NWRC	300.00
CONNER, ERIC	536.56
CONSOR NORTH AMERICA, INC.	59,276.93
CULLIGAN NORTHWEST	322.26
DIGITAL BOUNDARY GROUP, INC.	30,700.00
EDGE ANALYTICAL LABORATORIES	24.00
FASTENAL	53.79
FEDERAL EXPRESS	58.19
FERNDALE ACE HARDWARE	84.92
GRAINGER	149.63
GRAY MATTER SYSTEMS, LLC	9,191.00
HACH COMPANY	325.32
HARDWARE SALES, INC	34.26
HD FOWLER CO, INC	29.55
HOLLAND & HART LLP	4,021.00

DRAFT

INTERNAL REVENUE SERVICE	20,613.19
LES SCHWAB TIRE CENTER	1,046.62
MASSMUTUAL RETIREMENT SVCS LLC	12,500.00
NORTH COAST ELECTRIC COMPANY	3,094.95
P&P EXCAVATING, LLC	13,954.47
PACIFIC POWER BATTERIES	152.32
PAYLOCITY	183.16
PAYROLL	231,621.24
PLATT ELECTRIC SUPPLY CO	461.18
PUGET SOUND ENERGY, INC	3,417.62
SOUND WATER SERVICES	3,356.00
SPECIAL-T STRIPING & SIGN COMPANY	652.80
TENABLE, INC.	14,081.04
TUPPER MACK WELLS PLLC	15,968.50
WA FEDERAL VISA CARD MEMBER SERVICES	5,216.33
WA ST DEPT OF ECOLOGY-CASHIERING	780.00
WA ST DEPT OF REVENUE - EXCISE TAX	75,290.83
WESTERN CONFERENCE OF TEAMSTERS	9,317.00
WINDWOOD ENTERPRISES INC.	3,138.54
GRAND TOTAL	\$1,185,996.16

ACTION: Commissioner Grant made the motion to APPROVE THE CONSENT AGENDA OF SEPTEMBER 26, 2023. Commissioner Arnett second the motion. Motion passed unanimously.

4. Public Comment – None made.

5. General Manager’s Report

- Will be attending the WPUDA Water Workshop this week, returning early for a Watershed Management Board meeting.
- Will provide the bulk of his report in Executive Session.

6. Old Business

a) Broadband Program Update

- Entrikin updated on the status of WA State Broadband Office: Point Robert’s contract moving ahead, now being reviewed by WA Department of Commerce’s budget office;
- Sitkin is reviewing a Telecom Franchise Agreement with Whatcom County;
- WA State Broadband Office has released their Five-Year Action Plan.

b) Adjudication Update

Sitkin reported:

- Majority of update will be in Executive Session;
- Hopes to attend the WPUDA Water Workshop this week;
- An Executive Session will be planned with other water rights attorneys (Tupper, Mack, Wells) on October 24, 2023.
- Will be presenting at *American Water Works Association* regional meeting on adjudication.

7. New Business

a) Approve Resolution No. 833 – Cancellation of Warrant

Irvine stated a warrant issued to Digital Boundary Group, in the amount of \$30,700.00, issued on July 11, 2023, needs to be cancelled because it was deemed lost in the mail and has not been tendered. A new warrant will be issued in today’s claims.

DRAFT

ACTION: Commissioner Grant made the motion to APPROVE RESOLUTION NO. 833 AUTHORIZING CANCELLATION AND REISSUE OF WARRANT. Commissioner Arnett second the motion. Motion passed unanimously.

b) **Commission Priority Discussion**

The Commission discussed prioritization of their top items in the Strategic Plan.

ACTION: No action taken. Information only.

8. **Operations Report**

Walters reported on the following:

- Two major projects are now complete, on time and within budget: Plant 2 East Pond Cleaning and Rooftop Solar at Plant 2;
- A real-time link to solar output data will be added to the website.
- Plant 1 intake screens were cleared of sediment buildup; the sediment is then piped under Ferndale Road and deposited into one of the sediment basins. Walters indicated large amounts were cleared this year. Plant 2 screen cleanings were put on hold due to recent rainfall and river turbidity issues;
- New Bonneville Power Administration's rate period begins on October 1, 2023, including replenishment of Energy Efficiency Incentive Credits Budget. The total energy the District purchased from BPA during BPA's FY 2023 will become the base amount for the District's Tier 1 priced allocation under the new contract starting in 2028. There may be some minor adjustments to the base amount.
- A projects update will be included at the next regular meeting.

9. **Commissioner Reports**

Deshmane:

- Attended the Washington Public Utility Districts Association (WPUDA) committee meetings last week in Richland;
- Met with Greg Hanson, Mayor of Ferndale;
- District tour/meet and greet with Representative Timmons is planned for November 9, 2023;
- WPUDA encourages connecting with legislators to inform them about the association's processes.

Arnett:

- Attended the WPUDA Committee Meetings last week via Zoom; commented on the geo-thermal information which was presented there;
- Attended the WPUDA Executive Board meeting – announced Liz Anderson has been chosen as Executive Director.

Grant:

- Has had several meetings regarding energy supply;
- Emailed Representative Timmons regarding any state funding for water assistance (Grandview and smaller water associations);
- Planning to meet with someone who has been suggested for assistance in Strategic Planning, executive coaching and the like;
- Meeting with Senator Liz Lovelett and Representative Debra Lekanoff to discuss energy supply issues.

10. **Public Comment** – None made.

11. **Executive Session**

Commission President Deshmane requested an Executive Session pursuant to RCW 42.30.110(1)(i): Potential Litigation; and RCW 42.30.110(1)(g): To review the qualifications and/or performance of a

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public employee. Estimated time for Executive Session was one and a half hours. The Commission President indicated no action was anticipated to be taken after the adjournment of Executive Session. After a short recess, the Commission adjourned to Executive Session at 10:00 a.m.

Executive Session Adjourn

There being no further business for Executive Session, the Commission rejoined the Regular Commission Meeting at 11:59 a.m.

12. Adjourn

There being no further business for the regular meeting, Deshmane adjourned the regular meeting at 12:00 p.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/>

Action Memo

To: Commissioners Arnett, Deshmane and Grant
From: Andrew Entrikin, Broadband Program Manager
Date: October 10, 2023
Re: Approve Resolution No. 834 – Authorizing Point Roberts Broadband Fiber Optic Network Agreements

Requested Action: APPROVE RESOLUTION NO. 834 AUTHORIZING THE GENERAL MANAGER TO EXECUTE ALL AGREEMENTS NECESSARY TO ENTER INTO GRANT AGREEMENTS WITH WASHINGTON STATE BROADBAND OFFICE (WSBO), TO BRING FIBER OPTIC INFRASTRUCTURE TO THE POINT ROBERTS COMMUNITY, SUBJECT TO FINAL LEGAL REVIEW AND CONTRACT CORRECTIONS.

Background: The PUD has been awarded a \$3,150,000.00 grant through the Washington State Broadband Office (WSBO) to bring fiber optic infrastructure to the Point Roberts community.

This Broadband Infrastructure Grant Program, supported from the Coronavirus Capital Program Fund, will support the Point Roberts Fiber-to-the-Premise (FTTP) construction project.

The PUD is working to construct roughly 25 miles of aerial and underground fiber infrastructure, with the goal of producing more than 1,274 connections for residents in the area. These connections will bring high-speed internet service to certain areas of the Point Roberts community, which have previously been unserved or underserved, providing enhanced access and opportunities for economic development, education, and health and safety.

In addition to the WSBO funding, this construction project has been supported at the local level, including from Whatcom County, who approved \$350,000.00 in matching dollars.

Fiscal Impact:

The net effect is zero dollars. Costs are expected to be covered by the grant.

Recommended Action: APPROVE RESOLUTION NO. 834 AUTHORIZING THE GENERAL MANAGER TO EXECUTE ALL AGREEMENTS NECESSARY TO ENTER INTO GRANT AGREEMENTS WITH WASHINGTON STATE BROADBAND OFFICE (WSBO), TO BRING FIBER OPTIC INFRASTRUCTURE TO THE POINT ROBERTS COMMUNITY, SUBJECT TO FINAL LEGAL REVIEW AND CONTRACT CORRECTIONS.

RESOLUTION NO. 834

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF PUBLIC UTILITY DISTRICT (PUD) NO. 1 OF WHATCOM COUNTY, WASHINGTON, AUTHORIZING THE GENERAL MANAGER TO EXECUTE ALL AGREEMENTS NECESSARY TO ENTER INTO GRANT AGREEMENTS WITH WASHINGTON STATE BROADBAND OFFICE (WSBO), TO EXTEND TO THE COMMUNITY OF POINT ROBERTS FOR A BROADBAND FIBER-OPTIC NETWORK

WHEREAS, the PUD has been developing a wholesale dark fiber optic broadband program to provide improved broadband connectivity to the residents of Whatcom County, Washington; and

WHEREAS, the PUD completed a broadband feasibility study and identified unserved and underserved areas in Whatcom County; and

WHEREAS, the Board of Commissioners determined the community of Point Roberts as being unserved and underserved and lacking critical broadband infrastructure; and

WHEREAS, On December 13, 2022, the Board of Commissioners authorized the PUD to apply for grant funding from the Washington State Broadband Office (WSBO) for a recoverable grant under the Broadband Infrastructure Grant Notice of Funding Opportunity for American Rescue Plan Act (ARPA) Capital Project Funds; and

WHEREAS, On September 26, 2023, WSBO awarded the PUD funding in the form of a grant, for \$3,150,000 (the “Grant”) subject to a WSBO Grant Agreement, attached and incorporated into this Resolution as Exhibit 1 (the “Grant Agreement”).

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Public Utility District No. 1 of Whatcom County, that the above recitals are incorporated herein into this resolution; and that the General Manager of the PUD is hereby authorized to execute the Grant Agreement , and any other agreements reasonably necessary to fulfill the purposes of the Grant and to authorize a Fiber-to-The-Premise broadband fiber-optic network in the community of Point Roberts in Whatcom County, Washington in accordance with the Grant and the Grant Agreement.

ADOPTED at a regular meeting of the Board of Commissioners of Public Utility District No. 1 of Whatcom County, this 10th day of October 2023.

Public Utility District No. 1 of Whatcom County

Atul Deshmane, President/Commissioner

Christine Grant, Vice President/Commissioner

Jaime Arnett, Secretary/Commissioner

Action Memo

To: Commissioners Arnett, Deshmane, and Grant
From: Kurt Wank – Director of Utility Operations
Date: October 10, 2023
Re: Approve Professional Services Agreement with Performance Information Technologies

Requested Action: APPROVE THE PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH PERFORMANCE INFORMATION TECHNOLOGIES FOR SCADA SUPPORT SERVICES, AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.

Background: Whatcom PUD previously executed a Professional Consulting Services Agreement (“PSA”) with Performance Information Technologies (“Performance IT”) on February 25, 2020. The PSA expired on its own terms December 31, 2022.

Whatcom PUD staff continues to need technical services support on an ongoing basis for the development and deployment of the utility-wide SCADA system. Staff desires to again contract with Performance IT to continue this work and provide needed technical services to support further development and deployment of Whatcom PUD’s utility SCADA system.

Major work tasks will include, but not be limited to:

- Assessment of the current state of the Whatcom PUD’s SCADA software, including but not limited to: compliance with best practices, efficient configuration of software components and system architecture, and implementation of virtualization technologies.
- Assistance in creating a roadmap for future implementations, expansions, and upgrades to avoid common pitfalls associated with the use of the software and to get maximum value out of the software.
- Assistance in troubleshooting on-going issues as requested by Whatcom PUD.
- Other work tasks as needed from time to time, as requested by Whatcom PUD.

Specific SCADA related tasks for Performance IT will be identified from time to time by Whatcom PUD. From this, a Scope of Work will be developed by consultation of the parties. The Scope of Work and an associated cost not to exceed budget amount for the Work will be negotiated between the parties and identified in a Work Order. All Work Orders to be executed under the Agreement must be approved in writing and approved, in advance of the work to be performed, by the Commission and/or General Manager of Whatcom PUD.

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 Performance IT under the Agreement during this calendar year.

Recommended Action: APPROVE THE PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH PERFORMANCE INFORMATION TECHNOLOGIES FOR SCADA 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 _____ 2023, by and between the **PUBLIC UTILITY DISTRICT NO. 1 of WHATCOM COUNTY**, 1705 Trigg Road Ferndale, WA 98248, hereinafter called "Whatcom PUD," **and Performance Information Technologies** having an address of 8201 164th Ave.NE, Suite 200; Redmond, WA 98052; hereinafter called "Consultant," for a project generally described as:

Technical Services to Support Development, Deployment, and Operation of Whatcom PUD’s Utility SCADA System.

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.

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 sub-consultants 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
1705 Trigg Road/PO Box 2308
Ferndale, WA 98248

Consultant: Greg Dubiel
Performance Information Technologies
8201 164th Ave. NE, Ste.200
Redmond, WA 98052

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:

By: _____

Title: _____

Firm's EIN: _____

Date signed: _____