



LAKE WHATCOM WATER AND SEWER DISTRICT
1220 LAKEWAY DRIVE
BELLINGHAM, WASHINGTON 98229

REGULAR MEETING
OF THE BOARD OF COMMISSIONERS

AGENDA

June 25, 2014

8:00 a.m. – Regular Session

1. CALL TO ORDER

2. PUBLIC COMMENT OPPORTUNITY

At this time, members of the public may address the Commission. Please state your name prior to making comments.

3. ADDITIONS, DELETIONS, OR CHANGES TO THE AGENDA

4. CONSENT AGENDA

5. SPECIFIC ITEMS OF BUSINESS:

- A. Personnel Policies Manual Update – Section 7.10
- B. General Legal Services Contract – Zender, Thurston PS
- C. Planning for July 29, 2014 Rate Hearing

6. OTHER BUSINESS

7. MANAGER'S REPORT


8. PUBLIC COMMENT OPPORTUNITY

9. ADJOURNMENT



LAKE WHATCOM WATER AND SEWER DISTRICT

AGENDA BILL

| | | | |
|---|---|--|--|
| DATE SUBMITTED: | June 17, 2014 | | |
| TO BOARD OF COMMISSIONERS | | | |
| FROM: Patrick Sorensen | MANAGER APPROVAL  | | |
| MEETING AGENDA DATE: | June 25, 2014 | | |
| AGENDA ITEM NUMBER: | 5.A. | | |
| SUBJECT: | Personnel Policies Manual Update – Section 7.10 | | |
| LIST DOCUMENTS PROVIDED ⇒ NUMBER OF PAGES INCLUDING AGENDA BILL: _____ | 1. Excerpt of legislation | | |
| | 2. OFM pre-rule making Notice | | |
| | 3. MRSC Model Policy | | |
| | 4. Personnel Manual Section 7.10-existing | | |
| | 5. Personnel Manual Section 7.10-proposed | | |
| | 6. Personnel Manual Section 2.05-existing | | |
| TYPE OF ACTION REQUESTED | RESOLUTION <input type="checkbox"/> | FORMAL ACTION/ MOTION <input checked="" type="checkbox"/> | INFORMATIONAL/ OTHER <input type="checkbox"/> |

BACKGROUND / EXPLANATION OF IMPACT

Earlier this year, legislation was enacted requiring state and local governments, including special purpose districts, to give employees up to two unpaid holidays per year for “a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization.” The legislation is effective June 12, 2014. The Office of Financial Management (OFM) was directed to issue guidance to the governments for implementation of this legislation, but won’t for a while. The Municipal Research Service Center (MRSC) has nevertheless provided a model policy, which could be adopted.

The MRSC model policy, relevant excerpts from the legislation, existing personnel manual section 7.10 and proposed new section 7.10 are attached. Also attached for your information is the existing language in section 2.05 of the manual, concerning religion in the workplace, which does not appear to need revision in light of the legislation.

FISCAL IMPACT

Not applicable.

RECOMMENDED BOARD ACTION

Consider and discuss the proposed language amending section 7.10 of the District’s Personnel Policies Manual.

PROPOSED MOTION

To amend the personnel policy manual, section 7.10, using the MRSC model policy, as presented.

1 Employees of the state and its political subdivisions, except
2 employees of school districts and except those nonclassified employees
3 of institutions of higher education who hold appointments or are
4 employed under contracts to perform services for periods of less than
5 twelve consecutive months, shall be entitled to one paid holiday per
6 calendar year in addition to those specified in this section. Each
7 employee of the state or its political subdivisions may select the day
8 on which the employee desires to take the additional holiday provided
9 for herein after consultation with the employer pursuant to guidelines
10 to be promulgated by rule of the appropriate personnel authority, or in
11 the case of local government by ordinance or resolution of the
12 legislative authority.

13 Employees of the state and its political subdivisions, including
14 employees of school districts and those nonclassified employees of
15 institutions of higher education who hold appointments or are employed
16 under contracts to perform services for periods of less than twelve
17 consecutive months, are entitled to two unpaid holidays per calendar
18 year for a reason of faith or conscience or an organized activity
19 conducted under the auspices of a religious denomination, church, or
20 religious organization. This includes employees of public institutions
21 of higher education, including community colleges, technical colleges,
22 and workforce training programs. The employee may select the days on
23 which the employee desires to take the two unpaid holidays after
24 consultation with the employer pursuant to guidelines to be promulgated
25 by rule of the appropriate personnel authority, or in the case of local
26 government by ordinance or resolution of the legislative authority. If
27 an employee prefers to take the two unpaid holidays on specific days
28 for a reason of faith or conscience, or an organized activity conducted
29 under the auspices of a religious denomination, church, or religious
30 organization, the employer must allow the employee to do so unless the
31 employee's absence would impose an undue hardship on the employer or
32 the employee is necessary to maintain public safety. Undue hardship
33 shall have the meaning established in rule by the office of financial
34 management under section 2 of this act.

35 If any of the above specified state legal holidays are also federal
36 legal holidays but observed on different dates, only the state legal
37 holidays shall be recognized as a paid legal holiday for employees of
38 the state and its political subdivisions except that for port districts

1 The legislature declares that the twenty-seventh day of July be
2 recognized as national Korean war veterans armistice day but shall not
3 be considered a legal holiday for any purpose.

4 The legislature declares that the nineteenth day of February be
5 recognized as civil liberties day of remembrance but shall not be
6 considered a legal holiday for any purpose.

7 The legislature declares that the nineteenth day of June be
8 recognized as Juneteenth, a day of remembrance for the day the slaves
9 learned of their freedom, but shall not be considered a legal holiday
10 for any purpose.

11 The legislature declares that the thirtieth day of March be
12 recognized as welcome home Vietnam veterans day but shall not be
13 considered a legal holiday for any purpose.

14 NEW SECTION. Sec. 2. A new section is added to chapter 43.41 RCW
15 to read as follows:

16 The director of the office of financial management shall by rule
17 establish a definition of "undue hardship" for the purposes of RCW
18 1.16.050.

19 Sec. 3. RCW 28A.225.010 and 1998 c 244 s 14 are each amended to
20 read as follows:

21 (1) All parents in this state of any child eight years of age and
22 under eighteen years of age shall cause such child to attend the public
23 school of the district in which the child resides and such child shall
24 have the responsibility to and therefore shall attend for the full time
25 when such school may be in session unless:

26 (a) The child is attending an approved private school for the same
27 time or is enrolled in an extension program as provided in RCW
28 28A.195.010(4);

29 (b) The child is receiving home-based instruction as provided in
30 subsection (4) of this section;

31 (c) The child is attending an education center as provided in
32 chapter 28A.205 RCW;

33 (d) The school district superintendent of the district in which the
34 child resides shall have excused such child from attendance because the
35 child is physically or mentally unable to attend school, is attending
36 a residential school operated by the department of social and health



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)

(Implements RCW 34.05.310)
Do NOT use for expedited rule making

Agency: Office of Financial Management

Subject of possible rule making:

Implementation of Substitute Senate Bill 5173 – Respecting Holidays of Faith and Conscience

Statutes authorizing the agency to adopt rules on this subject:

Chapter 168, Laws of 2014 (Substitute Senate Bill 5173)

Reasons why rules on this subject may be needed and what they might accomplish:

Substitute Senate Bill 5173 (SSB 5173) allows employees of the state and its political subdivisions two unpaid holidays per calendar year for reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization. The employer must allow the employee to take this leave unless the employee's absence would impose an "undue hardship" on the employer. The Office of Financial Management was provided authority to establish by rule the meaning of "undue hardship".

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

United States Department of Labor, United States Equal Employment Opportunity Commission and the Washington State Human Rights Commission all regulate in this area. Each agency will be added to the stakeholder list and sent correspondence of all rulemaking activities.

Process for developing new rule (check all that apply):

- ☐ Negotiated rule making
☐ Pilot rule making
☐ Agency study

X Other Early solicitation of comments and recommendations will be sought, and draft rules will be sent to a list of stakeholders as well as presented for discussion at stakeholder meetings to solicit comments and recommendations prior to publication of the rules for the rulemaking hearing.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

(List names, addresses, telephone, fax numbers, and e-mail of persons to contact; describe meetings, other exchanges of information, etc.)

Kristie Wilson, State HR Rules and Policy Coordinator
Office of Financial Management,
P.O. Box 47500
Olympia, Washington 98504-7500
Telephone: (360) 902-0483 or email kristie.wilson@ofm.wa.gov

DATE

June 12, 2014

CODE REVISER USE ONLY

NAME (TYPE OR PRINT)

Roselyn Marcus

SIGNATURE

Roselyn Marcus

TITLE

Assistant Director Legal and Legislative Affairs
Rule Coordinator

MRSC MODEL POLICY

May 20, 2014

We recommend that you have this policy reviewed by your own legal counsel before it is adopted.

UNPAID HOLIDAYS FOR REASONS OF FAITH OR CONSCIENCE

Employees are entitled to two unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization.

The employee may select the days on which he or she desires to take the two unpaid holidays after consultation with his or her supervisor. If an employee prefers to take the two unpaid holidays on specific days, then the employee will be allowed to take the unpaid holidays on the days he or she has selected unless the absence would unduly disrupt operations, impose an undue hardship, or the employee is necessary to maintain public safety. The term “undue hardship” has the meaning contained in the rule established by the Office of Financial Management.

If possible, an employee should submit a written request for an unpaid holiday provided for by this section to the employee’s supervisor a minimum of _____ (days/weeks) prior to the requested day. Approval of the unpaid holiday shall not be deemed approved unless it has been authorized in writing by the employee’s supervisor. The employee’s supervisor shall evaluate requests by considering the desires of the employee, scheduled work, anticipated peak workloads, response to unexpected emergencies, the availability, if any, of a qualified substitute, and consideration of the meaning of “undue hardship” developed by rule of the Office of Financial Management.

The two unpaid holidays allowed by this section must be taken during the calendar year, if at all; they do not carry over from one year to the next.

7.10 Holidays

The following are recognized as paid holidays for all regular employees:

| | |
|-------------------------------|---|
| New Year's Day | January 1 |
| Martin Luther King's Birthday | 3 rd Monday in January |
| President's Day | 3 rd Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 th |
| Labor Day | 1 st Monday in September |
| Veteran's Day | November 11 th |
| Thanksgiving Day | 4 th Thursday in November |
| Day after Thanksgiving | Day after Thanksgiving |
| Day before or after Christmas | Dec. 24 th or 26 th (Employee vote) |
| Christmas Day | December 25 th |

Any paid holiday falling on Saturday will be observed on the preceding Friday. Any paid holiday falling on Sunday will be observed on the following Monday.

Any paid holiday falling on Saturday will be celebrated on the preceding Friday. Any paid holiday falling on Sunday will be celebrated on the following Monday. (See Article 9 – Fringe Benefits: 4.1 through 4.2, 2013 – 2015 AFSCME Union Contract).

A Holiday is worth one (1) full day's work regardless of which work schedule the employee is on. (See Article 9 – Fringe Benefits: 4.3 through 4.4, 2013 – 2015 AFSCME Union Contract).

Religious Holidays: If an employee's religious beliefs require observance of a bona fide religious holiday not included in the holiday schedule, the employee may, with his/her supervisor's approval, take the day off using vacation, compensatory time, or leave without pay.

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The following are recognized as paid holidays for all regular employees:

| | |
|-------------------------------|---|
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| Martin Luther King's Birthday | 3 rd Monday in January |
| President's Day | 3 rd Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 th |
| Labor Day | 1 st Monday in September |
| Veteran's Day | November 11 th |
| Thanksgiving Day | 4 th Thursday in November |
| Day after Thanksgiving | Day after Thanksgiving |
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A Holiday is worth one (1) full day's work regardless of which work schedule the employee is on. (See Article 9 – Fringe Benefits: 4.3 through 4.4, 2013 – 2015 AFSCME Union Contract).

Unpaid Religious Holidays: Employees are entitled to two unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization. The employee may select the days on which he or she desires to take the two unpaid holidays after consultation with his or her supervisor. If an employee prefers to take the two unpaid holidays on specific days, then the employee will be allowed to take the unpaid holidays on the days he or she has selected unless the absence would unduly disrupt operations, impose an undue hardship, or the employee is necessary to maintain public safety. The term "undue hardship" has the meaning contained in the rule established by the Office of Financial Management. If possible, an employee should submit a written request for an unpaid holiday provided for by this section to the employee's supervisor a minimum of five days prior to the requested day. Approval of the unpaid holiday shall not be deemed approved unless it has been authorized in writing by the employee's supervisor. The employee's supervisor shall evaluate requests by considering the desires of the employee, scheduled work, anticipated peak workloads, response to unexpected emergencies, the availability, if any, of a qualified substitute, and consideration of the meaning of "undue hardship" developed by rule of the Office of Financial Management. The two unpaid holidays allowed by this section must be taken during the calendar year, if at all; they do not carry over from one year to the next.

2.05 Religion in the Workplace Policy

The District is committed to complying with all laws that prohibit discrimination, including harassment or retaliation, on the basis of religion. This means that the District will make employment-related decisions regarding its employees without regard to their religious practices or beliefs. The District will provide reasonable accommodation for employees' religious expressions, observances and requirements when employees bring such matters to the District's attention and a reasonable accommodation can be identified unless the accommodation amounts to an undue hardship. The District also maintains a policy whereby employees can complain about alleged religious discrimination, harassment or retaliation. Employees can rest assured that every such complaint will be promptly and thoroughly investigated in accordance with District policy and procedures.

Just as employees have a right to expect the District to keep the workplace free of discrimination, the District expects its employees to be tolerant of each other's right to appropriately – and within the law – express or display their religious status or beliefs in conformance with their religious practices. However, the District also expects employees not to subject co-workers to unwelcome expressions of religious views, proselytizing, while in the workplace. Co-workers could justifiably believe that they should not be subjected to such behavior on the job – but many could also feel that expressing any negative reaction could cause conflict, resentment or retaliation. It is a violation of District policy to force any employee to participate unwillingly in religious activity out of fear of creating workplace disharmony or offending a co-worker.

On the other hand, it would be acceptable for employees to express verbally their religious beliefs or wear or possess items in the workplace that express religious status or beliefs if these expressions do not otherwise offend the District's anti-harassment policy, disrupt the work environment, or create a health or safety hazard. The District expects that its employees will exercise good judgment and sensitivity to co-workers in making common sense distinctions between the appropriate expression of religious status or belief and conduct or displays that are truly offensive, disruptive, unsafe or otherwise inappropriate.

Employees should feel free to express their concerns about behavior or displays which they believe are truly offensive, threatening, or intimidating on the basis of their religious beliefs, to the point where the tranquility of the workplace environment is compromised. These would include, for example, language or symbols that clearly state, imply, or condone opposition, prejudice, hatred, or violence against any religious group.

The objective of the District is to foster mutual respect and tolerance without interfering with our employees' ability to do their jobs in a peaceful and positive work environment. Any questions or concerns about this Policy or perceived violations of this Policy should be brought to the attention of the General Manager.



LAKE WHATCOM WATER AND SEWER DISTRICT

AGENDA BILL

| | | | |
|---|---|--|--|
| DATE SUBMITTED: | June 17, 2014 | | |
| TO BOARD OF COMMISSIONERS | | | |
| FROM: Patrick Sorensen | MANAGER APPROVAL <i>Patrick Sorensen</i> | | |
| MEETING AGENDA DATE: | June 25, 2014 | | |
| AGENDA ITEM NUMBER: | 5.B. | | |
| SUBJECT: | General Legal Services Contract – Zender, Thurston PS | | |
| LIST DOCUMENTS PROVIDED ⇒ NUMBER OF PAGES INCLUDING AGENDA BILL: _____ | 1. | | |
| | 2. | | |
| | 3. | | |
| TYPE OF ACTION REQUESTED | RESOLUTION <input type="checkbox"/> | FORMAL ACTION/ MOTION <input checked="" type="checkbox"/> | INFORMATIONAL/ OTHER <input type="checkbox"/> |

BACKGROUND / EXPLANATION OF IMPACT

At the June 4, 2014 Special Meeting, the Board authorized the General Manager to contract with Zender, Thurston PS for general legal services upon Brian Hansen's retirement. Attached is the proposed contract with Zender, Thurston.

FISCAL IMPACT

None at this time.

RECOMMENDED BOARD ACTION

Review, discuss and consider the presented contract.

PROPOSED MOTION

To approve the legal services contract with Zender Thurston and authorize the General Manager to sign the contract.

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is entered into on the date set forth below, by and between Lake Whatcom Water & Sewer District ("District"), a Washington special purpose district, and Zender Thurston, P.S. ("ZT"), a professional service corporation incorporated under the laws of the State of Washington.

WHEREAS, the District has a regular and ongoing need for a variety of legal services as described herein;

WHEREAS, the District selected ZT to provide professional legal services following a competitive procurement process;

WHEREAS, ZT provides the kind and nature of legal services as the District needs on a regular basis; and

WHEREAS, the parties believe that a contractual relationship for said legal services will be mutually beneficial;

NOW, THEREFORE, IT IS AGREED as follows:

1. **Scope of Work.** ZT shall provide legal services to the District as described in Exhibit A to this Agreement. Such work shall be performed in accordance with all applicable federal, state and local laws, ordinances and regulations. ZT shall exercise reasonable care and judgment in the performance of work pursuant to this Agreement, and shall make changes, amendments or revisions in the scope of work as may be directed by the District.
2. **Designation of District Attorney.** Robert Carmichael, a shareholder of ZT, is hereby designated as the District Attorney. Simi Jain, also a shareholder of ZT, is designated as the alternate District Attorney. As District Attorney, Mr. Carmichael and, in the absence of Mr. Carmichael, Ms. Jain, shall be responsible for providing and/or overseeing the provision of legal services described in Exhibit A. Mr. Carmichael or Ms. Jain shall be consulted prior to any decision by the District to retain or use legal counsel other than ZT; provided that, the District shall retain full and final authority to retain and select additional legal services from attorneys or law firms other than ZT when the District determines it is in its best interest to do so.
3. **Payment and Billing.**
 - 3.1 ZT shall invoice the District monthly for services rendered under this Agreement using the rates and charges set out in Exhibit B, attached hereto and incorporated herein by this reference. The fees will be determined based on time spent at the foregoing hourly rates. These rates are subject to adjustment on an annual basis, usually on January 1st of each year. Any time spent on District matters will be billed, including without limitation, reviewing materials, maintaining files, research, drafting

letters or memos, discussing matters on the telephone or in person, traveling to and attending meetings, and preparing for and attending hearings. Should the District require litigation services, ZT rates will remain the same. In addition, ZT will charge the District its actual costs for out-of-pocket expenses that ZT may incur in connection with ZT's performance of services, including but not limited to shipping, filing fees, large photocopy jobs, and messenger service. Phone service, including long-distance charges, and routine photocopying of documents will not be charged to the District.

- 3.2 Each month, ZT will send a statement detailing the time that has been spent working on District matters. The billing period ends on the 15th of each month, and the District will usually receive a statement approximately two weeks after that. This statement will include a bill which calculates fees on an hourly basis, and which lists all expenses which have been incurred in performing the work. The District agrees to pay the itemized bill within thirty (30) days of the date of the bill. All statements unpaid for sixty (60) days or more from the date on the statement will be charged interest at a rate of 1% per month.
- 3.3 ZT shall keep available for inspection for a period of three years after final payment, the cost records and accounts pertaining to this Agreement. If any litigation, claim or audit is started before the expiration of the three-year retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
4. **Duration.** This Agreement shall become effective upon the day of its execution by both Parties, and shall be of indefinite duration, subject to termination as described in Section 5.
5. **Termination. (A) With cause.** This Agreement may be terminated at any time for "just cause," by either party by providing written notice of said termination to the other party at least ten (10) days prior to the effective date of termination.
(B) Without cause. This Agreement may be terminated at any time by either party without cause by providing written notice of said termination to the other party at least ninety (90) days prior to the effective date of termination.
6. **Relationship of the parties.** The parties intend that an independent contractual relationship will be created by this Agreement. Any and all employees of ZT, while engaged in the performance of any work or services under this Agreement, shall be considered employees of ZT only and not of the District, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of said employees, while so engaged; any and all taxes arising out of ZT's or ZT's employees' work under this Agreement; and any and all claims made by a third party as a consequence of any acts, errors, or omissions on the part of ZT's employees, while so engaged, shall be the sole obligation and responsibility of ZT.
7. **Assignment/subcontracting.** ZT shall not assign or subcontract any portion of the

work described in Exhibit A without the prior written consent of the District. A change in the firm name only shall not be considered an assignment or affect this Agreement.

8. **Malpractice Insurance.** ZT shall furnish to the District and file with the District Clerk and at all times during the existence of this Agreement, maintain in full force and effect, at its own cost and expense, a professional malpractice insurance policy, with a minimum liability of \$1,000,000 per occurrence/ \$2,000,000 aggregate. Failure to maintain coverage with the limits provided herein shall be a material breach of this Agreement and cause for termination at any time. A policy naming the individual ZT members, among others named in the policy, shall be considered in compliance with this provision. A Certificate of Insurance containing the aforementioned minimum limits shall be provided to the District prior to the signing of this Agreement. Written notice of cancellation or reduction in coverage shall be delivered to the District thirty (30) days in advance of the effective date thereof. Any company from which said professional malpractice insurance policy is obtained shall be approved by the state insurance commissioner pursuant to Title 48 RCW, and shall have at least an A or an A+ Best Rating.
9. **Professional Responsibility.** ZT represents that the services provided hereunder shall be performed in a manner consistent with that level of care and skill ordinarily exercised by attorneys in similar endeavors under similar circumstances. No other representations to the District, express or implied, and no warranty or guarantee is included or intended in this Agreement.
10. **Equal Opportunity.** ZT agrees to comply with equal opportunity employment and not to discriminate against client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, rendition of services. ZT further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. ZT understands and agrees that if it violates this nondiscrimination provision, this agreement may be terminated by the District, and further that ZT will be barred from performing any services for the District now or in the future, unless a showing is made satisfactory to the District that discriminatory practices have been terminated and that recurrence of such action is unlikely.
11. **Unfair Employment Practices.** During the performance of this agreement, ZT agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.
12. **Affirmative Action.** Affirmative action shall be implemented by ZT to ensure that applicants for employment and all employees are treated without regard to race, creed, color, sex, sexual orientation, age, marital status, national origin or the

presence of any sensory, mental or physical handicap, unless based on a bona fide occupational qualification. ZT agrees to take affirmative action to ensure that all of its employees and agent adhere to this provision.

13. **Legal Relations.** ZT shall comply with all federal, state and local laws and ordinances applicable to work to be done under this agreement. This contract shall be interpreted and construed in accordance with the laws of Washington. Venue for any action commenced relating to the interpretation, breach or enforcement of this agreement shall be in Whatcom County Superior Court.
14. **Conflicts of Interest.** While this is a non-exclusive agreement ZT agrees to and will notify the District of any potential conflicts of interest in ZT's client base and will seek and obtain written permission from the District prior to providing services to third parties where a conflict of interest is apparent. If a conflict is irreconcilable, the District reserves the right to terminate this agreement.
15. **Confidences.** ZT agrees to and will keep in strict confidence, and will not disclose, communicate or advertise to third parties without specific prior written consent from the District in each instance, the confidences of the District or any information regarding the District or services provided to the District.
16. **Notices.** Notices to the District shall be sent to the following address:

LAKE WHATCOM WATER & SEWER DISTRICT
Attn: General Manager
1223 Lakeway Drive
Bellingham, WA 98229

Notices to ZT shall be sent to the following address:

ZENDER THURSTON, P.S.
Attn: Robert Carmichael
1700 D Street
Bellingham, WA 98225

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

17. **Disputes.** If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the Parties agree to endeavor to settle the dispute through a mediation firm acceptable to both Parties, the cost of which shall be divided equally. Venue for any litigation shall be Whatcom County Superior Court of the State of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.
18. **Governing Law.** This Agreement shall be governed by the laws of the State of

Washington.

19. **Complete Agreement.** This Agreement constitutes the entire agreement between the District and ZT. This Agreement may be modified in writing only, upon mutual agreement of the parties.
20. **Waiver.** Failure by any party to this Agreement to enforce any provision of this Agreement or to declare a breach shall not constitute a waiver thereof, nor shall it impair any party's right to demand strict performance of that or any other provision of this Agreement any time thereafter.
21. **Severability.** If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall not be affected.
22. **Survival.** These terms and conditions shall survive the completion of the services under the agreement and the termination of the agreement for any cause.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this ____ day of _____, 2014.

LAKE WHATCOM WATER & SEWER DISTRICT

By _____
Patrick Sorensen, General Manager

ZENDER THURSTON, P. S.

By 
Robert Carmichael, Shareholder

Approved as to form:


BRIAN L. HANSEN
Outgoing District Legal Counsel

EXHIBIT A

SCOPE OF LEGAL SERVICES

Subject to the proviso in Section 2 of the Agreement, ZT shall provide the District with all services necessary to meet its needs for legal counsel and representation. Said services shall include without limitation, providing legal advice to the District Board, General Manager, Assistant General Manager, and District Treasurer/Financial Officer, and other District officers and employees, representing the District in civil and administrative litigation, representing the District in negotiations with outside entities, and reviewing and drafting contracts and resolutions as requested.

Robert Carmichael shall act as District Attorney and Simi Jain shall act as alternate District Attorney. Each shall perform the functions and duties generally associated with the position of Attorney for the District. It is understood that Mr. Carmichael's designation as District Attorney is a material part of this Agreement and that this designation includes ultimate responsibility for carrying out the functions of the District Attorney. Mr. Carmichael will also have primary responsibility for personal attendance at all regular District Board meetings and those special District Board meetings and other meetings of District officers and employees as requested, but may delegate responsibility for specific tasks, or attendance at specific meetings as appropriate, to other attorneys at ZT.

The parties anticipate that other attorneys at ZT will also provide legal services to the District, in lieu of or in addition to Mr. Carmichael and Ms. Jain. ZT will seek to provide the District with timely access to ZT attorneys with expertise suited to the particular legal matter at hand. In the event that the necessary legal expertise is not available at ZT for a particular matter, ZT shall so advise the District and shall assist the District in locating outside legal counsel. Under all circumstances, the District shall retain full and final decision making authority in selecting and retaining outside legal counsel.

EXHIBIT B

HOURLY RATE SCHEDULE

Commencing Date of Agreement, through December 31, 2015

For partner/partner level experience attorneys work on civil matters:

| | |
|----------------|---------------|
| Bob Carmichael | \$200.00/hour |
| Simi Jain | \$190.00/hour |
| Loch Clark | \$200.00/hour |
| Bryan Page | \$190.00/hour |
| Greg Greenan | \$190.00/hour |
| Tim Potts | \$190.00/hour |
| Jolyn Hunt | \$190.00/hour |
| Other partners | \$190.00/hour |

For associate attorney work on civil matters:

| | |
|------------------|---------------|
| Michael Kleps | \$165.00/hour |
| Other associates | \$165.00/hour |

For paralegal work: \$75.00/hour



CERTIFICATE OF LIABILITY INSURANCE

ZENTH-1

OP ID: NA01

DATE (MM/DD/YYYY)

06/16/14

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Hub International Northwest
P. O. Box 3018
Bothell, WA 98041-3018
Scott Andrews

425-489-4500

425-489-4501

CONTACT

NAME:

PHONE

(A/C, No, Ext):

E-MAIL

ADDRESS:

FAX

(A/C, No):

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Hanover Insurance Group

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED Zender Thurston, PS
1700 D Street
Bellingham, WA 98225

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|----------------|-------------------------|-------------------------|--|
| | GENERAL LIABILITY | | | | | | |
| | <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | | | | EACH OCCURRENCE \$ |
| | <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ |
| | | | | | | | MED EXP (Any one person) \$ |
| | | | | | | | PERSONAL & ADV INJURY \$ |
| | | | | | | | GENERAL AGGREGATE \$ |
| | | | | | | | PRODUCTS - COMPROP AGG \$ |
| | | | | | | | \$ |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | |
| | <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | | | | | \$ |
| | AUTOMOBILE LIABILITY | | | | | | |
| | <input type="checkbox"/> ANY AUTO | | | | | | COMBINED SINGLE LIMIT (Ea accident) \$ |
| | <input type="checkbox"/> ALL OWNED AUTOS | | | | | | BODILY INJURY (Per person) \$ |
| | <input type="checkbox"/> HIRED AUTOS | | | | | | BODILY INJURY (Per accident) \$ |
| | | | | | | | PROPERTY DAMAGE (Per accident) \$ |
| | | | | | | | \$ |
| | UMBRELLA LIAB | | | | | | |
| | <input type="checkbox"/> EXCESS LIAB | | | | | | EACH OCCURRENCE \$ |
| | | | | | | | AGGREGATE \$ |
| | | | | | | | \$ |
| | DED RETENTION \$ | | | | | | |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | | |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | Y/N | N/A | | | | WC STATU-TORY LIMITS OTH-ER |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. EACH ACCIDENT \$ |
| | | | | | | | E.L. DISEASE - EA EMPLOYEE \$ |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$ |
| A | Lawyers Prof Liab | | | LH2 A288152 00 | 05/01/14 | 05/01/15 | Per claim 2,000,000 Aggregate 2,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

EVIDENCE OF INSURANCE**CERTIFICATE HOLDER****CANCELLATION**

LAKEWH2

LAKE WHATCOM WATER & SEWER
DISTRICT
1223 LAKEWAY DR
BELLINGHAM, WA 98229

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



LAKE WHATCOM WATER AND SEWER DISTRICT

AGENDA BILL

| | | | |
|---------------------------|--|---|---|
| DATE SUBMITTED: | June 17, 2014 | | |
| TO BOARD OF COMMISSIONERS | | | |
| FROM: Patrick Sorensen | MANAGER APPROVAL <i>Patrick Sorensen</i> | | |
| MEETING AGENDA DATE: | June 25, 2014 | | |
| AGENDA ITEM NUMBER: | 5.C. | | |
| SUBJECT: | Planning for July 29, 2014 Rate Hearing | | |
| LIST DOCUMENTS PROVIDED ⇒ | 1. | | |
| NUMBER OF PAGES | 2. | | |
| INCLUDING AGENDA BILL: | 3. | | |
| TYPE OF ACTION REQUESTED | RESOLUTION <input type="checkbox"/> | FORMAL ACTION/ MOTION <input type="checkbox"/> | INFORMATIONAL/ OTHER <input checked="" type="checkbox"/> |

BACKGROUND / EXPLANATION OF IMPACT

The Board scheduled a special meeting to hold a Rate Hearing on July 29, 2014 at 7:00 p.m. FCSG has been invited to give a presentation which will be followed by a question and answer period. A written comment form can also be made available to the public.

The Board directed staff to reserve the Geneva Fire Hall for the meeting however it is not available on Tuesday evenings. Other meeting facilities in the Geneva area include the Geneva Elementary School (not rented during the summer), The Firs meeting rooms (not available during the summer), Bloedel Donovan is booked up a year in advance. Consequently, the meeting will have to be held in the District's Boardroom which will legally accommodate 73 persons. Staff and Commissioners can park in the District's upper parking spaces (near the 7/11). The District's vehicles can also be moved up to Lakeview Street for the evening, so that the entire parking lot is available for meeting attendees.

FISCAL IMPACT

Not applicable.

RECOMMENDED BOARD ACTION

Discussion only.

PROPOSED MOTION



LAKE WHATCOM WATER & SEWER DISTRICT

1220 Lakeway Drive
Bellingham, WA, 98229

(360) 734-9224
Fax 738-8250

DRAFT

June 19, 2014

Setting utility rates is a complex issue. In setting the rates, the District's Board of Commissioners must be sure that sufficient revenues are collected to pay for the day to day operations of the District and to fund future infrastructure upgrades, repairs and replacements. A certain amount must also be kept in reserve for emergency contingencies.

The District's water and sewer rates are charged on a cost of service basis. Per state law, the District is not allowed to make a profit. Other than grants or low-cost loans for specific projects, the District receives no outside funding; all costs are borne by our customers.

To assist with financial planning, the District contracts with a financial consultant, FCS Group, to conduct rate studies on a regular basis, usually every two years. The latest study results indicate that the District's water and sewer rates need to be increased overall.

FCS Group has analyzed our current revenue and expenditures, capital plans, debt commitments, and other data needed to develop rates for the next five years beginning in January 2015. That rate study has been reviewed by the Board. The Board has also been considering policy issues pertaining to water conservation and the impact of rates on low-income customers. The following are the results of the rate study and the Board's discussions:

RATES NEED TO BE INCREASED OVERALL

- **Sewer Rates** - which are two-thirds of the total bill - need to increase at about the level of inflation. Proposed rate increases are 3% for 2015 and 2.5% per year after that.
- **Water Rates** - which are about a third of the total bill - need to increase substantially over the next several years. Proposed rate increases for water are 8.75% for the next three years, then 8.5% for 2018, and 4% for 2019.
- Why the big increases in the water bill? It is mostly to pay the debt service for large water capital projects.
- This includes a \$3.4 million project to replace asbestos concrete mains in the Geneva area and to build an additional reservoir in Sudden Valley. The District was able to secure a low-cost state loan, but debt service will be about \$200,000 per year.
- In addition, the Districts needs to install reservoir seismic restraints and pay for coating and structural repairs to the Division 7 and Geneva water reservoirs.

- **Low Income Senior/Disabled Rate.** For both water and sewer, the District is proposing to create discounted rates for low-income senior and low-income disabled single-family residential customers. The discount for those qualifying customers would be 40% of the total bill.
- **Conservation Block Rate** for single-family residential water customers the District is proposing to create a “conservation block rate” under which the volume rate is higher for accounts using more the 2,500 cubic feet in a two-month billing period. Our research indicates that this will affect approximately 150 of the District’s current customers.
- In general, the District’s rates are high compared to surrounding water and sewer utilities for the following reasons:

Small size – currently about 4,000 customers.

Slow growth, only infill of existing lots.

Lack of commercial and industrial accounts.

Topography (which creates the need for more sewage pump stations and water reservoirs).

Pressing capital needs, particularly for water

Questions regarding the rate study can be directed to the District’s email address at general.inbox@lwwsd.org or by phone 734-9224. In addition, the existing and proposed rate schedule can be found at www.lwwsd.org. An information meeting on the proposed rate changes will be held on July 29, 2014 at 7:00 p.m. at the District’s administrative office located at 1220 Lakeway Drive in Bellingham.



LAKE WHATCOM WATER AND SEWER DISTRICT

AGENDA BILL

| | | | |
|---|--|---|---|
| DATE SUBMITTED: | June 17, 2014 | | |
| TO BOARD OF COMMISSIONERS | | | |
| FROM: Patrick Sorensen | MANAGER APPROVAL <i>Patrick Sorensen</i> | | |
| MEETING AGENDA DATE: | June 25, 2014 | | |
| AGENDA ITEM NUMBER: | 7 | | |
| SUBJECT: | Manager's Report | | |
| LIST DOCUMENTS PROVIDED ⇒ NUMBER OF PAGES INCLUDING AGENDA BILL: _____ | 1. Manager's Report | | |
| | 2. | | |
| | 3. | | |
| TYPE OF ACTION REQUESTED | RESOLUTION <input type="checkbox"/> | FORMAL ACTION/ MOTION <input type="checkbox"/> | INFORMATIONAL/ OTHER <input checked="" type="checkbox"/> |

BACKGROUND / EXPLANATION OF IMPACT

Updated information from the General Manager in advance of the Board meeting.

FISCAL IMPACT

None

RECOMMENDED BOARD ACTION

None required.

PROPOSED MOTION

None

General Manager Comments

June 25, 2014

Board Meeting

Important Upcoming Dates:

- **Meetings Associated with the Lake Whatcom Management Program:**
 - **Policy Group Meeting:** An additional June meeting will be held Monday the 30th, at 1:30 p.m. in the County Civic Center Garden Room. The discussion will be a follow-up to the June 2 meeting addressing a recommendation on how fast to meet the overall TMDL target (e.g. 50 v. 25 years). The next meeting in July is scheduled for the 7th. Remember, all Policy Group Meetings are publicly noticed by the District.
 - **Management Meeting:** The last meeting with the Mayor and County Executive was held on June 6, 2014. The next meeting has not been scheduled at this time.
- **Next Regular Board Meeting:** The next regular meeting is scheduled for **Wednesday, July 9, 2014** at 6:30 p.m.
- **Next Employee Staff Meeting:** Is set for **Thursday, July 10, 2014 at 8:00 a.m.** in the Board Room. Commissioner Lambert is scheduled to attend this coming meeting. Scheduling is rotated by alphabetical order each month.
- **Washington Association of Sewer & Water Districts (WASWD) Section III Meeting:** The next Section III meeting will be held at Bob's Burger & Brew in Tulalip at 6:15 p.m. on **Tuesday, July 8, 2014**. All WASWD Section III Meetings are publicly noticed by the District.
- **Whatcom Water District's Caucus Meeting:** The next meeting is scheduled for **Wednesday, July 16, 2014** from 1:00 p.m. to 3:00 p.m. in the District's Board Room. These meetings are held on the third Wednesday of each month.
- **WRIA 1 Planning Unit Meeting:** The next meeting is scheduled for **July 23, 2014 at 6:00 p.m.** in the County's Garden Room. This meeting is held on the fourth Wednesday of the month.

Other:

- **Committee Meeting Reports as Needed:** This is a place holder for Board and staff members to report on recent committee meeting reports since the last Board Meeting.
- **Sewer Comprehensive Plan Update:** The Whatcom County Council approved the Sewer Plan Update without issue on June 17, 2014.
- **Out of Area:** Commissioner Citron will be out of the area for the July 9 meeting. I will be out of the area from July 3 through July 7.