PLEDGE OF ALLEGIANCE

CONSENT AGENDA
1. Approval of Agenda 09/19/17
2. Approval of Minutes 09/12/17
3. Approval of Vouchers 09/19/17
4. Project Acceptance – Chuckanut Drive, Joe Leary Slough Crossing (Burlington)
5. Agreement for Professional Services-Accent Business Services, Inc.
   Enterprise Content Management
   Document Management, Imaging and Archiving
   Email Archiving and Management
   Digital Texting Management Systems

AUDIENCE COMMENTS

OLD BUSINESS
6. Manager’s Report

NEW BUSINESS
7. Resolution No. 2249-17
   Granting the General Manager Authority to Enter into the Real Estate Purchase and Sale
   Agreement with Weyerhauser Company for Purchase of Property in the Cultus Mountain
   Watershed – Action

MISCELLANEOUS

COMMISSIONER COMMENTS

EXECUTIVE SESSION – Approximate Duration of 15-30 Minutes
Per RCW 42.30.110(g)

ADJOURNMENT

JUDY RESERVOIR ELEVATION
MINUTES OF THE REGULAR MEETING OF THE COMMISSION
PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY, WASHINGTON

September 12, 2017

The regular meeting of the Commission of Public Utility District No. 1 was held in the Aqua Room of the utility located at 1415 Freeway Drive, Mount Vernon, Washington, on September 12, 2017.

The meeting was called to order at 4:41 PM. Those Commissioners in attendance were: Robbie Robertson, President; Eron Berg, Vice President; and Al Littlefield Secretary. Also in attendance were: George Sidhu, General Manager; Sally Saxton, Finance Manager/Treasurer; Peter Gilbert, Attorney; and Kim Carpenter, Clerk of the Board; Audience: Judy Littlefield, Brad Furlong. District Employees: Mike Fox, Kathy White, Kevin Tate, Luis Gonzalez, Mark Semrau and Bill Trueman.

Commissioner Littlefield led the Pledge of Allegiance.

Commissioner Littlefield moved to approve the Consent Agenda for September 12, 2017:

1. Approval of Agenda 09/12/17
2. Approval of Minutes 08/22/17
3. Ratification of Vouchers
   No. 2750  Voucher Nos. 10243-10260 ($146,633.83) 08/29/17;
   No. 2751  Voucher Nos. 10261-10325, Payroll Check Nos. 19577-19658 ($362,280.31) 09/05/17
   Approval of Vouchers
   No. 2752  Voucher No. 10326 ($3,125.00) 09/06/17
   No. 2753  Voucher Nos. 10327-10384 ($1,050,451.99) 09/12/17
4. Project Acceptance – Woodside Division 3, 4 & 5 (Mount Vernon)

The motion passed.

Audience Comments: None

Under Old Business:

5. Manager’s Report - Manager Sidhu reported on the following items:
   • A 2018 Preliminary Budget Work Session preceded today’s meeting and requested that the Commission email him with any additional questions or concerns.
   • An additional regular meeting of the Commission is scheduled for 09/19 followed by a special meeting Work Session to discuss Fleet Management with regard to the 2018 Preliminary Budget
   • The Budget Hearing is scheduled for Monday, October 2. Discussion ensued regarding budget hearing options and regular meetings in October. The Commission will hold the 2018 Budget Hearing on October 2 and look at changes to Resolution No. 1361 regarding the budget process in 2018.
• The recent tours of the District’s Water Treatment Plant, Judy Reservoir and Gilligan Creek Intake for elected officials were very successful with positive feedback from attendees. A suggestion was made to offer the tour annually to newly elected officials.

• State Auditors continue with the 2016 audit and expect to be completed by September 19.

• Have been requested to present information to Governor’s staff on 09/21 regarding telecommunication work by PUD’s and specifically Skagit PUD with George Caan, WPUDA Executive Director; Scott Richards, WPUDA Telecom Lobbyist; and Patsy Martin, Port of Skagit County Executive Director.

• Requested that Commissioner Robertson attend the Skagit Watershed Council meeting on 09/21 from 11:30-2:00 PM, as Engineering Supervisor Trueman will be out of town. Commissioner Robertson indicated he would attend.

Under New Business

6. No item under this number.

7. Gilligan Creek Watershed Property Protection Project
Real Estate Purchase and Sale Agreement – Discussion and Potential Action
Manager Sidhu presented the purchase and sale agreement with a brief summary of grant and loan funding and requested authorization to sign said agreement to meet Weyerhauser’s request to close by year end.

Manager Sidhu introduced Attorney Brad Furlong who has been working with the District to develop the purchase agreement with Weyerhauser. Engineering Supervisor Trueman and Attorney Furlong presented the background information regarding the project to date and details regarding the agreement. Discussion ensued regarding various aspects of the proposed agreement. Engineering Supervisor Trueman stated that Weyerhauser is ready to move forward and the agreement includes a condition to close by December 20, 2017.

Mr. Furlong expressed his appreciation to the District for asking him to assist with this project, commended Engineering Supervisor Trueman and staff for their assistance and recommended accepting the agreement.

Commissioner Berg moved to authorize the General Manager to enter into the Gilligan Creek Watershed Property Protection Project Real Estate Purchase and Sale Agreement with Weyerhauser as presented.

The motion passed.

Commissioner Robertson thanked Engineering Supervisor Trueman for his work on this project.

Manager Sidhu stated that DOE is requiring a resolution granting him authority to enter into the agreement which will be presented at the next meeting.

8. Approval of Scope and Fee for The Driftmier Architects for Building Needs Analysis and Master Planning Work – Action
Manager Sidhu present background information regarding the needs analysis, Request for Qualifications and scope of work to fit within the remaining budget dollars for 2017 and recommended approval of Tasks 1-3.

Discussion ensued regarding various aspects of the Scope of Work. The Commission requested stopping at Task 2 and having further discussion prior to making a determination regarding Task 3. They also requested contacting Driftmier regarding whether they would offer their services under a design/build concept.

Commissioner Littlefield moved to authorize the General Manager to enter into a contract with Driftmier Architects for Tasks 1 & 2 as presented. The motion passed.

9. Authorization to Execute Sole Source Justification for GC Systems to Rebuild Pump Control Valves at the Skagit River Diversion (SRD) Pump Station – Action

Commissioner Berg moved to authorize the General Manager to execute the Sole Source Justification and to enter into an Agreement with GC Systems to rebuild four (4) Cla-Val pump control valves at the Skagit River Diversion (SRD) Pump Station in the amount of $61,628.00. The motion passed.

10. Schedule 09/19/17 Commission Meeting – Action

Commissioner Robertson moved to schedule an additional regular meeting of the Commission on September 19, 2017 at 4:30 PM with a Work Session following the meeting to discuss Fleet Manager and the 2018 Preliminary Budget.

Manager Sidhu stated that per Resolution No. 1361, the 2018 Budget Hearing is scheduled for the first Monday in October. There are regular Commission meetings scheduled for October 10 & 24. Discussion ensued concerning the schedule for the 2018 Budget Hearing and the addressing the budget process resolution in 2018.

At this time, President Robertson recessed the regular meeting to go into executive session per RCW 42.30.110(g) and 42.30.110(1)(b) for an approximate duration of 30-40 minutes. The meeting was recessed at 5:41 PM.

President Robertson convened the executive session at 5:45 PM.

President Robertson reconvened the regular meeting of the Commission at 7:00 PM. No audience members remained following the executive session.

Having no further business to come before the Board, Commissioner Littlefield moved for adjournment. The motion passed and the meeting of September 12, 2017 was adjourned at 7:01 PM.

Respectfully submitted:

Kim Carpenter
Clerk of the Board
September 19, 2017

Board of Commissioners
Public Utility District No. 1 of Skagit County
Post Office Box 1436
1415 Freeway Drive
Mount Vernon, WA 98273-1436

RE: Project Acceptance

Name of Project: Chuckanut Drive, Joe Leary Slough Crossing
Reference: Project # 3639
Location: Burlington
Developer: PUD
Contractor: Trenchless Construction, LLC

The District has approved the plans and specifications and has inspected the installation of the new water plant within the above project. The Engineering Department has received satisfactory pressure and bacteriological test results. All documentation for this project has been completed.

I recommend that the Commission of the District accept this project.

Respectfully submitted,

Mark Handzlik, P.E.
Engineering Manager

cmp

Attachment

cc: George Sidhu, P.E. General Manager
    Chris Smith, Engineering Technician
September 14, 2017

TO: George Sidhu, P.E., General Manager

FROM: Gary Chrysler, IT Manager

SUBJECT: Document Management and Enterprise Content Management Study and RFP Development

Requested Action:
Authorize the General Manager to sign the attached Statement of Work authorizing Accent, Inc., to proceed with the attached statement of work in the amount of $56,235 plus applicable taxes.

Background:
The purpose of this recommendation is to authorize Accent, Inc., to proceed with a needs analysis and discovery in order to develop an RFP for an Enterprise Content Management System, a Document Management system, and a system to manage email and texts. We have received pricing from Accent, Inc., in the estimated amount of $56,235 plus applicable taxes. Expenses will be charged as outlined in the attached statement of work.

The reference project which the consultant is tasked to address has been requested by Engineering and Finance for many years, and has been in our CIP planning for the past several years. It has been given a preliminary budget estimate of $500,000 dollars. We will refine that number as the consultant completes the study and RFP development.

The District will benefit from the software through improvements in the timely retrieval and orderly storage of information made available for a multitude of internal and external requests requiring access to historical documents and reports, including Engineering documents, Financial documents, and Public Records Requests. It will also give us the ability to effectively manage our systems according to Document Retention laws, including the managed deletion of documents. It will give us the ability to use Optical Character Recognition, (OCR), and index scans of physical documents, as well as the indexing of digital documents. The indexing of documents facilitates very quick retrieval. The District will also benefit from the ability to digitize and replicate stored scanned documents, and with stored digital documents, replicate them to multiple, disparate locations for the added protection of redundancy.
Agenda Item #5

The referenced software system is multi-faceted and touches nearly every major software system within the District, each existing now as its own data silo, as I will show in bullet outline form.

- Cayenta
- Northstar
- Cityworks
- ArcGIS
- Tokay
- Email
- Texting
- Access Control
- Alarming
- SCADA
- Cognos Reporting
- Scanned Files
- Web Presence

The requested start date for the project is on or before September 20, 2017.

**Fiscal Impact:**
Funds are to be allocated from this year's Operating Budget Line Item 6320 in the amount of $717,200.

glc
AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ("Agreement") is between Public Utility District No. 1 of Skagit County, 1415 Freeway Drive, P.O. Box 1436, Mount Vernon, WA 98273 (360) 424-7104, ("SKAGIT PUD") and Accent Business Services, Inc., 7710 NE Greenwood Drive, Suite 210, Vancouver WA 98662, ("CONSULTANT"). The terms of this Agreement shall be deemed to be incorporated into any and all Work Orders issued by SKAGIT PUD to CONSULTANT for the performance of professional services with respect to any SKAGIT PUD Project ("Project"), as provided in the Scope of Services ("Services") in such Work Orders, and shall govern the relationship and respective rights and obligations between SKAGIT PUD and CONSULTANT with respect to such Work Orders and CONSULTANT’S performance of the Services thereunder. This Agreement shall be effective as of September 19, 2017, and shall remain in full force and effect for a period of four (4) years thereafter ("Term") provided, however, that this Agreement may be terminated before the expiration of the Term in accordance with the procedures provided in this Agreement. This Agreement may be modified only by written instrument, as provided in ¶ XX.4 herein, or as specifically modified in a Work Order issued and dated subsequent to the effective date of this Agreement and signed by both SKAGIT PUD and CONSULTANT. The parties to this Agreement hereby agree as follows:

ARTICLE I – Information to be Provided by Consultant for Work Orders. CONSULTANT shall provide SKAGIT PUD with the following information in a Work Order (Attachment A):

1. **Scope of Services.** The Scope of Services, as supplemented or augmented by applicable Work Orders ("Services"), shall contain a general statement identifying the nature and scope of Services CONSULTANT shall provide SKAGIT PUD under this Agreement, and shall break down such Services into line item Tasks to be performed by CONSULTANT to accomplish those Services. The Scope of Services shall also state the form(s) of the final products(s) resulting from performance of the Services that will be delivered to SKAGIT PUD.

2. **Contract Price and Task Budget.** The total Contract Price for performance of the Services stated in the Work Order shall be inclusive of all fees and costs as provided in ¶ II.1 herein. The Contract Price shall be broken down and allocated to the various line item Tasks set forth in the Scope of Services ("Task Budget").

3. **Schedule of Performance.** The dates for completion of each of the line item Tasks set forth in the Scope of Services of the Work Order, and the date for final completion of all Services to be rendered by CONSULTANT under the Work Order, shall govern the time schedule for the performance of the Services under the Work Order, unless modified in writing signed by both parties.

4. **Assignment of Personnel.** The identities of all of CONSULTANT’S employees and subcontractors or other third parties that will have any significant role in performance of the Services, along with a description of their respective roles in such performance, shall be set forth on the Work Order. CONSULTANT shall not change these assignments without prior written consent of SKAGIT PUD. Unless otherwise provided in an applicable Work Order, SKAGIT PUD shall not unreasonably
withhold consent to a proposed change by CONSULTANT in the personnel initially assigned by CONSULTANT to the Project, provided the CONSULTANT adequately demonstrates to SKAGIT PUD that the change is reasonably necessary for CONSULTANT under the circumstances.

**ARTICLE II – Contract Price, Regulatory Approvals, Project Taxes, Work Orders, Task Budget, and Equitable Adjustments.**

1. **Contract Price, Regulatory Approvals and Project-Specific Charges.**

   a. **Contract Price Includes All of CONSULTANT’S Services and Expenses.** The cost of CONSULTANT’S Services shall not exceed the total Contract Price set forth in the applicable Work Order, unless such Contract Price is increased by written agreement or by Equitable Adjustment made under the terms of this Agreement. Unless otherwise specified in the first Work Order issued in connection with a specific Project (“Initial Work Order”), the Contract Price for performance of the Services shall include all fees, costs and expenses CONSULTANT will charge SKAGIT PUD for performance of the Services through the completion thereof, including without limitation, all fees and expenses of CONSULTANT relating to CONSULTANT obtaining the Regulatory Approvals assigned to CONSULTANT in the Initial Work Order, and assisting SKAGIT PUD in obtaining the Regulatory Approvals assigned to SKAGIT PUD therein, as provided in sub-¶ b. below.

   b. **Allocation of Responsibility for Obtaining Regulatory Approvals.** In connection with preparation of the initial Work Order for a Project, CONSULTANT shall identify for SKAGIT PUD, at minimum and without limitation, all permits, licenses and other regulatory approvals (collectively, “Regulatory Approvals”) that will be required or imposed by local, state or federal authorities: (1) in order for CONSULTANT to perform the Services; and (2) in order to complete the Project (collectively, “Regulatory Fees”), and CONSULTANT shall provide the estimated amount that each such Regulatory Fee will likely be. The Initial Work Order shall allocate responsibility for obtaining such Regulatory Approvals between CONSULTANT and SKAGIT PUD. CONSULTANT agrees to timely prepare and submit the applications and information necessary to obtain the Regulatory Approvals assigned to CONSULTANT, and to take reasonable measures to timely obtain the issuance of such Regulatory Approvals. CONSULTANT also agrees to assist SKAGIT PUD, as reasonably required and requested by SKAGIT PUD, in preparing the applications and securing issuance of the Regulatory Approvals assigned to SKAGIT PUD. Unless otherwise provided in the Initial Work Order, SKAGIT PUD shall be responsible for paying all Regulatory Fees identified on the Initial Work Order directly to such regulatory authorities;

   c. **Responsibility for Project Taxes.** In connection with preparation of the initial Work Order for a Project, CONSULTANT shall also identify for SKAGIT PUD any and all taxes, duties and levies that will be imposed by local, state or
federal authorities in connection with completion of the Project ("Project Taxes") and the estimated amounts thereof. SKAGIT PUD shall pay such Project Taxes directly to the authorities imposing the same; provided, however, that CONSULTANT shall be responsible for paying any Project Tax CONSULTANT failed to identify, and the amount of such Tax shall be deemed included within the Contract Price, but CONSULTANT shall not be liable in any way for any identified Project Tax that exceeds CONSULTANT’S estimate thereof.

2. **Work Orders.** After a Work Order has been issued to CONSULTANT for a particular Project, SKAGIT PUD reserves the right, in its sole discretion, to amend a Work Order or to issue one or more additional Work Orders modifying, adding, augmenting or deleting one or more of the items under the Scope of Services, the Tasks, or the Schedule of Performance of such Work Order or other previously issued Work Order, for the same or any other phase of any Project. Any agreed additions or reductions to costs or charges by CONSULTANT resulting from such change shall be set forth in a Work Order or written and signed amendment thereto, and the applicable Contract Price shall be deemed modified accordingly. The Work Order and any such agreed additions or reductions to costs or charges shall be deemed a bilateral agreement under ¶ II.4.d of this Agreement. All Work Orders and any amendments thereto shall be in writing and signed and dated by both parties hereto.

3. **Task Budget.** Absent of written increases in scope, in no event shall the total fees and costs for all Tasks exceed the Contract Price. CONSULTANT redistribution of individual line item task budgets within the overall project budget are subject to SKAGIT PUD approval. Written request for said redistribution shall be accompanied by a summary of redistributions.

4. **Equitable Adjustments to the Contract Price.**
   
a. **Scope of Services Adjustments.** Any Work Order or amendment to a Work Order issued by SKAGIT PUD that changes or augments the Scope of Services causing a material increase in the time or expense to CONSULTANT beyond that contemplated in the original Scope of Services ("Scope of Services Adjustment") shall be subject to Equitable Adjustment as provided herein.
   
b. **Changed Conditions.** Any changes in the conditions existing at the time a Work Order was issued, including without limitation changes in laws or regulations that either could not have been reasonably anticipated by a professional in the areas of CONSULTANT’S expertise or that have no relationship to the subject matter of the Scope of Services, occurring after the effective date of this Agreement, that materially increase the time or cost of CONSULTANT’S performance of the Services hereunder ("Changed Conditions"), shall be subject to Equitable Adjustment as provided herein.
c. **Determination of Disputed Amount of Equitable Adjustment and Exclusive Remedy.** Except as provided in ¶ II.4.a and ¶ II.4.b herein, CONSULTANT shall not be entitled to any adjustment in the Contract Price for performance of the Services. Any Equitable Adjustment hereunder shall be designed to fairly compensate CONSULTANT for such materially increased time and/or expense resulting from the Changed Conditions or Scope of Services Adjustment. If the parties are unable to agree on the amount of such Equitable Adjustment, then the issue shall be decided in accordance with the Dispute Resolution Procedures set forth in Article XIX herein. Notwithstanding submission of the Equitable Adjustment issue to the Dispute Resolution Procedures, CONSULTANT shall remain obligated under this Agreement to continue performing the originally agreed Services, and in addition, if reasonably necessary to avoid any delays in work on the Project to which the Services relate, pending resolution of the Equitable Adjustment process, CONSULTANT shall also proceed with performing the additional or changed Services as modified by the Work Order making a Scope of Services Adjustment, or as may be altered as required, and approved in writing by SKAGIT PUD, to address the Changed Conditions. The Equitable Adjustment CONSULTANT is entitled to as determined by the Dispute Resolution Procedures shall be CONSULTANT’S exclusive remedy for such increased time and expenses, and CONSULTANT hereby waives any right to seek or recover any direct, consequential, incidental or other damages beyond the value of such increased time or the amount of such increased expenses. CONSULTANT shall provide notice in writing to SKAGIT PUD before performing any work for which it intends to seek equitable adjustment and CONSULTANT waives all rights to seek equitable adjustment unless notice in writing is provided before any extra cost is incurred.

d. **Bilateral Agreements re Equitable Adjustments.** All bilateral agreements between SKAGIT PUD and CONSULTANT regarding CONSULTANT’S alleged right to an Equitable Adjustment and the amount thereof shall constitute a full accord and satisfaction and represent payment in full as to adjustments in both Contract Price and Schedule of Performance for all costs, whether direct or indirect, and all damages arising out of, or incidental to, or otherwise attributable to, the Scope of Services Adjustment or the Changed Conditions, including any and all delays and impacts resulting from the same. Acceptance of payment by CONSULTANT pursuant to such bilateral agreement shall constitute a waiver of any and all claims for payment, known or unknown, arising out of, or incidental to, or otherwise attributable to the Scope of Services Adjustment or the Changed Conditions.
ARTICLE III – Payment, Disputed Amounts, Reasonably Alleged Breach and Effect on Performance Obligation, Dates of Completion and Acceptance, and Effect of Expiration of Agreement.

1. **Payment Terms.** Unless otherwise provided in a Work Order, payment shall be based on monthly “time and material” progress invoices utilizing the fees and charges specified in the Schedule of Fees and Charges attached to the applicable Work Order as Exhibit A thereto. SKAGIT PUD shall pay undisputed portions of each progress invoice within thirty (30) days of the date of the invoice. After thirty (30) days, interest shall thereafter accrue on any undisputed amount of a progress invoice that has not been paid at the per annum rate of two (2) points over the Treasury Bill Rate at the San Francisco federal reserve bank as of December 31 of year prior to the year that the payment is first due under the invoice.

2. **Disputed Amounts and Performance Obligation.** SKAGIT PUD shall notify CONSULTANT of any disputed amount of any invoice within fifteen (15) days from the date of the invoice and give the reasons for the objection. Any disputed amounts are subject to the Dispute Resolution Procedures in Article XIX. If payment is not maintained on a thirty (30) day current basis with respect to non-disputed amounts of such invoices, CONSULTANT may suspend further performance of the Services in accordance with the notice and right to cure provisions of ¶ XVI.1 until such payments are current; provided, however, that CONSULTANT shall not have the right to suspend further performance of the Services for the non-payment of any disputed amounts, and CONSULTANT shall continue to perform such Services pending resolution of the disputed amounts pursuant to the Dispute Resolution Procedures in Article XIX of this Agreement.

3. **Performance Obligation and Reasonably Alleged Breach.** SKAGIT PUD shall also have the right to withhold payment, in whole or in part, with respect to one or more progress invoices, in the event SKAGIT PUD alleges CONSULTANT has materially breached this Agreement and SKAGIT PUD has provided notice thereof and an opportunity to cure pursuant to Article XVI, but SKAGIT PUD has not terminated the Agreement pursuant to Article XVII, and in such event, CONSULTANT shall continue to perform the Services pending resolution of the Dispute under the Dispute Resolution Procedures. Upon CONSULTANT'S cure, if any, of the alleged breach, SKAGIT PUD shall pay CONSULTANT all non-disputed amounts withheld hereunder, without interest thereon; provided that, if and to the extent the breach by CONSULTANT caused, in SKAGIT PUD’S reasonable opinion, material damage to SKAGIT PUD, SKAGIT PUD may withhold from such payment an amount reasonably designed to compensate SKAGIT PUD for such material damage; and provided further, if it is determined through the Dispute Resolution Procedures that an actual breach of this Agreement by CONSULTANT caused SKAGIT PUD to suffer material damage, the remaining amount withheld shall be applied to reduce the amount of the damages sustained, and the amount remaining after such application, if any, shall be paid to CONSULTANT. CONSULTANT shall be entitled to interest on the net of any disputed amounts found owing to
CONSULTANT under the Dispute Resolution Procedures after SKAGIT PUD has been compensated in full for any material damage suffered as a result of the breach by CONSULTANT. Any interest awardable hereunder shall be in accordance with the rates stated in ¶ III.1 above.

4. “Date of Services Completion” and “Date of Project Acceptance”.

   a. Date of Services Completion. The “Date of Services Completion” shall be the date that all Services to be rendered under a particular Work Order have been fully performed, and all of CONSULTANT’S Work Product (as defined in ¶ XIV.2) due under such Work Order has been delivered to SKAGIT PUD in the forms required. Upon completion of the performance of all Services to be rendered under a particular Work Order, and delivery to SKAGIT PUD of all of CONSULTANT’S Work Product due under such Work Order, CONSULTANT shall deliver a notice in writing to SKAGIT PUD so stating. Such notice shall include the date that CONSULTANT believes is the Date of Services Completion. SKAGIT PUD shall have thirty (30) days from the date of receipt of such notice to either: (1) provide CONSULTANT with written confirmation of CONSULTANT’S proposed Date of Services Completion; or (2) provide CONSULTANT with written notice to the effect that the Services due under the designated Work Order have not been fully and/or satisfactorily performed, and stating what further Services or portions thereof that SKAGIT PUD believes must still be performed to complete the Services owed under the Work Order. Any disagreements regarding whether the Services have been fully performed, or regarding the Date of Services Completion shall be subject to the Dispute Resolution Procedures of this Agreement.

   b. Date of Project Acceptance. The “Date of Project Acceptance” shall be the date SKAGIT PUD formally accepts the Project to which the Services under one or more Work Orders relate, in accordance with the terms of the agreement between SKAGIT PUD and the contractor that constructed such Project.

5. Effect of Expiration of Agreement. Upon the expiration of the Term of this Agreement, or any fully executed written extension of the same, the following rights and obligations shall apply:

   a. Completion of Work under Outstanding Work Orders. Upon expiration of this Agreement (“Expired Agreement”), unless and to the extent SKAGIT PUD directs otherwise in writing as permitted by the Expired Agreement, CONSULTANT shall complete the performance of all un-completed and all un-rendered Services identified under any Work Order(s) issued under the Agreement before it expired (“Outstanding Work Orders”) in accordance with the terms and Schedule(s) of Performance of such Work Order(s) and in accordance with the terms of the Expired Agreement as if it had not expired.
b. **Survival of Terms of Agreement and Outstanding Work Orders.** After expiration of the Agreement, and completion by CONSULTANT of all Services to be rendered under any Work Orders issued under the Agreement before it expired, the terms of the Expired Agreement shall continue to govern the parties’ rights and obligations vis-à-vis the Services that were provided under such Work Order(s) to the same extent as provided in ¶XX.10 in the event of Termination of the Agreement.

c. **SKAGIT PUD’S Option to Extend Agreement.** If the term of this Agreement is such that it will expire prior to issuance by SKAGIT PUD of all Work Orders necessary to complete a Project for which Work Orders were previously issued to CONSULTANT under this Agreement, SKAGIT PUD may extend this Agreement for purposes of issuing such additional Work Orders by providing written notice of such extension to CONSULTANT prior to the date this Agreement would have expired, and in such event, this Agreement shall be deemed extended until all Services under such additional Work Orders, and the Project itself, are completed, at which time this Agreement shall automatically expire.

**ARTICLE IV – Consultant’s Professional Responsibility and Compliance with Law and Indemnification re the Same.**

1. **Generally Applicable Standards.** CONSULTANT shall render all Services in accordance with the standards of professional care and skill provided by engineers practicing in the same or similar locality under the same or similar circumstances and in accordance with the terms of this Agreement and the duties assigned to CONSULTANT hereunder and under the terms of any Work Orders issued by SKAGIT PUD. In rendering the Services, CONSULTANT shall comply with all laws, ordinances, codes, rules, regulations, licenses and permits applicable to the Project and/or performance of the Services consistent with the applicable professional standard of care that are in effect on the date any Work Order issued under this Agreement is signed, and any changes in such laws or regulations that occur during the course of performance of the Services, as provided more specifically in sub-¶ IV4 below. CONSULTANT shall be compensated for any additional Services required as a result of changes in such laws as provided in sub-¶ IV4. below.

2. **Consultant’s Opinions re Cost, Financial Considerations and Schedules and Effect of Events Beyond Consultant’s Control.** In providing opinions of cost, financial analyses, economic feasibility projection, and schedules for the Project, SKAGIT PUD acknowledges that CONSULTANT has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule that are outside of CONSULTANT’S control. Therefore, CONSULTANT makes no warranty, express or implied, that SKAGIT
PUD’S actual Project costs, financial aspects, economic feasibility or schedules will not vary from CONSULTANT’S opinions, analyses, projections, or estimates; provided, however, CONSULTANT shall be responsible for any material deviations from CONSULTANT’S opinions, analyses, projections, or estimates: (a) to the extent such occurs as a result of factors within CONSULTANT’S control or expertise; or (b) to the extent CONSULTANT has assumed such responsibility under the terms of a Work Order, or this Agreement, or is otherwise subject to such responsibility under industry standards applicable to the rendering of such professional Services.

3. **Subsurface Investigations.** SKAGIT PUD recognizes that in soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made, and as a result, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. If and to the extent changed or reasonably unanticipated underground conditions materially effects CONSULTANT’S opinions or projections of Project cost, financial considerations, feasibility or Project schedule previously given to SKAGIT PUD, CONSULTANT makes no warranty that SKAGIT PUD’S actual Project costs, financial aspects, economic feasibility or schedules will not vary from CONSULTANT’S opinions, analyses, projections, or estimates; provided, however, that CONSULTANT shall be responsible for any material deviations from CONSULTANT’S opinions or projections of Project cost, financial considerations, feasibility or Project schedule if it was negligent under industry standards applicable to the rendering of the professional Services, or a breach of this Agreement or an applicable Work Order, for CONSULTANT not to have anticipated or discovered the changed or unanticipated underground conditions.

4. **Consultant’s Responsibility for Compliance with Changes in Applicable Laws and Compensation for the Same.** CONSULTANT’S responsibility to ensure that performance of the Services complies with applicable laws described in ¶ 1. above includes the obligation to reasonably anticipate, be aware of and incorporate into its Proposal, Scope of Services, and Contract Price, if reasonably possible, changes in the laws or regulations applicable to any aspects of performance of the Services or completion of the Project that are reasonably likely to occur after execution of the Agreement or Work Order but before performance of the Services under this Agreement or Work Order or for the Project are completed. Changes in the laws or regulations applicable to the Project or the Services rendered by CONSULTANT that take effect after the date CONSULTANT submits its opinions, cost estimates or other written product to SKAGIT PUD under the terms of a Work Order, that could not have been reasonably anticipated by CONSULTANT in connection with the preparation of its previous written product, and that directly result in CONSULTANT incurring additional costs in order to properly perform the Services, may be the subject of an Equitable Adjustment per the terms of this Agreement.
5. **Consultant’s Indemnification re Compliance with Applicable Laws, Licenses, Permits and Regulatory Approvals.** CONSULTANT agrees to indemnify, defend and hold SKAGIT PUD harmless from and against any and all claims, loss, costs, damage, or expense of any kind and nature (including, without limitation, court, arbitration and alternative dispute resolution costs and expenses, architect, engineer and other professional fees, and reasonable attorneys’ fees), to the extent arising from or relating to CONSULTANT’S negligence in failing to comply with applicable laws, regulations, licenses, permits and Regulatory Approvals.

**ARTICLE V – Consultant’s Responsibility for Others.** CONSULTANT shall be responsible to SKAGIT PUD for performance of the Services, including CONSULTANT’S performance and the performances of CONSULTANT’S employees, subcontractors, agents, licensees, and representatives that are involved in any manner in the performance of the Services under this Agreement (hereinafter, sometimes collectively “CONSULTANT’S Support”). Except as may be otherwise provided in this Agreement, CONSULTANT shall not be responsible for the acts or omissions of other parties contracting directly with SKAGIT PUD, nor for such other parties’ construction means, methods, techniques, sequences, or procedures, or such other parties’ health and safety precautions and programs, unless and except to the extent the same are a result of the advice or direction provided by CONSULTANT or fall within the Scope of Services to be rendered under this Agreement.

**ARTICLE VI – Insurance to be Provided by Consultant.** Prior to commencement of performance of any of the Services identified in a particular Work Order, CONSULTANT shall, at its own expense, procure and maintain in force and provide SKAGIT PUD with Certificates with respect to the following insurance:

1. **Liability Insurance.**
   a. **Commercial General Liability Insurance.**
   b. **Comprehensive Automobile Liability Insurance.**
   c. **Contingent Employer’s Liability Insurance** (i.e., Washington Stop Gap, to the extent applicable to CONSULTANT’S employees).
   d. **Scope of Liability Coverages.** Without limiting the generality of sub-¶¶ a.-c. above, in combination, such General, Auto and Employer Liability Insurance shall, at minimum, protect SKAGIT PUD, SKAGIT PUD’s public officials, officers, employees, and agents (hereinafter, “SKAGIT PUD’s Representatives”) and CONSULTANT from the following claims which may arise out of, result from or relate to the operations of CONSULTANT or CONSULTANT’S Support or performance of the Services under this Agreement or applicable Work Order by CONSULTANT or CONSULTANT’S Support:
      
      (1) Claims for damages because of bodily injury, occupational sickness or disease, or death of CONSULTANT’S employees;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than CONSULTANT’S employees;

3. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom as a proximate result of CONSULTANT’S work (and including, but not limited to, the coverage provided by the usual Liability Coverage);

4. Claims for damages, insured by the coverage provided by the usual personal and advertising injury liability coverage, which are sustained (a) by any person as a result of an offense directly related to the employment of such person by CONSULTANT, or (b) by any other person; and

5. Claims for damages because of bodily injury or death of any person or because of property damage arising out CONSULTANT’S or CONSULTANT’S Support’s ownership, maintenance, hire, rental or use of any motor vehicle.

e. **Liability Coverage Policy Limits.** Except for Worker’s Compensation and Employer Liability or stop gap coverages, each of these insurance policies identified in sub-¶s a. – c. above shall have limits of not less than One Million Dollars ($1,000,000.00), per occurrence/aggregate exclusive of attorneys’ fees, combined single limit per occurrence made coverage. SKAGIT PUD shall be listed as an additional insured on all such policies, except for Worker’s Compensation and Employer’s Liability policies. CONSULTANT shall also maintain Liability coverage, in excess of the other policies required in this ¶VI.1, with limits of not less than Three Million Dollars ($3,000,000.00) aggregate which shall follow the form of said underlying policies. This coverage may be any combination of primary, umbrella, or excess liability coverage of not less than Three Million Dollars ($3,000,000.00) per occurrence and in aggregate. All such policies shall be primary and non-contributory to any insurance or self-insurance applicable to SKAGIT PUD. Such coverage may be arranged under single policies for the full limits required or by a combination of underlying policies with the balance provided by one or more Excess or Umbrella Liability Policies.

f. **Contractual Liability Coverage.** The Insurance required by this ¶ VI.1 shall include liability insurance coverage supporting the full scope of CONSULTANT’S indemnification obligations under this Agreement.

2. **Workers’ Compensation Insurance:** CONSULTANT shall provide such coverage consistent with the requirements of Washington law.

3. **Professional Liability Insurance:** CONSULTANT shall provide Professional Liability Insurance coverage with limits in the amount of not less than One Million
Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) in aggregate, unless a greater or lesser amount is specifically provided for in the applicable Work Order; provided, however, that SKAGIT PUD reserves the right to increase the amount of the limits of such insurance if, in SKAGIT PUD’s sole discretion, any changes in the Scope of Services warrant such increase, and the allocation of the cost of any such requested increase shall be negotiated at the time of the request. Any such increase in the applicable policy limits shall be reflected in a Work Order, and CONSULTANT shall provide SKAGIT PUD with a Certificate of Insurance as proof that such increased limits are in effect within fifteen (15) days of issuance of the Work Order. Such Insurance shall be written on a “claims made” basis, unless otherwise agreed in writing by SKAGIT PUD, and such Insurance shall be issued by an insurance company authorized to do business in the State of Washington having an A.M. Best Rating of not less than A Minus (VII). The amount of any deductible(s) or self-insured retention(s) relating to such Insurance shall be subject to SKAGIT PUD’s approval.


a. Certificates of Insurance. Prior to commencement of performance of the Services (or within such further time as SKAGIT PUD may permit in writing), but in any event, prior to any work being performed by CONSULTANT on the Project site or on other property owned by SKAGIT PUD or by a third party, CONSULTANT shall provide SKAGIT PUD with Certificates for each of the foregoing coverages in a form and with insurers acceptable to SKAGIT PUD, to establish that insurance policies with the required provisions, coverages and limits are in full force and effect. Upon request, CONSULTANT shall provide SKAGIT PUD with complete copies of the applicable insurance policies, or in the absence of a reasonably available insurance policy, a summary of the key terms of the same prepared by a professional in the insurance industry.

b. Notice of Cancellation or Non-Renewal. Each of the foregoing policies shall contain a provision that the coverages afforded by such policy shall not be canceled or terminated unless at least thirty (30) days prior written notice has been given to SKAGIT PUD as additional insured or otherwise.

c. Insurance Required of Consultant’s Subcontractors and Subconsultants Involved in the Performance of the Services. CONSULTANT shall assess the risks of the portions of the Services being provided by CONSULTANT’S Subcontractors and Subconsultants and shall require that such Subcontractors and Subconsultants maintain the same limits of general and liability insurance as required of CONSULTANT under Section VI(1) (e), workers compensation under Section VI(2) and professional liability insurance (applicable to Subconsultants only) with a limit of $1,000,000 per claim/aggregate.
d. **Coverage Period.** Subject to any longer periods specifically required by applicable Work Order(s) issued under this Agreement, CONSULTANT and CONSULTANT’S Subcontractors and Subconsultants shall maintain the foregoing insurance and coverages in full force and effect at all times, and for a period of time equal to the longer of either: (1) three (3) years from the Date of Services Completion under this Agreement and applicable Work Order(s); or (2) if the Services under the applicable Work Order(s) relate to a Project that is to be constructed, fabricated or otherwise based either in whole or in part on the results of CONSULTANT’S performance of the Services or on CONSULTANT’S Work Product, then for three (3) years from the Date of Project Acceptance for the related Project, as defined in ¶III.4.b. Upon request, of SKAGIT PUD, CONSULTANT shall provide SKAGIT PUD with documentary proof that such insurance remains in full force and effect for the period required by this sub-paragraph.

e. **Consultant’s Responsibility for Deductible or Self-Insured Retention.** Any deductible paid or self-insured retention absorbed by CONSULTANT shall not be a cost of the Services reimbursable by SKAGIT PUD.

f. **Waiver of Right of Subrogation.** Except with respect to Worker’s Compensation, Stop Gap Liability and CONSULTANT’S Professional Liability Insurance, CONSULTANT shall ensure that any policies of insurance required of CONSULTANT and CONSULTANT’S Subcontractors and Subconsultants hereunder include a waiver of the insurer’s right of subrogation against SKAGIT PUD and SKAGIT PUD’S Representatives. To the extent permitted by its insurance policies, CONSULTANT hereby waives any right of subrogation it may have against SKAGIT PUD and SKAGIT PUD’S Representatives under such policies.

g. **No Limitation on Other Requirements of Consultant.** The requirements of this Agreement with respect to insurance and acceptability to SKAGIT PUD of insurers and insurance to be maintained by CONSULTANT and CONSULTANT’S Support hereunder are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under this Agreement, nor shall it limit in any way any of SKAGIT PUD’S other rights or remedies with respect thereto.

h. **Skagit PUD’S Right to Maintain Insurance.** If CONSULTANT or CONSULTANT’S Subcontractors and Subconsultants fail to maintain the insurance coverage as required by this Article VI, SKAGIT PUD may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as set forth above. CONSULTANT shall be liable to SKAGIT PUD for the reasonable cost of any such insurance thus acquired and SKAGIT PUD may charge to or otherwise recover from CONSULTANT (e.g., by offset against any amounts otherwise due CONSULTANT under this Agreement) the cost of such insurance.
ARTICLE VII -- Responsibilities of SKAGIT PUD in Connection with Consultant's Performance of the Services. Additional data and responsibilities of SKAGIT PUD, if any, will be addressed in the Work Order(s), as applicable. CONSULTANT may reasonably rely upon the accuracy, timeliness, and completeness of the information relating to the Project provided by SKAGIT PUD; provided, however, that such reliance shall not in any way diminish or limit the scope of CONSULTANT’S responsibilities hereunder, or under the applicable Work Order, or under professional standards applicable to the rendering of such Services.

ARTICLE VIII -- Performance of Services on Property Owned by Skagit PUD or by Third Parties.

1. **Access to Property and Facilities.** SKAGIT PUD grants to CONSULTANT, and, if the Project site(s) is not owned by SKAGIT PUD, warrants that permission is or will be granted for, a right of entry from time to time, at reasonable times, by CONSULTANT, and its designated employees, agents and subcontractors, upon the Project site(s) to the extent reasonably necessary for CONSULTANT to perform the Services. SKAGIT PUD will also make its facilities accessible to CONSULTANT, at reasonable times, as reasonably required for CONSULTANT’S performance of its Services.

2. **Equipment and Tests.** Unless otherwise agreed in writing, CONSULTANT will provide all labor and equipment, including safety equipment, as may be required by CONSULTANT for access to the facilities or property owned by SKAGIT PUD or by third parties and for performance of the Services necessary on such facilities or property. Based upon information provided by CONSULTANT, the initial Work Order shall identify, to the extent reasonably possible under the circumstances, all tests of equipment, machinery, pipelines and other components of SKAGIT PUD’S facilities or property as may be required in connection with CONSULTANT’S performance of the Services, and shall state the projected costs of such tests. CONSULTANT will perform such identified tests at SKAGIT PUD’s expense.

3. **Restoration of Property and Indemnification re the Same.** If and to the extent that CONSULTANT’S performance of the Services on property owned either by SKAGIT PUD or by a third party, including CONSULTANT'S use of investigative equipment and practices, negligently alters the existing site conditions of that property and/or affects the environment in the area, notwithstanding CONSULTANT’S use of reasonable care, then CONSULTANT hereby agrees to take any and all measures necessary, at CONSULTANT’S own expense, to restore the property or environment in the area to substantially the same condition it was in prior to the alteration of the property or affect on the environment. CONSULTANT’S obligation to make such restoration includes, but is not limited to, obtaining and paying for any permits, licenses or other Regulatory Approvals required to make the restoration; complying with the terms of any such authorizations; bearing all costs of making restoration pursuant to such Regulatory Approvals; and bearing all costs of unforeseen circumstances arising out of or in connection with the restoration required of CONSULTANT hereunder. In connection with issuance of any Work Order under which the Services provided by
CONSULTANT could result in the need for restoration of property, CONSULTANT agrees to provide SKAGIT PUD with a list of possible types of restoration foreseen by CONSULTANT, and the projected costs thereof, and such list shall be attached as an Addendum to the applicable Work Order; provided, however, that the attachment of such Addendum to the Work Order shall not relieve CONSULTANT of its unqualified obligation to make full restoration, as provided in the first two sentences of this paragraph, regardless of whether the restoration ultimately required was identified on the Addendum. CONSULTANT hereby indemnifies and holds SKAGIT PUD and SKAGIT PUD’s Representatives harmless, including costs and reasonable attorneys’ fees, from and against any claims by any third parties arising out of or relating to CONSULTANT’S failure to adequately perform its obligations under this ¶ VIII.3.

4. **Obtaining Rights re Real Property.** Unless otherwise agreed in writing, and without limiting the responsibility of CONSULTANT to obtain the necessary approvals and/or authority, including the necessary permits and licenses, required of CONSULTANT in Article IV. herein, SKAGIT PUD shall obtain, arrange and pay for all advertisements for bids, if any, and for all land, easements, rights-of-way and access necessary for CONSULTANT to perform the Services.

**ARTICLE IX – Responsibilities re Project Site.**

1. **Responsibility re Personnel at Project Site.** CONSULTANT shall be responsible for the negligent or reckless acts or omissions of CONSULTANT and CONSULTANT’S Subcontractors and Subconsultants personnel while present on or using the facilities or property owned by SKAGIT PUD or by third parties. The presence or performance of duties by CONSULTANT or CONSULTANT’S Subcontractors and Subconsultants at a Project site shall not in and of itself make CONSULTANT responsible for duties that belong to SKAGIT PUD and/or to construction contractors, subcontractors or other persons or entities that do not constitute CONSULTANT’S Subcontractors and Subconsultants, and does not relieve such other persons or entities of their independent obligations, duties and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences and procedures necessary for coordinating and completing all portions of the Project work in accordance with the contract documents, and any health or safety precautions required by such Work; provided, however, that the exemption of CONSULTANT in the foregoing sentence shall not apply to the extent such responsibility for methods, means, techniques, sequences and procedures or such health and safety precautions are reasonably assumed by CONSULTANT under the Work Order.

2. **Authority and Duties re Other Contractors and Reporting of Health and Safety Deficiencies.** CONSULTANT shall have no authority to exercise any control over any construction contractors, subcontractors, or other persons or entities that do not constitute CONSULTANT’S Subcontractors and Subconsultants in connection with the Project or any health or safety precautions at the Project. Unless otherwise provided in writing, CONSULTANT shall have no duty for inspecting, noting, observing, correcting or reporting on health or safety deficiencies of the construction contractors.
or other entities at the Project site except as regards CONSULTANT’S own employees, agents, licensees, invitees and representatives; provided, however, that even if it is not a specific duty of CONSULTANT under the applicable Work Order to inspect, note, observe, correct or report on health or safety deficiencies or other illegal or dangerous conditions at the Project site, CONSULTANT hereby agrees to promptly report any such deficiencies or conditions CONSULTANT does observe or become aware of to SKAGIT PUD; notwithstanding the foregoing, CONSULTANT shall have responsibility for coordinating the activities of its Subcontractors and Subconsultants and shall require such parties to assume responsibility for the health and safety precautions of their own employees and agents.

ARTICLE X - Indemnifications.

1. **CONSULTANT’S Indemnification.** CONSULTANT agrees to indemnify, defend and hold harmless SKAGIT PUD and SKAGIT PUD’s Representatives from and against any and all claims, loss, cost, damage, or expense of any kind and nature (including, without limitation, court, and alternative dispute resolution costs and expenses, architect, engineer and other professional fees, and reasonable attorneys’ fees), including personal injury claims by CONSULTANT’S employees, arising out of injury to persons or damage to property (including, without limitation, property of SKAGIT PUD), in any manner caused by the negligent acts, errors or omissions of CONSULTANT, or CONSULTANT’S Support, in connection with the performance of the Services under this Agreement to the extent of the proportionate negligence of CONSULTANT or CONSULTANT’S Support, if any. CONSULTANT specifically agrees and warrants that CONSULTANT will not assert any rights, immunities or limitations on liability it might otherwise have under RCW Title 51 as a defense, counter-claim or cross-claim in any action by SKAGIT PUD against CONSULTANT or in connection with any claim asserted by SKAGIT PUD against CONSULTANT, including, without limitation, any claim by SKAGIT PUD against CONSULTANT for indemnification under this Agreement.

CONSULTANT’S waiver of immunity by the provisions of this paragraph extends only to claims against SKAGIT PUD by CONSULTANT’S current or former employees and does not include or extend to any claims by CONSULTANT current employees or former employees directly against CONSULTANT.

Each party’s defense obligation under this indemnity paragraph and Article IV(5) shall include only reimbursement of reasonable defense costs to the extent of each party’s actual, proportional indemnity obligation hereunder. The waivers of immunity under Title 51 in this paragraph and Article IV(5) have been mutually negotiated.

ARTICLE XI – Skagit PUD Contractor Indemnifications.

1. **Third Party Damage and Injury Claims.** SKAGIT PUD will require its contractors and their subcontractors (collectively, “PUD Contractors”) to execute indemnification
agreements wherein they agree to indemnify and hold harmless SKAGIT PUD and CONSULTANT against all personal injury, death and property damage claims (including all losses, damages, costs, expenses and reasonable attorneys’ fees) made by third parties to the extent that such claims arise as a result of PUD Contractors’ negligence.

2. **PUD Contractors’ Employee Injury Claims.** SKAGIT PUD will require PUD Contractors to specifically agree to indemnify CONSULTANT and SKAGIT PUD against liability for personal injury claims (including all losses, damages, costs, expenses and reasonable attorneys’ fees) by PUD Contractors’ own employees that may arise during or in connection with CONSULTANT’S performance under this Agreement; provided, however, that PUD Contractors’ indemnification shall not apply to the proportionate extent that such injury was caused by the negligence of CONSULTANT or CONSULTANT’S Support.

3. **PUD Contractors’ Liability Insurance.** SKAGIT PUD will require PUD Contractors to carry comprehensive general liability insurance naming SKAGIT PUD and CONSULTANT as additional insureds that includes a contractual indemnity clause that provides coverage for the PUD Contractors’ indemnification obligations herein.

4. **PUD Contractors’ Agreement to Dispute Resolution Procedures for Claims Against Consultant.** SKAGIT PUD will require the PUD Contractors to execute an agreement requiring such Contractors to submit any claims they may have against CONSULTANT for compensation or damages arising out of or relating to CONSULTANT’S performance of the Services hereunder to the Dispute Resolution Procedures provided in Article XIX of this Agreement.

**ARTICLE XII – Performance of Services During Dispute Resolution.** The assertion of a claim or the occurrence of a Dispute between or among SKAGIT PUD, CONSULTANT and/or PUD Contractors arising out of or relating to CONSULTANT’S performance of the Services under a Work Order shall not be grounds for CONSULTANT to suspend performance of such Services, and CONSULTANT shall continue to provide such Services in a timely manner in accordance with its obligations under such Work Order pending final resolution of the claim or Dispute pursuant to the Dispute Resolution Procedures provided in Article XIX of this Agreement.

**ARTICLE XIII - Force Majeure.** CONSULTANT shall not be responsible for damages for delays in performance of the Services to the extent such are caused by force majeure or acts of God; except where such delays are caused in whole or in part by the fault of negligence of CONSULTANT.

**ARTICLE XIV - Data, Documents and Records.**

1. **Confidentiality, Ownership and Return of Information and Documents Provided by Skagit PUD.** CONSULTANT agrees that any and all information, documents, electronic media and other data provided by SKAGIT PUD to CONSULTANT in connection with CONSULTANT’S performance of the Services under this Agreement shall be maintained as confidential to CONSULTANT and CONSULTANT’S Support.
the extent permitted by law, except as may by a judicial order and shall not be disclosed to third parties without SKAGIT PUD’S written authorization, and CONSULTANT further agrees that all original information, documents and electronic media shall be returned to SKAGIT PUD upon completion of CONSULTANT’S Services provided under the applicable Work Order.

2. **Ownership and Use of Information, Documents and Electronic Media Prepared by Consultant or Otherwise Provided to Skagit PUD and Indemnification re Same.** Upon receipt of all amounts owing under the Work Order, all work for hire, including without limitation, all reports and other data, documents, drawings, plans, designs, specifications, electronic media or other work prepared by CONSULTANT or on CONSULTANT’S behalf, and/or otherwise provided to SKAGIT PUD by CONSULTANT, in connection with performance of the Services under the applicable Work Order (hereinafter, “CONSULTANT’S Work Product”) shall under all circumstances be the property of SKAGIT PUD, and may be used by SKAGIT PUD for any purpose. Nothing herein shall be construed as granting ownership rights to any pre-existing content or data of CONSULTANT. CONSULTANT has the right to retain a copy of all plans, designs, specifications and other work product created by CONSULTANT in providing the Services hereunder; provided, however, that each party shall indemnify and hold harmless the other from all claims, costs, expenses, damage, or liability, including costs and reasonable attorneys’ fees, arising out of or resulting from that party’s use or subsequent reuse of CONSULTANT’S Work Product, or use by other parties to whom either party has provided such Work Product, whether or not such Work Product has been modified by either party or such third parties for purposes outside the scope of this agreement to the extent that such party has not obtained prior written permission for the reuse from the other party. SKAGIT PUD agrees that it will not voluntarily and intentionally provide CONSULTANT’S Work Product for the use of third parties; provided, however, that “third parties” in the preceding clause shall not include persons or entities with whom SKAGIT PUD has a business relationship, or agents of such persons or entities, or persons or entities with respect to whom disclosure of part or all of CONSULTANT’S Work Product is reasonably necessary in connection with SKAGIT PUD’s operations.

3. **Reliance on Information, Documents and Electronic Media Provided by Consultant.** Consistent with the standards of professional care generally applicable to performance of the types of Services being performed by CONSULTANT, SKAGIT PUD shall have the right to rely upon the accuracy of all information and documents, and upon electronic media to the extent provided in this Agreement, including Record Drawings and exact locations and types of various components, constituting CONSULTANT’S Work Product provided to SKAGIT PUD by CONSULTANT in the performance of the Services, including any information or data incorporated therein that was provided to CONSULTANT by CONSULTANT’S Support or by any third parties; provided that CONSULTANT shall not be responsible for the accuracy of information and documents obtained from any third parties, including any governmental entities, if and to the extent: (a) it is not reasonably possible for CONSULTANT to verify the accuracy of such information or documents; and (b) it
would not be a violation of industry standards applicable to the types of Services being performed by CONSULTANT for CONSULTANT to rely on such information or documents without independently verifying the accuracy thereof.

a. **Record Drawings.** “Record Drawings” (i.e., drawings showing the Project “as built”), if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which some building, work or project relating to the performance of the Services was finally constructed or completed. CONSULTANT shall not be strictly liable for any errors or omissions in the information from others that is incorporated into the Record Drawings.

b. **Electronic Media.** “Construction Documents” (i.e., documents including but not limited to construction drawings, technical specifications, and any other of CONSULTANT’S Work Product relating to construction, fabrication, development, or building of a Project), Record Drawings, and all other of CONSULTANT’S Work Product shall, at SKAGIT PUD’S request, be delivered to the designated person(s) at SKAGIT PUD in the form of electronic files. All such electronic files shall bear markings that, at minimum, identify the CONSULTANT, the person(s) employed by CONSULTANT that prepared the electronic files, the Work Order under which the files are provided and the date such files are prepared by CONSULTANT. In addition, to the extent technologically feasible, such electronic files also shall bear the same logos, seals, signatures, certifications and other markings that normally would be included by CONSULTANT on the hard copy of any such files. In recognition of the fact that data provided electronically may be altered, whether inadvertently or otherwise, such electronic files may also include a disclaimer as notice to persons or entities other than SKAGIT PUD that, because the information provided therein is in electronic form and is subject to alteration, such persons or entities should consult the hard copy of the electronic file at issue for the most accurate information. SKAGIT PUD and CONSULTANT agree that electronic files shall not be considered “Record Drawings”; that electronic files containing information that would normally be provided in the form of Record Drawings shall be provided to SKAGIT PUD also in hard copy and shall be accompanied by a professional’s stamp and signature and other markings, as appropriate; and that in the event of an inconsistency between the Record Drawings provided by CONSULTANT and the electronic files CONSULTANT provided that relate thereto, the Record Drawings shall control. CONSULTANT further agrees to provide SKAGIT PUD with hard copy of any and all electronic files provided to SKAGIT PUD, unless SKAGIT PUD informs CONSULTANT in writing that certain electronic files need not be also provided in hard copy.

4. **Liability for Viruses in Electronic Files.** CONSULTANT shall take reasonable measures to ensure that any electronic files CONSULTANT provides to SKAGIT
PUD do not contain a virus. SKAGIT PUD shall also take reasonable measures to ensure that any electronic files SKAGIT PUD provide to CONSULTANT, and any electronic files provided to SKAGIT PUD by CONSULTANT and provided by SKAGIT PUD to a third party, do not contain viruses. Each party agrees to promptly notify the other party if transmission of a virus is suspected or discovered. Each party shall indemnify the other and hold it harmless from any and all liability to any third party for any viruses contained in the electronic files provided by CONSULTANT or by SKAGIT PUD, respectively, to such third party, if and to the extent the virus(s) giving rise to the liability originated while the files were in possession of the party that provided such files to such third party.

**ARTICLE XV - Construction Progress Payments.** If the Scope of Services under the applicable Work Order provides that CONSULTANT’S Services include making recommendations to SKAGIT PUD for periodic construction progress payments to one or more construction contractors engaged by SKAGIT PUD, SKAGIT PUD shall be entitled to rely on the accuracy of CONSULTANT’S determination of the percentage of completion of the construction work in place and value of materials on site in making such progress payments, regardless of the inspection or other methods used by CONSULTANT to formulate such recommendations. Furthermore, if the Scope of Services for this Agreement provides that CONSULTANT’S Services include the responsibility of determining that the construction work is being completed in accordance with the applicable contract documents and/or applicable standards or building codes, SKAGIT PUD shall be entitled to rely on the accuracy of information provided to SKAGIT PUD by CONSULTANT regarding the same, and further, SKAGIT PUD shall be entitled to rely on CONSULTANT’S silence regarding whether there are deviations in the construction work compared to the contract documents and/or applicable standards or building codes that such deviations do not exist.

**ARTICLE XVI – Notice of Breach, Opportunity to Cure and Limitation of Personal Liability.**

1. **Notice of Breach and Opportunity to Cure.** If either party to this Agreement deems the other to be acting or failing to act in breach of its obligations under this Agreement or any Work Order issued pursuant to this Agreement, such party shall provide written notice thereof to the other, describing the basic nature and details of the breach and the corrective action necessary to cure such alleged breach. With respect to any notice of breach provided by CONSULTANT to SKAGIT PUD, SKAGIT PUD shall then have either ten (10) days, or other reasonable time agreed to by the parties given the nature of the alleged breach, whichever is greater, to cure such breach. With respect to any notice of breach provided by SKAGIT PUD to CONSULTANT, CONSULTANT shall then have either ten (10) days, or a reasonable time given the nature of the alleged breach, whichever is greater, to cure such breach; provided, however, that if CONSULTANT’S breach is material, and if the delay that would be caused by giving CONSULTANT an opportunity to cure would likely cause SKAGIT PUD significant damage or irreparable harm, no opportunity for CONSULTANT to cure the breach is required of SKAGIT PUD.
2. Limitation on Personal Liability. CONSULTANT hereby agrees that SKAGIT PUD’s public officials, officers and employees shall not be personally liable for any acts or failures to act in connection with performance of SKAGIT PUD’s obligations under this Agreement or under any Work Order, it being understood that such persons are acting solely as agents for SKAGIT PUD; provided, however, that this provision shall not apply to personal injury or property damage intentionally and maliciously caused by any such person.

ARTICLE XVII– Termination of Services. SKAGIT PUD shall have the right to terminate this Agreement and/or the Services yet to be rendered under any Work Order issued pursuant to this Agreement under the following circumstances:

1. Termination For Convenience. SKAGIT PUD may terminate any Work Order and all or any portion of the Services thereunder for Convenience, at its option, by sending a written notice thereof to CONSULTANT. Such termination shall be effective as of the date stated in the notice. Upon such termination, CONSULTANT shall be entitled to make a request for an Equitable Adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus the agreed reasonable administrative costs arising out of the termination, if any, but shall not be entitled to any other costs, or damages whatsoever, whether such damages be direct, consequential, incidental or otherwise; provided, however, that the total of such administrative costs that SKAGIT PUD may agree to pay to CONSULTANT because of such termination shall not exceed the total Contract Price for specific items within the scope of the applicable Work Order less payments already made to CONSULTANT therefore under such Work Order. Any Dispute arising out of or in connection with a termination for Convenience regarding the fair compensation owed to CONSULTANT shall be subject to the Dispute Resolution Procedures contained in Article XIX of this Agreement.

2. Termination For Cause. Either party can terminate this Agreement and/or all or a portion of the Services to be rendered under any Work Order issued pursuant to this Agreement for cause, which includes but is not limited to the other party committing a material, uncured breach of this Agreement. Termination for cause shall be effective immediately upon expiration of the applicable cure period, or ten (10) days after receipt of a notice of termination, whichever is earlier, unless an earlier or later date is specified in the notice of termination. The notice of termination for cause shall contain specific reasons for termination. Termination shall not be effective if reasonable action to cure the breach has been taken before the effective date of the termination; provided, however, that with respect to a notice of termination provided by SKAGIT PUD to CONSULTANT, this provision shall not apply if CONSULTANT’S breach is material, and if the delay that would be caused by giving CONSULTANT an opportunity to cure would likely cause SKAGIT PUD significant damage, financial loss or irreparable harm. Any Disputes arising out of or in connection with a termination for cause shall be subject to the Dispute Resolution Procedures contained in Article XIX of this Agreement. Any termination for cause
shall be without prejudice to any other right or remedy the terminating party has under this Agreement or in law or equity.

3. **Failure or Inability of CONSULTANT to Timely Comply with Skagit PUD Modifications to a Work Order.** SKAGIT PUD can terminate all or any portion of the Services to be rendered under any Work Order or amendment thereto is Agreement if and when SKAGIT PUD reasonably determines that CONSULTANT and/or CONSULTANT’S Support are unable to perform, or are unable to perform in a timely manner, the Services under any Work Order issued by SKAGIT PUD that modifies the Scope of Services in a prior Work Order to CONSULTANT on the same Project. In the event of such termination, CONSULTANT shall be entitled to make a request for an Equitable Adjustment as provided in ¶ XVII.1 above.

4. **Termination For Other Reasons.** This Agreement shall be deemed terminated automatically if and when CONSULTANT is placed into bankruptcy, whether voluntarily or involuntarily, or CONSULTANT makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of CONSULTANT’S insolvency, or CONSULTANT ceases to exist as a legal entity.

5. **Termination of Agreement Upon Completion of Services Under a Work Order.** Either party to this Agreement may terminate this Agreement, without cause, upon three (3) days written notice to the other after all Services to be rendered under any outstanding Work Order have been fully performed by CONSULTANT; provided, however, that the terms relating to survival of provisions of this Agreement after termination set forth in ¶ XX.10 herein shall apply.

6. **Obligations of Consultant upon Termination.** Unless SKAGIT PUD directs otherwise in writing, upon receipt of written notice of termination of this Agreement or any Work Order issued pursuant hereto, whether for Convenience, cause or other reason, CONSULTANT shall promptly:

   a. Stop performing the terminated Services on the date and as specified in the notice;

   b. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for the completion of any Services not terminated;

   c. Cancel all orders and subcontracts, upon terms acceptable to SKAGIT PUD, to the extent they relate to performance of the Services terminated;

   d. Assign SKAGIT PUD all right, title and interest of CONSULTANT in all orders and subcontracts;

   e. Take such action as may be necessary or as directed by SKAGIT PUD to preserve CONSULTANT’S Work Product and the Project and Project site, and any other property related to the Services or the Project in which SKAGIT PUD has an interest; and
f. Remove all equipment and personnel of CONSULTANT or CONSULTANT’S Support from the Project site, SKAGIT PUD’s facilities and any property owned by third parties that has been involved in connection with performance of the Services.

ARTICLE XVIII – Hazardous Substances and Indemnifications Regarding the Same.

1. Regulated Substances Generated in Connection with CONSULTANT’S Performance of the Services and Indemnification by CONSULTANT. Unless otherwise agreed in writing, any and all non-hazardous materials, including wastes, that cannot be introduced back into the environment under existing law without additional treatment, and all hazardous wastes, radioactive wastes, or hazardous substances (collectively, “Regulated Substances”) created or generated by or arising out of, or brought to the site in connection with, performance of the Services, shall be packaged and disposed of by CONSULTANT, at CONSULTANT’S expense, in accordance with applicable laws; provided, however, that without limiting the foregoing responsibility of CONSULTANT to lawfully dispose of such Regulated Substances, CONSULTANT may, at its own expense, hire a subcontractor to perform such services. Furthermore, if the Scope of Services or a Work Order contemplates that CONSULTANT shall treat, process, package, arrange for or otherwise dispose of Regulated Substances in addition to those that are generated by or that arise out of performance of the Services, CONSULTANT shall do so in accordance with applicable laws. CONSULTANT hereby indemnifies and holds SKAGIT PUD, SKAGIT PUD’s Representatives and PUD Contractors harmless from and against any and all claims, loss, costs, damage, or expense of any kind and nature (including without limitation, all court, arbitration or other dispute resolution costs and expenses, architects, engineers, and other professional fees, and reasonable attorneys’ fees) arising out of CONSULTANT’S breach of its obligations under this Article XVIII, ¶ 1.

2. Regulated Substances Pre-Existing CONSULTANT’S Performance of the Services and Indemnification by SKAGIT PUD. Vis-à-vis CONSULTANT and SKAGIT PUD, SKAGIT PUD shall be solely responsible for and shall indemnify and hold CONSULTANT harmless from any liability arising out of Regulated Substances that pre-existed CONSULTANT’S performance of the Services or that were not created or generated, or brought to the site by CONSULTANT or by CONSULTANT’S subcontractors or agents, in connection with CONSULTANT’S performance of the Services (hereinafter, “Pre-Existing Regulated Substances”). SKAGIT PUD acknowledges that, in performing Services for Project under this Agreement, CONSULTANT is not and shall not be considered: (i) the owner of Pre-Existing Regulated Substances (ii) the operator of a waste management facility vis-à-vis such Substances (iii) the generator, storer, or disposer of such Substances; or (iv) to have arranged for the transportation or disposal of such Substances, as those phrases are used in the Resource Conservation and Recovery Act (RCRA), as amended, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, or any other federal or state statute or regulation governing the treatment, transportation, storage or disposal of such Pre-Existing Regulated
Substances. SKAGIT PUD shall indemnify and hold harmless CONSULTANT, its officers, employees, and sub-consultants from and against all costs, losses, and damages (including but not limited to, all court, arbitration or other dispute resolution costs and expenses, architects, engineers, and other professional fees, and reasonable attorneys fees) caused by, alleged to be caused by, arising out of or resulting from such Pre-Existing Regulated Substances, provided that any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed work), including the loss of use resulting therefrom.

3. **Termination of Agreement by CONSULTANT Because of Pre-Existing Regulated Substances.** If CONSULTANT’S Services under this Agreement cannot be performed because of the existence of undisclosed and unknown Regulated Substances, CONSULTANT shall be entitled to terminate this Agreement for cause in accordance with Article XVII.2 of this Agreement; provided, however, that SKAGIT PUD has been given an opportunity to cure, as required by Article XVII.1 and has failed to timely do so; and provided further, that termination by CONSULTANT on this ground shall not be deemed to be based upon a material breach of this Agreement by SKAGIT PUD.

**ARTICLE XIX – Dispute Resolution Procedures.**

1. **Disputes Subject to Dispute Resolution Procedures.** Disputes, claims or other matters in question (collectively referred to hereinafter as “Disputes”) between the parties to this Agreement or any Work Order issued pursuant to this Agreement (collectively “Agreement”) arising out of or relating to this Agreement or breach thereof shall be subject to the dispute resolution procedures set forth in this Article XIX (“Dispute Resolution Procedures”).

2. **Notice of Dispute.** Any party having a Dispute subject to these Dispute Resolution Procedures shall first advise the other party of the details of the Dispute, in writing, with sufficient detail and backup information to permit the other party to evaluate the Dispute (“Notice of Dispute”). A “notice of breach” provided by one party to the other under ¶ XVI.1 above shall satisfy this sub-¶ 2 requirement for delivery of a “Notice of Dispute” sufficient to formally invoke these Dispute Resolution Procedures if the breach identified therein is not cured within the applicable cure period.

3. **Good Faith Negotiations.** Within ten (10) days (or such longer period as agreed to by the parties) after notification of a Dispute in writing pursuant to sub-¶ 2 above (or notice of breach with opportunity to cure as provided in Article XVI herein), representatives of the SKAGIT PUD and CONSULTANT shall have met and endeavored to negotiate a resolution to the Dispute. Representatives of both parties shall attend with authority to settle any Dispute on their party’s behalf.

4. **Mediation of Disputes.** If the parties have agreed to the identity of a mediator for the purposes of this sub-¶ 4, by filling in the name of such mediator in the blank provided therefore in the applicable Work Order, and if good faith negotiations under
sub-¶ 3 above have reached impasse without resolution of all aspects of a Dispute, at the end of the ten (10) days required for good faith negotiations, either party may contact the mediator, with notice thereof to the other party, to informally mediate the Dispute, and such mediation shall take place within the next ten (10) days or such longer period as agreed to by the parties following such notice. Such mediator shall have experience in the industry or subject matter area that is the focus of the Scope of Services of this Agreement. The costs of the Mini-Mediation, including the mediator’s fees, shall be shared equally by the parties to the Dispute.

5. **Unresolved Disputes.** If good faith negotiations under sub-¶ 3 above, and any Mini-Mediation provided for in the applicable Work Order under ¶ 4 above, have not resulted in resolution of all aspects of a Dispute, after the expiration of a total of twenty (20) days from the date of the Notice of Dispute was given under sub-¶ 2 above, the Dispute shall be subject to and decided within the Washington State Court System, venue Skagit County.

6. **Mandatory Mediation Prior to Filing.** Mediation shall be an express condition precedent to the filing under this article. Mediation shall be conducted by a Mediator mutually acceptable to the parties involved in the Dispute. If the parties cannot agree upon a Mediator, then the Mediator shall be selected by Judicial Dispute Resolution, LLC (JDR) in accordance with sub-¶ 6 above from lists of three (3) Mediators proposed by each party. The costs of the Mediation, including the Mediator’s fees, shall be shared equally by the parties to the Dispute. Such Mediation shall take place no later than thirty (30) days prior to the date scheduled of filing. Representatives of all parties involved in the Dispute shall attend the Mediation and each party representative shall have full, unrestricted authority to enter into a binding settlement on behalf of that party. The Mediation proceedings shall be confidential and privileged, to the extent permitted by law.

7. **Attorney’s Fees & Costs of Litigation.** In the event of Litigation hereunder, and/or in the event of court proceedings as permitted under paragraph 14 hereunder and/or court proceedings to enforce or contest any Award, in addition to any other relief granted, the prevailing party shall be entitled to an award of its reasonable attorneys’ fees and costs incurred in connection therewith (including, without limitation, expert witness fees and expenses), in addition to costs otherwise taxable by Statute or Court Rule.

8. **Applicable Law.** This Agreement, and all Work Orders issued by SKAGIT PUD pursuant to this Agreement, and all question(s) concerning the capacities of the parties, execution, validity (or invalidity) and performance of this Agreement or such Work Orders, and all Disputes that arise out of or in connection with this Agreement or such Work Orders, shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington without reference to provisions thereof relating to conflicts of law.
9. **Venue.** The venue of any Dispute Resolution Proceedings between the parties to this Agreement shall be State Court System, venue Skagit County, Washington unless otherwise mutually agreed in writing.

10. **Injunctive Proceedings.** Notwithstanding any other provisions of these Dispute Resolution Procedures, any Disputes otherwise subject to submission to these Dispute Resolution Procedures may instead be first submitted, by any party having a legal interest therein, to the jurisdiction of the Washington State Court System, venue Skagit County, if and only to the extent necessary to secure injunctive relief reasonably necessary under the circumstances.

**ARTICLE XX – Miscellaneous Provisions re This Agreement.**

1. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. Neither party to this Agreement shall assign its duties and obligations hereunder without prior written consent of the other party. If either party attempts to make an assignment without such consent, such assignment shall be void, and the assigning party shall nevertheless remain legally responsible for all obligations set forth in this Agreement.

2. **No Third Party Rights.** This Agreement shall not be construed to create any rights or benefits to parties other than SKAGIT PUD and CONSULTANT.

3. **Integrated Writing and Enforceability.** This Agreement, and all Work Orders issued by SKAGIT PUD pursuant to this Agreement, constitute the final and complete memorandum of the entire agreement between SKAGIT PUD and CONSULTANT relating to the Services to be provided by such Work Orders and supersede all prior or contemporaneous communications, representations, or agreements, whether oral or written, with respect to the terms of this Agreement and/or the terms of such Work Orders. Each party hereby acknowledges and agrees that it is not relying on any promises or representations other than as set forth in this Agreement or in such Work Orders. The provisions of this Agreement and all Work Orders shall be enforceable by any and all remedies stated herein, or otherwise available under law or equity, and the remedies stated herein are cumulative and in addition to such remedies available at law or in equity. This Agreement and all Work Orders shall be enforced to the fullest extent permitted by law.

4. **Modification of Agreement.** Modifications of this Agreement, or any Work Order issued by SKAGIT PUD pursuant to this Agreement, shall not be binding unless made in writing and signed by an authorized representative of each party. All such modifications to this Agreement, whether in the form of a Work Order or by other written agreement between the parties, shall be attached to this Agreement and fully incorporated herein. All such modifications to a Work Order shall be attached to the applicable Work Order and fully incorporated therein.

5. **Severability of Provisions.** If any provision of this Agreement is found to be invalid or unenforceable, the provision shall be construed and applied in a way that comes as
close as possible to expressing the intention of the parties with regard to the Agreement and any applicable Work Orders as a whole and that saves the validity and enforceability of the provision at issue if possible. The invalidity of any covenant, restriction, condition, limitation or other provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the remainder of the Agreement.

6. **Notices.** Any notice required to be given under this Agreement shall be in writing and may be delivered in person, or sent by mail or facsimile, to the other party at the location or address for such other party identified at the beginning of this Agreement, or as may be amended by an applicable Work Order; provided that any notice by facsimile shall also be documented by sending the same by mail. Any notice sent solely by mail shall be deemed received on the third (3rd) day after it is mailed. Notices will be sent to the attention of: For Consultant: Dave Chaney; for Skagit PUD: Gary Chrysler.

7. **Construction of Agreement.** This Agreement shall be given a reasonable and fair interpretation in accordance with the words contained in it without any weight being given to whether a provision was drafted by one party or its counsel.

8. **Waiver and Course of Dealing.** No consent or waiver, express or implied, by any party hereto of any breach of or default in the obligations of the other party hereto shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such other party hereunder.

9. **Paragraph Headings.** The paragraph headings in this Agreement are provided for the convenience of the parties and shall not modify or alter the substance of this Agreement.

10. **Terms Surviving Completion of Services or Termination of the Agreement.** All provisions of this Agreement that contemplate rights, obligations or duties that are meaningful only if such provisions continue to govern the parties’ relationship with respect to the subject matter of this Agreement and any Work Orders issued hereunder after completion of the Services under such Work Orders or expiration or termination of this Agreement shall survive such events and shall continue to be binding on the parties. Such provisions include, by way of example, but are not limited to, indemnifications, equitable adjustments, interest on money owed, confidentiality requirements, obligations upon termination of this Agreement, dispute resolution procedures and miscellaneous terms regarding interpretation of the Agreement.
**THE PARTIES ACKNOWLEDGE** that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to be bound accordingly.

<table>
<thead>
<tr>
<th><strong>SKAGIT PUD</strong></th>
<th><strong>ACCENT BUSINESS SERVICES, INC.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
<td>Signature</td>
</tr>
<tr>
<td>George Sidhu, P.E.</td>
<td>Dave Chaney</td>
</tr>
<tr>
<td>General Manager</td>
<td>Senior Partner</td>
</tr>
<tr>
<td>Date of Signature</td>
<td>Date of Signature</td>
</tr>
</tbody>
</table>
PROPOSAL
FOR
CONSULTANT SERVICES
SKAGIT PUD

Prepared by
7710 NE Greenwood Dr.
Suite 210
Vancouver, WA 98662
(360) 882-4002
http://www.accent-inc.com
July 10, 2017

Doug McConnell, Contracts Administrator  
Skagit PUD  
1415 Freeway Drive  
Mount Vernon, Washington 98273

Subject: Proposal for Consulting Services (Accent QUO-01400-Z2S9)

Mr. McConnell:

Thank you for giving us the opportunity to offer our services to Skagit PUD. We’ve enjoyed working with your team on past projects, and would be pleased to assist with this one.

I believe we bring the following unique qualifications to your project:

- Because we are based in Vancouver, Washington, we can respond quickly. We are very familiar with Washington procurement rules and practices.

- Accent’s consulting team specializes in facilitating enterprise software selection projects. Our understanding of technology and software project management has been honed on more than 70 successful projects.

- We have extensive experience working with utilities, so we understand the business processes and management goals of this project.

- Accent does not sell hardware, software or services that could compromise our ability to act in the best interests of the utility. We carefully avoid partnerships or other biasing relationships with the vendors.

- We have a reputation with our customers for straightforwardly tackling tough issues, and with the vendor community for providing honest, unbiased consulting.

Please feel free to contact us with any questions.

Sincerely,

Dave Chaney  
Senior Partner  
Accent Business Services, Inc.
I. PROPOSAL SIGNATURE PAGE

PROPOSAL SIGNATURE PAGE

Name of Corporation __________________________________________
Mailing Address ____________________________________________
City/State/Zip Code _________________________________________

Receipt is hereby acknowledged of addendum(s) No(s). _____, _____, and _____

Individual designated as the point of contact for any questions or concerns related to evaluation of this proposal:

Name of Representative ______________________________________
Telephone ______________ Email ______________________________
Federal Employee Tax Identification Number ______________________

Person authorized to bind corporation to the Terms and Conditions of this response:

Authorized Person _________________________________________
Title ______________________________________________________
Telephone ______________ Email ______________________________
Authorized Signature ________________________________________
II. CONSULTANT EXPERIENCE AND WORKLOAD

A. EXPERIENCE

A description of Consultant’s experience in providing these services in Washington State, and a description of how the Consultant and its staff meets the preferred qualifications to complete the scope of work.

Accent is a technology consulting company based in Vancouver, Washington. Our consulting team specializes in business process analysis, business case justification, and evaluation / procurement of enterprise-level software systems for public agencies and utilities. We have provided these consulting services to a number of utilities in multiple states.

We have created and refined our own formal methodologies. We’ve written a considerable number of RFP/RFIs and facilitated our successful due diligence process for many clients. In concert with client legal and procurement staff, we’ve written and negotiated large contracts including the development of the associated statements-of-work, payment schedules, software licenses, support maintenance agreements and training services.

Each organization for which we’ve consulted has unique requirements that necessitate thorough investigation and analysis to properly identify the optimal software solution. We bring hands-on, practical, investigative consulting to the project. Our clients appreciate us for our integrity, leadership, and common-sense approach to problem-solving. Accent does not offer a “cookie-cutter” approach to software application procurement which might attempt to discount specific needs at the risk and expense of the client.

Accent does not sell hardware, software or services that could compromise our ability to act in the best interests of the utility. We are very careful to avoid formal or informal partnerships or other biasing relationships.

We believe the most important attributes we bring to your project are experience, flexibility, imagination, and the ability to listen. We know that from the onset of a project, we have to remain open to changes in the project timelines and approach. We want to help manage the project to its most economical conclusion, but we also want to ensure the involvement of the stakeholders— their buy-in will form the basis for a successful implementation project.

B. REFERENCES

A minimum of three references relating to the services being requested, including full name, title, address, phone and email address.

<table>
<thead>
<tr>
<th>Name</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Centralia</td>
<td>ML Norton, General Manager, Utilities</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:mlnorton@cityofcentralia.com">mlnorton@cityofcentralia.com</a></td>
</tr>
<tr>
<td></td>
<td>360-330-7512</td>
</tr>
<tr>
<td></td>
<td>1100 N Tower Ave</td>
</tr>
<tr>
<td></td>
<td>Centralia, WA 98531-5044</td>
</tr>
<tr>
<td>City of Ellensburg Utilities</td>
<td>Larry Dunbar, Director of Energy Services</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:dunbarl@ci.ellensburg.wa.us">dunbarl@ci.ellensburg.wa.us</a></td>
</tr>
<tr>
<td></td>
<td>509-962-7226</td>
</tr>
<tr>
<td></td>
<td>501 N Anderson St</td>
</tr>
<tr>
<td></td>
<td>Ellensburg, WA 98926</td>
</tr>
<tr>
<td>Snohomish County</td>
<td>Linda Hjelle, Assessor</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:linda.hjelle@snoco.org">linda.hjelle@snoco.org</a></td>
</tr>
</tbody>
</table>
Other references can be provided upon request.

A statement regarding your firm’s current workload and how you intend on supporting the District during this project, while still balancing your existing obligations.

Accent typically works several consulting projects in parallel. We currently have two large projects and a handful of small projects, but we have the bandwidth to fully and effectively support Skagit’s project during the expected project timeframe.
III. PERSONNEL EXPERIENCE

Description of the proposed Consultant team and role of each member. List all staff members assigned to work on this contract, including years of experience, type of experience, education, and availability to work on this contract.

Accent will allocate the following consultants to this project. They have an in-depth understanding of utility operations.

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
<th>Summary</th>
<th>Years of Experience</th>
<th>Availability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jeff Tompkins</td>
<td>Project Manager</td>
<td>One of Accent’s three owners, Jeff has worked on most of Accent’s consulting projects, large and small.</td>
<td>30</td>
<td>Yes, during Skagit’s proposed timeframe</td>
</tr>
<tr>
<td>Dave Chaney</td>
<td>Project Alternate, Analyst</td>
<td>One of Accent’s three owners, Dave is an experienced manager, analyst and facilitator who has worked on Accent’s largest consulting projects.</td>
<td>23</td>
<td>Yes, during Skagit’s proposed timeframe</td>
</tr>
</tbody>
</table>
JEFF TOMPKINS – PRINCIPAL CONSULTANT (MANAGING PARTNER)

SUMMARY
Jeff is the Managing Partner at Accent, and works closely with the consulting staff on most major projects. He has twenty-six years of progressive growth in the areas of project management, process analysis, systems acquisition and implementation, and IT/business management strategies. Industry experience includes utilities of all sizes, Federal, state and local government, and private industry. He can work equally well with both senior management and entry-level employees.

CONSULTING PROJECTS
Consulting, leadership, and management for:

- Central Lincoln PUD, OR – CIS, ERP
- Centralia, City of – ERP, GIS, Design
- Chelan PUD, WA – Process Improvement, IT Management
- Clark County, WA – Assessment & Taxation
- Clark Public Utilities, WA – GIS, Electrical Design, Mobile Work Management
- Consumers Power, OR – Work Management, Estimate
- Confederated Tribes – IT Strategy, Case Management
- Douglas PUD, WA – Finance, Document Management
- Douglas Electric, OR – Work Management
- Emerald PUD, OR – CIS, ERP, Document Management
- Eugene Water & Electric Board, OR – ERP, Work & Asset Management
- Franklin County, WA – ERP
- Franklin PUD, WA – ERP
- Grant County PUD, WA – ERP, GIS, Electrical Design, IT Strategy, Content Management
- Grays Harbor PUD, WA – CIS, ERP (twice)
- Gresham, City of – Records Management
- Jamestown BPU, NY – CIS, ERP
- Josephine County, OR – Assessment & Taxation
- Klickitat PUD, WA – Business Measurement
- Lane Electric, OR – ERP Procurement Process
- Lewis County PUD, WA – CIS, ERP, GIS, Estimate
- Maricopa County, AZ – Assessment & Taxation
- McMinnville Water & Light, OR – CIS, ERP
- Medford Water Commission, OR – CIS, ERP
- Monroe County, FL – Assessment & Taxation
- Multnomah County, OR – Assessment & Taxation
- Northwest Natural, OR – Training & Certification Process
- Oregon DOR – Process Improvement
- PacifiCorp, UT – ERP, CIS
- Pioneer Electric, KS – IT Strategy
- Salem Electric, OR – CIS, ERP
- Salt Lake County, UT – Assessment & Taxation
- San Isabel Electric, CO – IT Strategy & Software Evaluation
- Skagit County PUD, WA – CIS, ERP
- Southern Nevada Health – Environmental Health App, ERP
- Trinity County PUD, CA – Business Acquisition
- Umatilla Electric, OR – Process Improvement, E&O Applications
- Vancouver, City of – IT Services Interlocal
- Walla Walla County, WA – ERP, Assessment & Taxation, Auditing
- Whatcom County, WA – Assessment & Taxation, Process Analysis
- Yamhill County, OR – Assessment & Taxation

EXPERIENCE/SKILLS
- Process analysis, improvement, and initiative management
- Software application procurement
- Business case and justifications
- Software licensing, statements-of-work, services contracts, source code escrows
- Complex project contract negotiations
- Project planning, management, and independent oversight
- Senior management consulting—IT and business process
- Business performance measurement
- Training development, logistics, and management

EDUCATION/TRAINING
BA, Business Administration................................................................................................................. Washington State University
DAVE CHANEY – SENIOR PARTNER

SUMMARY
Dave is one of three senior partner/owners of Accent. He works closely with the consulting staff on most major projects, and has extensive experience in all phases of the project lifecycle. Dave has worked with city, county and state agencies, utilities of all sizes, and private industry.

CONSULTING PROJECTS
Dave has performed business process analysis, technology analysis, business case development, software selection, contract negotiation & project leadership for the following clients. He has had oversight responsibilities for many more clients.

- Monroe County, FL – Assessment & Taxation
- Maricopa County, AZ – Assessment & Taxation
- Clark County, WA – Assessment & Taxation
- Josephine County, OR – Assessment & Taxation
- Multnomah County, OR – Assessor/Treasury
- Oregon Department of Revenue – Tax Assessment & County Data Communications
- Salt Lake County, UT – Assessor/Treasury
- Tarrant Appraisal District, TX – Tax Assessment
- Whatcom County, WA – Assessment & Taxation, Process Analysis
- Southern Nevada Health District – Environmental Health
- Southwest Washington Health Dist. – Environmental Health and Public Health Systems
- Yakima County, OR – Juvenile Court System
- CalPERS – Benefits Management
- Franklin County – Finance
- Northwest Natural Gas – Training & Certification Process
- PacifiCorp – ERP, CIS
- Unified Sewerage Agency – Permitting
- Central Lincoln PUD, Oregon – CIS, Finance
- City of Vancouver Utilities – CIS, Finance
- Consumers Power, Oregon – Work Management
- Eugene Water & Electric Board, Oregon – Finance, Work & Asset Management
- Franklin PUD, WA – Finance
- Grant County PUD, WA – Finance, GIS, Electrical Design, Work Management
- Grays Harbor PUD, Washington – CIS, Finance
- Lewis County PUD, WA – CIS, Finance
- McMinnville Water & Light, Oregon – CIS, Finance
- Salem Electric, Oregon – CIS, Finance

EXPERIENCE/SKILLS
- Senior management consulting
- Business process analysis & improvement
- Gap analysis & project strategy definition
- Business case development and justification
- Systemic needs assessment
- Enterprise software evaluation and selection
- Software design, development & implementation
- Training program development and management
- Proposal & technical writing
- Project planning, management, and independent oversight
- Project management & facilitation
- Conflict resolution facilitation
- Network infrastructure management

EDUCATION/TRAINING
BS, Business Administration
Portland State University
IV. PROJECT APPROACH AND SCHEDULE

Provide a write-up on the specific tasks listed in the Scope of Work and your approach on how you will complete these, given the District’s needs.

Please refer to Appendix A for our baseline methodology for evaluating, vetting and selecting enterprise applications for utilities. In the kickoff/planning phase, we expect to meet with the Skagit team to adapt the approach to accommodate Skagit’s resource availability and other commitments.

Because this project involves content/document management, imaging, texting and archiving, we expect a lot of overlap with many of Skagit’s other systems, departments, policies and workflows. It will be particularly important to adjust our approach accordingly.

Suggestions for additional services which may benefit the District.

Proposed project management and communications approach for this contract.

We are often asked to provide contact negotiation and project management oversight/IV&V (independent verification & validation) services, after the product has been selected. Our involvement during the evaluation phase gives us unique ability to enforce both vendor and utility team responsibilities, as defined in the contract. We are happy to provide our method and costs to Skagit, if needed.

Our recommended project management and communications approach are also contained in Appendix A.
V. COST PROPOSAL

It is acceptable for the Consultant to perform some of the required work remotely, however the District will require some services to be performed on site.

In the Cost Proposal spreadsheet, the Consultant shall list the different staff proposed to work on this contract, their hourly billing rate, and a determination of the number of hours per month assigned to each employee, with the total number of hours in the form of a “not to exceed” estimate.

The Consultant shall also provide an estimate and a description of all expenses and charges that are anticipated.

<table>
<thead>
<tr>
<th>Item</th>
<th>Hours or Count</th>
<th>Rate</th>
<th>Subtotal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Labor</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Initiation</td>
<td>6</td>
<td>$175</td>
<td>$1,050</td>
</tr>
<tr>
<td>Prep &amp; onsite interviews (2 cons., 2 onsite days)</td>
<td>40</td>
<td>$175</td>
<td>$7,000</td>
</tr>
<tr>
<td>Analysis follow up, research, documentation</td>
<td>12</td>
<td>$175</td>
<td>$2,100</td>
</tr>
<tr>
<td>Market research &amp; documentation</td>
<td>16</td>
<td>$175</td>
<td>$2,800</td>
</tr>
<tr>
<td>Requirements &amp; needs development/ review</td>
<td>12</td>
<td>$175</td>
<td>$2,100</td>
</tr>
<tr>
<td>Create needs statements &amp; questions</td>
<td>12</td>
<td>$175</td>
<td>$2,100</td>
</tr>
<tr>
<td>RFP development</td>
<td>32</td>
<td>$175</td>
<td>$5,600</td>
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<tr>
<td>RFP scoring assistance, decision support</td>
<td>24</td>
<td>$175</td>
<td>$4,200</td>
</tr>
<tr>
<td>Demonstration script development</td>
<td>24</td>
<td>$175</td>
<td>$4,200</td>
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<tr>
<td>Demonstration logistics support</td>
<td>8</td>
<td>$175</td>
<td>$1,400</td>
</tr>
<tr>
<td>Demonstration facilitation, 3 1-day demos</td>
<td>30</td>
<td>$175</td>
<td>$5,250</td>
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<tr>
<td>Final decision facilitation</td>
<td>24</td>
<td>$175</td>
<td>$4,200</td>
</tr>
<tr>
<td>Miscellaneous meetings &amp; ad hoc support</td>
<td>20</td>
<td>$175</td>
<td>$3,500</td>
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<tr>
<td>Review and revise related policies and workflows</td>
<td>24</td>
<td>$175</td>
<td>$4,200</td>
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<tr>
<td><strong>Labor Subtotal (not to exceed)</strong></td>
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<td></td>
<td>$49,700</td>
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<tr>
<td><strong>Expense Estimate</strong></td>
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<tr>
<td>Travel Hours</td>
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<tr>
<td>Lodging, Days</td>
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<td>$107.00</td>
<td>$749</td>
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<tr>
<td>Meals, Days</td>
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<td>$61.00</td>
<td>$427</td>
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<tr>
<td>Mileage, trips * RT mileage * $0.535 rate</td>
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<td>$246.10</td>
<td>$984</td>
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<tr>
<td><strong>Expense Subtotal</strong></td>
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<td>$6,535</td>
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<tr>
<td><strong>Project Total</strong></td>
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<td>$56,235</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Category of Staff (Manager, Staff, etc.)</th>
<th>Hourly Rate</th>
<th>Number of Hours</th>
<th>Expenses and Charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jeff Tompkins</td>
<td>$175</td>
<td>~65% of total</td>
<td></td>
</tr>
<tr>
<td>Dave Chaney</td>
<td>$175</td>
<td>~35% of total</td>
<td></td>
</tr>
</tbody>
</table>

**Not to Exceed Total:** $49,700

A. COST ASSUMPTIONS

This cost estimate is based on the following assumptions:

- Accent’s current hourly rate for on-site and off-site work is $175 per hour. Any additional work or change to scope (e.g., contract negotiation support) would be billed at this rate.
• All expenses are estimated, but will be passed directly through to the utility, with no administrative add-on.
• Accent consultants will travel to Mount Vernon by car or train, depending on schedule and availability. No air travel is expected.
• Labor will be billed monthly.
• Travel time to the utility will be billed at ½ the normal Accent labor rate.
• Any ad hoc labor requests will be approved in advance by Skagit PUD staff, then billed at Accent’s regular hourly rate.
September 14, 2017

TO: George Sidhu, P.E., General Manager
FROM: Mark Handzlik, P.E., Engineering Manager
BY: Bill Trueman, Engineering Supervisor

SUBJECT: Gilligan Creek Watershed Property Protection Project
Authorization to Sign Real Estate Purchase and Sale Agreement

Requested Action:
Adopt Resolution No. 2249-17 granting the General Manager authority to enter into a Real Estate Purchase and Sale Agreement with the Weyerhaeuser Company to purchase the “Gilligan Creek” property.

Background:
The end result of the Gilligan Creek Watershed Property Protection Project is the purchase of property around the surface water intake at Gilligan Creek, an important source of water to Judy Reservoir. The District’s Cultus Mountain Watershed Management Plan identified this area as a “Critical Area” of the Watershed and the District has determined it to be the most important parcel in the entire Watershed for purchase to protect water quality. Discussions with the Commission regarding this project have occurred numerous times over the last several years, with the Commission moving to authorize the General Manager to enter into negotiations for purchase of the property during a regular meeting of the Commission on August 23, 2016.

This project is included in the District’s 2017 capital budget, and $1,590,000 in financing is provided via a financial assistance loan from Washington State Department of Ecology (including a 25% forgiveness of principle). Washington State Department of Health has also provided two grants for a total amount of $45,574 to support the project.

In late 2016, the District hired Brad Furlong of Furlong Butler Attorneys to support preparation of a purchase offer to Weyerhaeuser. A formal offer was submitted in March 2017 and negotiations have continued throughout this summer. Negotiations are completed and the attached resolution is ready for adoption.

Fiscal Impact:
$1,590,000 for property purchase project.

kac
RESOLUTION NO. 2249-17

A RESOLUTION OF THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY, WASHINGTON, GRANTING THE GENERAL MANAGER AUTHORITY TO ENTER INTO A REAL ESTATE PURCHASE AND SALE AGREEMENT WITH WEYERHAEUSER COMPANY FOR PURCHASE OF PROPERTY IN THE CULTUS MOUNTAIN WATERSHED.

WHEREAS, Public Utility District No. 1 of Skagit County is a duly formed special purpose district in the State of Washington to distribute potable water to the residents of Skagit County within its service area which currently totals a population of approximately 65,000, and

WHEREAS, The District has multiple sources of raw water to supply its customers, and

WHEREAS, Gilligan Creek is the District’s primary source of water from the Cultus Mountain Watershed, and

WHEREAS, protection of this water source is critical to the operation and mission of the District as identified in the Cultus Mountain Watershed Management Plan, and

WHEREAS, the Commission passed a motion on August 23, 2016 authorizing the General Manager to enter into negotiations with property owners to purchase a particular piece of land for protection of the Gilligan Creek Watershed, and

WHEREAS, this piece of land is approximately 250 acres in size, is located within Parcel P30001 in Section 2, Township 34 North, Range 5 East, W.M, and would be created by a land division of the existing 549-acre parcel, and

WHEREAS, District staff under the direction of the General Manager has negotiated an agreement with Weyerhaeuser Company to purchase this piece of land around the District’s source water intake at Gilligan Creek to protect water quality through property protection in the Gilligan Creek watershed.

NOW, THEREFORE, BE IT RESOLVED that the Commission hereby authorizes the General Manager to enter into the agreement to purchase approximately 250 acres of property around the Gilligan Creek intake for the price of $1,500,000.

ADOPTED by the Commission of Public Utility District No. 1 of Skagit County, Washington, at a regular meeting held this 19th day of September, 2017.

Robbie Robertson, President

Eron Berg, Vice President

ATTEST

Al Littlefield, Secretary