



Lake Whatcom Water & Sewer District Board Meeting Access Information

Next Meeting:

Wed September 13, 2023
6:30 pm to 8:30 pm

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ATTENDING A MEETING

How to Participate

MEETINGS ARE HYBRID

Our meetings are held in a hybrid format. You may attend in person at our administrative office or virtually through the GoTo platform.



COMMUNICATING WITH US



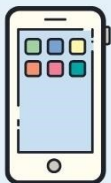
If you wish to make a public comment, you may submit it in written form via email or the contact form on our website, or utilize the public comment periods during the District's regular meetings.

ATTENDING ANONYMOUSLY

If you wish to observe a meeting, but do not plan to actively participate, you may attend anonymously. Turn off your mic & camera, and change display name to "Observation Only."



ACCESS INFORMATION



We use GoTo for virtual access to our meetings. Download the app, sign in through your browser, or use a phone to call in for audio-only participation. Access information for specific meetings is in the meeting packet.

QUESTIONS?

If you have questions about attending an upcoming meeting, please contact Administrative Assistant Rachael Hope at rachael.hope@lwwsd.org or 360-734-9224.



Public Comment Periods

Lake Whatcom Water & Sewer District's Board of Commissioners values feedback, questions, and concerns from our constituents. The public comment period is....





LAKE WHATCOM WATER AND SEWER DISTRICT

1220 Lakeway Drive
Bellingham, WA 98229

REGULAR MEETING OF THE BOARD OF COMMISSIONERS

AGENDA


September 13, 2023
6:30 p.m. – Regular Session

1. CALL TO ORDER
2. ROLL CALL
3. PUBLIC COMMENT OPPORTUNITY
At this time, members of the public may address the Board of Commissioners. Please state your name and address prior to making comments, and limit your comments to three minutes. For the sake of time, each public comment period will be limited to 45 minutes.
4. ADDITIONS, DELETIONS, OR CHANGES TO THE AGENDA
5. CONSENT AGENDA
6. SPECIFIC ITEMS OF BUSINESS
 - A. Resolution No. 897—Revision to Certain Sections of Administrative Code Title 3—General
 - B. Resolution No. 898—Revision to Certain Sections of Administrative Code Title 4—Water and Title 5—Sewer
 - C. Professional Services Agreement with Wilson Engineering for Flat Car Sewer Lift Station Reverse Flow Retrofit Project
7. OTHER BUSINESS
8. STAFF REPORTS
 - A. General Manager
9. PUBLIC COMMENT OPPORTUNITY
10. EXECUTIVE SESSION
Executive Session per RCW 42.30.110(1)(g): To review the performance of a public employee (General Manager performance evaluation) – 30 minutes
11. ADJOURNMENT



**AGENDA
BILL
Item 5**

Consent Agenda

DATE SUBMITTED:	September 7, 2023	MEETING DATE:	September 13, 2023
TO: BOARD OF COMMISSIONERS	FROM: Rachael Hope		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. See below		
TYPE OF ACTION REQUESTED	RESOLUTION <input type="checkbox"/>	FORMAL ACTION/ MOTION <input checked="" type="checkbox"/>	INFORMATIONAL /OTHER <input type="checkbox"/>

****TO BE UPDATED 09.13.2023****

BACKGROUND / EXPLANATION OF IMPACT

- Payroll for Pay Period #18 (08.19.2023 through 09.01.23) totaling \$42,756.78
- Benefits for Pay Period #18 totaling \$33,262.77
- Accounts Payable Vouchers total to be added

FISCAL IMPACT

Fiscal impact is as indicated in the payroll/benefits/accounts payable quantities defined above. All costs are within the Board-approved 2023 Budget.

RECOMMENDED BOARD ACTION

Staff recommends the Board approve the Consent Agenda.

PROPOSED MOTION

A recommended motion is:

"I move to approve the Consent Agenda as presented."

CHECK REGISTER

PAYROLL

Lake Whatcom W-S District

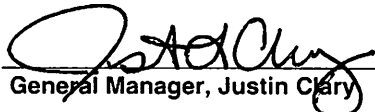
Time: 10:35:42 Date: 09/05/2023

09/07/2023 To: 09/07/2023

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
2650	09/07/2023	Payroll	5	EFT		3,623.41	08/19/2023 - 09/01/2023 PR 18
2651	09/07/2023	Payroll	5	EFT		2,818.40	08/19/2023 - 09/01/2023 PR 18
2652	09/07/2023	Payroll	5	EFT		3,157.66	08/19/2023 - 09/01/2023 PR 18
2653	09/07/2023	Payroll	5	EFT		1,769.04	08/19/2023 - 09/01/2023 PR 18
2655	09/07/2023	Payroll	5	EFT		1,940.93	08/19/2023 - 09/01/2023 PR 18
2656	09/07/2023	Payroll	5	EFT		3,062.84	08/19/2023 - 09/01/2023 PR 18
2657	09/07/2023	Payroll	5	EFT		2,384.79	08/19/2023 - 09/01/2023 PR 18
2658	09/07/2023	Payroll	5	EFT		2,142.73	08/19/2023 - 09/01/2023 PR 18
2659	09/07/2023	Payroll	5	EFT		2,449.17	08/19/2023 - 09/01/2023 PR 18
2660	09/07/2023	Payroll	5	EFT		2,644.77	08/19/2023 - 09/01/2023 PR 18
2661	09/07/2023	Payroll	5	EFT		1,353.20	08/19/2023 - 09/01/2023 PR 18
2662	09/07/2023	Payroll	5	EFT		2,245.29	08/19/2023 - 09/01/2023 PR 18
2663	09/07/2023	Payroll	5	EFT		3,337.53	08/19/2023 - 09/01/2023 PR 18
2664	09/07/2023	Payroll	5	EFT		4,016.51	08/19/2023 - 09/01/2023 PR 18
2665	09/07/2023	Payroll	5	EFT		2,664.51	08/19/2023 - 09/01/2023 PR 18
2649	09/07/2023	Payroll	5	14470		1,674.89	08/19/2023 - 09/01/2023 PR 18
2654	09/07/2023	Payroll	5	14471		1,471.11	08/19/2023 - 09/01/2023 PR 18
401 Water Fund						11,667.22	
402 Sewer Fund						31,089.56	
						42,756.78	Payroll: 42,756.78

I do hereby certify, under penalty of perjury, that the above is an unpaid, just, and due obligation as described herein, and that I am authorized to certify this claim.

Sign  Date 9/5/2023
General Manager, Justin Clary

Board Authorization - The duly elected board for this district has reviewed the claims listed and approved the payment by motion at the meeting listed below:

Board President, Todd Citron

Attest : _____
Recording Secretary, Rachael Hope

Approved by motion at _____ Regular _____ Special Board Meeting on _____
Date Approved

CHECK REGISTER

BENEFITS

Lake Whatcom W-S District

Time: 10:51:20 Date: 09/05/2023

09/07/2023 To: 09/07/2023


Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
2666	09/07/2023	Payroll	5	EFT	DEPARTMENT OF RETIREMENT SYSTEMS	4,308.50	Pay Cycle(s) 09/07/2023 To 09/07/2023 - DCP
2667	09/07/2023	Payroll	5	EFT	WA ST PUBLIC EMP RET PLAN 2	7,537.14	Pay Cycle(s) 09/07/2023 To 09/07/2023 - PERS 2
2668	09/07/2023	Payroll	5	EFT	WA ST PUBLIC EMP RET PLAN 3	3,210.22	Pay Cycle(s) 09/07/2023 To 09/07/2023 - PERS 3
2669	09/07/2023	Payroll	5	EFT	WA ST SUPPORT ENFORCEMENT REGISTRY	814.47	Pay Cycle(s) 09/07/2023 To 09/07/2023 - SUP ENF
2670	09/07/2023	Payroll	5	14472	AFLAC	354.85	Pay Cycle(s) 09/07/2023 To 09/07/2023 - AFLAC Pre-Tax; Pay Cycle(s) 09/07/2023 To 09/07/2023 - AFLAC Post-Tax
2671	09/07/2023	Payroll	5	14473	AFSCME LOCAL	356.18	Pay Cycle(s) 09/07/2023 To 09/07/2023 - Union Dues; Pay Cycle(s) 09/07/2023 To 09/07/2023 - Union Fund
2672	09/07/2023	Payroll	5	14474	HRA VEBA TRUST (PAYEE)	550.00	Pay Cycle(s) 09/07/2023 To 09/07/2023 - VEBA
2673	09/07/2023	Payroll	5	14475	WA ST HEALTH CARE AUTHORITY	16,131.41	Pay Cycle(s) 09/07/2023 To 09/07/2023 - PEBB Medical; Pay Cycle(s) 09/07/2023 To 09/07/2023 - PEBB ADD LTD; Pay Cycle(s) 09/07/2023 To 09/07/2023 - PEBB SMK Surcharge; Pay Cycle(s) 09/07/2023 To 09/07

401 Water Fund
402 Sewer Fund22,653.69
10,609.08

33,262.77 Payroll: 33,262.77

I do hereby certify, under penalty of perjury, that the above is an unpaid, just, and due obligation as described herein, and that I am authorized to certify this claim.

Sign 
General Manager, Justin Clary

Date 9/5/2023

Board Authorization - The duly elected board for this district has reviewed the claims listed and approved the payment by motion at the meeting listed below:


Board President, Todd Citron

Attest :
Recording Secretary, Rachael HopeApproved by motion at _____ Regular _____ Special Board Meeting on _____
Date Approved



**AGENDA
BILL
Item 6.A**

**Resolution No. 897
Revision to Certain Sections of
Administrative Code
Title 3—General**

DATE SUBMITTED:	September 6, 2023	MEETING DATE:	September 13, 2023
TO: BOARD OF COMMISSIONERS	FROM: Justin Clary, General Manager		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. Draft Resolution No. 897		
TYPE OF ACTION REQUESTED	RESOLUTION <input checked="checked" type="checkbox"/>	FORMAL ACTION/ MOTION <input type="checkbox"/>	INFORMATIONAL /OTHER <input type="checkbox"/>

BACKGROUND / EXPLANATION OF IMPACT

District Administrative Code Title 3, General, defines terms used within the Code, as well as general District policies (e.g., power and authority, violation penalties, dispute resolution process, water/sewer service requirements, and fees and charges). As it has been a number of years since the last comprehensive review of Title 3, District management completed a review of Title 3. Following is a summary of proposed revisions:

- Section 3.1. Addition/deletion/revision of several terms used within the Administrative Code for clarification or consistency purposes.
- Section 3.5. Revision to permit and connection charge policies to accommodate customer issues raised over the past few years.
- Section 3.7. Revise appeal timeline to be consistent with that defined in Section 2.1

FISCAL IMPACT

None anticipated.

APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)

Customer Satisfaction

RECOMMENDED BOARD ACTION

Staff recommends adoption of Resolution No. 897.

PROPOSED MOTION

A recommended motion is:

"I move to adopt Resolution No. 897 as presented."

**LAKE WHATCOM WATER AND SEWER DISTRICT
RESOLUTION NO. 897**

A Resolution of the Board of Commissioners
Incorporating Clarifying Language within Certain Sections of
Administrative Code Title 3, General

WHEREAS, the Lake Whatcom Water and Sewer District ("District") is a special purpose district located in Washington State authorized under Title 57 Revised Code of Washington; and

WHEREAS, the District is responsible for planning, improvements, maintenance, and operation of comprehensive water and sewer systems capable of providing reliable service to District ratepayers; and

WHEREAS, the District Board of Commissioners has previously set policies, codified under Title 3 of the District Administrative Code, to define general administrative and operational policies associated with connection to and/or operation of the District's water and sewer systems; and

WHEREAS, the District Board of Commissioners wishes to revise certain portions of Title 3 of the District Administrative Code for uniformity with current industry policies and to provide greater clarity for consistent policy implementation; and

WHEREAS, the District Board of Commissioners wishes to make editorial revisions to portions of Title 3 to enhance consistency and readability throughout the Administrative Code; and

WHEREAS, the District collects connection charges, as a condition of new development connecting to its water and/or sewer systems, which are set at rates that allow the recovery of that connection's proportionate share of the District's investment in both historical and future capital capacity; and

WHEREAS, the District Board of Commissioners has previously set policies, codified under Section 3.5 of the Administrative Code, prohibiting the refund of fees and charges associated with new development; and

WHEREAS, the District Board of Commissioners has become aware of instances in which a property that has paid permit fees and connection charges to the District is subsequently rendered undevelopable through undergoing a lot consolidation process; and

WHEREAS, the District Board of Commissioners recognizes that in such instances, there will be no historical or future capacity impact to the District's systems, thereby rendering the paid fees and charges unnecessary; and

WHEREAS, the District Board of Commissioners has determined it appropriate to revise the Administrative Code to accommodate such instances; and

WHEREAS, the District Board of Commissioners has reviewed and determined it appropriate to revise Sections 3.1, 3.5, and 3.7.3 of Title 3, General, of the Administrative Code, as reflected in Exhibit A attached hereto for reference purposes only, which identifies specific amendments to those specific sections of Title 3 with deletions in strikethrough and additions underlined; and

WHEREAS, the foregoing recitals are a material part of this Resolution;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake Whatcom Water and Sewer District, Whatcom County, Washington as follows:

Section 1. Sections 3.1, 3.5, and 3.7.3 of Title 3 of the District Administrative Code are repealed and replaced with Sections 3.1, 3.5, and 3.7.3 of Title 3 of the Administrative Code, as attached hereto as Exhibit B.

Section 2. Any resolutions or parts of resolutions in conflict herewith are hereby repealed insofar as they conflict with the provisions of this Resolution.

Section 3. If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Board of Commissioners hereby declare that it would have passed this Resolution and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this Resolution should be declared invalid or unconstitutional, then the original resolution or resolutions shall be in full force and effect.

Section 4. This Resolution shall be effective immediately.

ADOPTED by the Board of Commissioners of Lake Whatcom Water and Sewer District, Whatcom County, Washington, at a regular meeting thereof, on the 13th day of September, 2023.

Todd Citron, President, Board of Commissioners

Attest:

Rachael Hope, Recording Secretary

Approved as to form:

Robert Carmichael, Attorney for the District

DRAFT

EXHIBIT A

3.1 Definition of Terms

Unless a specific definition is set forth in this Code, all words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning. Any text contained within this document that uses gender-specific language shall be assumed to encompass and apply to all genders.

The following words or phrases shall have the following meanings unless the context specifically indicates otherwise:

3.1.1 Accessory Dwelling Unit (ADU)

A second dwelling unit located on the same lot as, and subordinate to, a single-family dwelling unit as administered by Whatcom County under Title 20 of the Whatcom County Code. An ADU may consist of either of the following:

1. "Attached accessory dwelling unit" means an ADU located within or attached to a single-family residence. To be considered attached the roof and wall of the ADU must be an extension of the roof and wall of the existing single-family residence.
2. "Detached accessory dwelling unit" means an ADU that consists partly or entirely of a building that is accessory to a single-family dwelling unit.

Each ADU shall be considered a separate Equivalent Residential Unit for purposes of billings of all kinds. [Resolution No. 897]

3.1.2 Accessory Use

A land use customarily incidental and subordinate to and located on the same lot as the main use. [Resolution No. 897]

3.1.13 Administrative Authority

The Commissioners of Lake Whatcom Water and Sewer District, through the General Manager of the District, or other authorized representative. [Resolution Nos. 146, 242A, 785]

3.1.24 Applicant

A property owner that intends to connect to the District's water distribution system or discharge sanitary sewage to the District's sewage collection and conveyance system. [Resolution Nos. 779, 785]

3.1.35 Board

The elected or appointed Commissioners of Lake Whatcom Water and Sewer District, acting collectively as the legislative and policy-setting arm of the District. [Resolution Nos. 779, 785]

3.1.46 Bonded Gravity Side Sewer Contractor

A contractor who holds a bond that specifically benefits the District and is licensed to construct, install, repair, reconstruct, excavate, or connect any gravity side sewer to the public sewer of the District. The Bonded Gravity Side Sewer Contractor must comply with all provisions of this Administrative Code. [Resolution Nos. 779, 785]

3.1.57 Bonded Pressure Side Sewer Contractor

A contractor who holds a bond that specifically benefits the District and is licensed to construct, install, repair, reconstruct, excavate, or connect any pressure side sewer to the public sewer of the District. The Bonded Pressure Side Sewer Contractor must comply with all provisions of this Administrative Code. [Resolution Nos. 779, 785]

3.1.68 Building Drain

The lowest horizontal piping of a drainage system which receives the drainage from waste and other drainage pipes inside the walls of the building and conveys it to the side sewer. [Resolution Nos. 146, 785]

~~3.1.7 Building Sewer~~

~~Also called a side sewer (see definition under side sewer). [Resolution Nos. 146, 785]~~

3.1.89 Building Occupant

A person that resides on a property that is connected to the District's water distribution system and/or discharges sanitary sewage to the District's sewage collection and conveyance system but is NOT the property owner. [Resolution No. 785]

3.1.910 City

The City of Bellingham or any of its duly authorized personnel. [Resolution Nos. 146, 242A, 785]

3.1.101 Commercial Customer

A non-residential customer who shall be billed a multiple of the single-family rate expressed in Equivalent Residential Units. Commercial connections shall be deemed at least one Equivalent Residential Unit or multiple based on 18 fixture units rounded up to the next whole number (i.e., 19 fixture units would be rounded up to 2 residential units) as defined in the Uniform Plumbing Code. When volumetric measurements are used, a "residential unit" shall be based upon the equivalent of ~~900600~~ cubic feet or ~~6,7324,488~~ gallons per two-month billing cycle. Note that the UPC "fixture units" are not a one-to-one correlation with the number of fixtures. [Resolution Nos. 146, 174, 242A, 785, 897]

3.1.112 Connection Charge

The current total monetary charge for general facilities charges, ULID or latecomer fees, as well as an administrative charge (permit fee), that developers or other property owners pay to the District for system capacity. The Connection Charge shall be determined by resolution of the Board and collected as provided in Section 3.5.2. [Resolution Nos. 675, 785, 799, 838]

3.1.123 Consulting Engineer

A professionally qualified engineer or engineering firm contracted by the District to offer advice, consultancy or technical assistance to the District. [Resolution No. 785]

3.1.134 County

Whatcom County or any of its duly authorized personnel. [Resolution No. 785]

3.1.145 Cover

The depth of material lying between the top of the sewer or water main and the finished grade immediately above it. [Resolution Nos. 146, 242A, 785]

3.1.156 Cross Connection

Any physical arrangement whereby a public water supply is connected, directly or indirectly with any other water supply system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or other device which contains or may contain contaminated water, sewage, or other wastes or liquids of unknown or unsafe quality, which may be capable of imparting contamination to a public water supply as a result of back flow. [Resolution Nos. 227, 242A, 785]

3.1.167 Customer

A person receiving service from the District's water distribution system and/or discharges sanitary sewage to the District's sewage collection and conveyance system. A "Customer" may be a "Property Owner" or may be a "Building Occupant". [Resolution No. 785]

3.1.178 Developer Extension Agreement (DEA)

A contract between the District and a developer or property owner to construct water and/or sewer facilities on property owned by the developer, and in roads, easements, or other rights of way described in an approved application (RCW 57.22). [Resolution Nos. 675, 785]

3.1.189 District

Lake Whatcom Water and Sewer District. [Resolution Nos. 146, 242A, 681, 785]

3.1.20 District-Approved Connection

A water or sewer connection to a District-owned water or sewer system that has been inspected by authorized District personnel and found to comply with current District design and construction standards. [Resolution No. 897]

3.1.1921 District Management

Lake Whatcom Water and Sewer District's General Manager, ~~Assistant General Engineering Manager/District Engineer, Finance Manager/Treasurer, or Operations and Maintenance Manager or the District's managerial designee.~~ [Resolution Nos. 785, 897]

3.1.202 District Water System

Any water system which is owned or controlled by the District; this term generally refers to the water source, treatment, storage and transmission/distribution facilities. [Resolution Nos. 242A, 785]

3.1.213 Domestic Sewage

What is commonly known as residential, institutional and commercial sewage and shall exclude industrial wastes. [Resolution No. 785]

3.1.224 Downspout

Leader or pipe above ground which is installed to conduct water from the roof gutter. [Resolution Nos. 146, 785]

3.1.235 Drain

Any conductor of liquids. [Resolution Nos. 146, 785]

3.1.246 Dump Station

A commercial facility whose purpose is to receive sewage from trailers, boats or recreational vehicles, and shall be considered as a commercial connection. [Resolution Nos. 146, 785, 897]

3.1.257 Duplex

A two-unit dwelling (including 2 trailers or 2 mobile homes not a part of a mobile home or trailer park; ~~or a single family residence with an accessory apartment or detached accessory dwelling unit as defined under Title 20 of the Whatcom County Code~~) containing not more than two kitchens, designed and/or used to house not more than two households living independently of each other and including all necessary facilities for each such household. Each dwelling unit shall be considered a separate Residential Unit for purposes of billings of all kinds. [Resolution Nos. 146, 242A, 785, 897]

3.1.268 Engineer

The District's engineer, or other engineers employed by the District. [Resolution Nos. 779, 785]

3.1.279 Equivalent Residential Unit (ERU) (or Residential Unit)

The basic unit used for purposes of billings of all kinds. One residential unit shall be based on 18 fixture units as defined in the Uniform Plumbing Code. When volumetric measurements are used, an Equivalent Residential Unit shall be based upon the equivalent of 600 cubic feet or 4,488 gallons per two month billing cycle. Note that the UPC "fixture units" are not a one-to-one correlation with the number of plumbing fixtures. [Resolution Nos. 146, 174, 242A, 785]

3.1.2830 Garbage

Solid wastes from the preparation, cooking, and dispensing of food, and from the handling, storage and sale of produce. [Resolution Nos. 146, 785]

3.1.2931 General Manager

The chief administrative officer appointed by the Board of Commissioners. The General Manager shall have the power to delegate ~~his or her~~their functions to authorized representatives. [Resolution Nos. 242A, 785]

3.1.302 Health Department

Whatcom County Health ~~and Community Services~~ Department. [Resolution No. 785]

3.1.313 Health Officer

A Whatcom County Health Department Officer responsible for the public health or that officer's authorized representative. [Resolution Nos. 146, 242A, 785]

3.1.324 Industrial Wastes

The liquid wastes from industrial manufacturing processes, trade or business, as distinct from domestic sewage. [Resolution Nos. 146, 785]

3.1.335 Inspector

The District's authorized representative assigned to make detailed inspections of a contractor's compliance with the District's specifications and standards. [Resolution Nos. 779, 785]

3.1.346 Land-Use and Zoning

The District recognizes that Whatcom County is the land-use planning and permitting authority for the District's service area. The District cannot and will not authorize uses that are inconsistent with current zoning regulations and land-use restrictions. [Resolution No. 785]

3.1.357 Latecomer Agreement

An agreement between the District and a developer who has paid for an extension of water and/or sewer facilities on a public right of way or easement and that is capable of providing water service to property that has not been assessed or has not contributed to the cost of the distribution line. The Latecomer Agreement shall provide for the reimbursement to the developer or the developer's assigns of a pro rata share of the costs of the facilities constructed (RCW 57.22). [Resolution Nos. 242A, 785]

3.1.368 Maintain or Maintenance

A preemptive action that preserves and sustains the design operating/flow parameters and physical integrity of a water or sewer system. [Resolution Nos. 779, 785]

3.1.379 Master Fees and Charges Schedule

The District's current rates and charges set by the Board in accordance with RCW 57.08.005. [Resolution Nos. 640, 774, 785, 798]

3.1.3840 Multiple Family Dwelling

A multiple family dwelling designed and/or used to house three or more households living independently of each other and having a separate outside access and including all necessary fixtures for each household unit. Multiple Unit Dwellings shall also include mobile home parks or courts containing three or more mobile homes or trailer stalls; apartments, condominiums, cabins and cottages. Each dwelling unit shall be deemed a separate Residential Unit for purposes of billings of all kinds. [Resolution Nos. 242A, 785]

3.1.3941 Permit

A District Water and/or Sewer Permit, or the signed authorization issued by a representative of the District for:

1. Any construction or repair of a water service connection or side sewer.
2. Work affecting the public water or public sewer system.

[Resolution Nos. 146, 242A, 779, 785]

3.1.402 Permit Fee

The permit administration and processing fee. The permit fee is a component of the Connection Charge. [Resolution Nos. 675, 785, 799]

3.1.413 Permit Holder

The owner and/or contractor who have jointly been granted a permit by the District. [Resolution Nos. 779, 785]

3.1.424 Person or Owner

May be any individual, firm, company, association, society, corporation, or group. [Resolution Nos. 146, 242A, 785]

3.1.435 Plumbing Fixture

A receptacle or device that is connected to a water supply system or discharges to a drainage system or both. Such receptacles or devices require a supply of water; or discharge liquid waste or liquid-borne solid waste; or require a supply of water and discharge waste to a drainage system, or as otherwise revised in future revisions of the ~~(Source: 2012~~ International Plumbing Code~~).~~ [Resolution Nos. 834, 897]

3.1.446 Point of Delivery

That point where the District ownership and maintenance responsibility terminates; specifically, the fitting on the customer's side of the water meter. [Resolution Nos. 242A, 785]

3.1.457 Pre-Paid Connection Certificate

A certificate that the District issues when a Developer makes the required payment to reserve capacity in District-owned water and/or sewer facilities as part of a Developer Extension Agreement, or when any other person makes the same required payment to reserve capacity for future actual connection. This connection charge is effective for 365 days from the date of issuance of the certificate per Section 3.5.2, and thereafter shall be subject to such additional or higher fees adopted subsequent to the date of issuance of the certificate. [Resolution Nos. 675, 785, 838]

3.1.468 Pressure Reducing Valve (PRV)

A customer or District owned and maintained valve to protect ~~residential~~customer plumbing and District water mains and fittings from possible high pressures and/or pressure spikes in the District's waterlines. [Resolution Nos. 785, 897]

3.1.479 Private Sewer

The sewage disposal system constructed, installed, or maintained where connection with a public sewer may not be required herein. [Resolution Nos. 146, 785]

3.1.4850 Private Water Service

The customer owned, operated, and maintained water service line(s) that connects to the District's water meter and extends to the customer's building(s), structure(s) or facility(s). Private water systems will exist on the customer's property, and/or in an easement(s) benefiting the customer. [Resolution Nos. 242A, 785]

3.1.4951 Property Owner

A person who owns property that is connected to the District's water distribution system and/or discharges sanitary sewage to the District's sewage collection and conveyance system. [Resolution No. 785]

3.1.502 Public Sewer System

Any sanitary sewers, including but not limited to trunks, laterals, service laterals and force mains and constructed within the public right-of-way or perpetual easement benefiting the District. [Resolution Nos. 146, 785]

3.1.513 Public Water Service

That portion of a water service connection between the District's water main and the point of delivery. A public water service exists only in a public right-of-way, and/or in an easement(s) benefiting the District. [Resolution No. 785]

3.1.524 Recreation Park

A plot of land in which two or more sites are occupied or intended for occupancy by recreation vehicles for short-term or seasonal travel, recreational or camping uses. No permanent residence, no matter how small, how simple, or how rustic, is permitted on a site designated for recreational uses. Three sites shall be equivalent to one Residential Unit as described and utilized in this code. [Resolution Nos. 242A, 785]

3.1.535 Recreation Vehicle

A vehicular type unit as defined by the Department of Labor and Industries, designed for temporary living quarters for recreational, camping or travel use which either has its own motor power or is mounted on or drawn by another vehicle. [Resolution Nos. 242A, 785]

3.1.546 Repair

A reactive action that restores a water or sewer systems design operating/flow parameters if interrupted or impaired, or physical integrity if damaged. [Resolution Nos. 779, 785]

3.1.557 Sewage or Sanitary Sewage

A combination of water-carried wastes from residences, business buildings, institutions and industrial establishments, which wastes contain polluted matter subject to treatment at the sewage treatment plant and to which storm, surface and groundwater are not intentionally admitted. [Resolution Nos. 146, 785]

3.1.568 Service Lateral

The District-owned lateral sewer that connects to a Sewer Main or to a District sewer manhole, and extends to the boundary of a public right-of-way, or the boundary of an easement benefiting the District. It connects a customer's side sewer to the Sewer Main. [Resolution Nos. 779, 785]

3.1.579 Sewage Treatment Plant or Works

Any arrangement of devices and structures used for treating sewage and may include collecting, pumping, treating, and disposing of sewage. [Resolution Nos. 146, 785]

3.1.5860 Sewer

A pipe or conduit for carrying sewage. [Resolution Nos. 146, 779, 785]

3.1.5961 Sewer Main

Main sewer conduits that receive and convey sanitary sewage from Lateral Sewers. Sewer mains exist only in a public right of way, and/or in an easement(s) benefiting the District. [Resolution Nos. 779, 785]

3.1.602 Shall - May

"Shall" is mandatory, "may" is permissive. [Resolution Nos. 146, 242A, 785]

3.1.613 Side Sewer

The property owner owned, operated, and maintained sewer that connects to the service lateral sewer and extends to the property owner's building(s), structure(s) or facility(s) that generate sanitary sewage. Side sewers will exist on the property owner's property, and/or in an easement(s) benefiting the property owner. [Resolution Nos. 779, 785]

3.1.624 Specifications or District Standards

The most current version of the District's Design and Construction Standards. [Resolution No. 785]

3.1.635 Substantial Development

Any land development or building program, including by any public agency, involving residences or structures for human occupancy within Lake Whatcom Water and Sewer District boundaries where the person or agency has control over the use of public or private water and/or sewer systems. [Resolution Nos. 146, 242A, 785]

3.1.646 Uniform Plumbing Code

The version of International Association of Plumbing and Mechanical Officials Code most recently adopted by the State of Washington and/or Whatcom County. [Resolution Nos. 146, 242A, 785]

3.1.657 Utility Local Improvement District (ULID)

The procedure used to extend water and/or sewer service to a group of properties whereby all property owners share in the cost (RCW 57.16). [Resolution No. 785]

3.1.668 Water Main

A District-owned or controlled pipe or conduit for supplying potable water. It does not include water service lines. Water mains exist only in a public right-of-way and/or in an easement(s) benefiting the District. [Resolution Nos. 242A, 785]

3.1.679 Water Service Connection

That portion of the public water line running from a water main or from a stub line of a water main in a street, right of way, or easement to the water meter of the customer to be served. A water service connection consists of a saddle, direct tap or tee and corporation stop, water service line, curb stop, meter setter, meter, meter box and appurtenances, or any combination thereof as may be required to furnish the requested service. The water service connection from the water main to the property line shall be owned, and installed by the District. [Resolution Nos. 242A, 785]

3.1.6870 Water Treatment Plant or Works

Any arrangement of devices and structures used for water treatment and may include the collecting, pumping and treating of water. [Resolution Nos. 242A, 785]

3.5 Permits and Connection Charges

3.5.1 Permit Fees

At the time the Water and/or Sewer Permit is applied for, the applicant shall pay to the District, or its designated representative, the Permit Fee in accordance with the District's current Master Fees and Charges Schedule. The Permit Fee is a component of the connection charge. Water and/or Sewer Permits are not transferable, nor are the fees or charges paid for them refundable, except as allowed under Section 3.5.8. [Resolution Nos. 757, 799, 897]

3.5.2 Connection Charges

- A. Property owners seeking to connect serviceable properties to the District's water and/or sewer system will be charged a connection fee at the time of issuance of a connection permit so that they will bear an equitable share of the cost of the existing system and the cost of the facilities planned for construction within the next ten years. Connection charges shall be in accordance with the District's current Master Fees and Charges Schedule.
- B. Property owners issued connection permits ~~before or after the date of this Resolution~~ shall have 365 days from the date of issuance of said connection permit to make a District-approved connection to the District water and/or sewer system without being subject to any increase or additional fees in the connection charge. After 365 days have elapsed, the connection permit shall be subject to any increase or additional fees in the connection charge adopted subsequent to the date of issuance of the permit.

- C. Property owners holding pre-paid connection certificates have 365 days from the date of said certificate to make a District-approved connection to the District water and/or sewer system at the prepaid amount. After 365 days have elapsed, the pre-paid connection charge shall be subject to any increase or additional fees in the connection charge adopted subsequent to the date of issuance of the certificate.
- D. In the event the District performs a compulsory connection, the property owner shall pay the connection charge owing at the time of actual connection to the system, subject to interest and fees as designated in the Master Fees and Charges Schedule.

[Resolution Nos. 685, 779, 799, 838, 897]

3.5.3 Service Laterals

All costs and expenses incidental to the installation and connection of a side sewer shall be borne by the property owner. The property owner shall indemnify the District for any loss or damage to the District's facilities that may result directly or indirectly from the installation of a side sewer.

Properties with service laterals that have been installed by the District may be assessed a service lateral charge. For those not assessed, the lateral shall be installed by a Bonded Side Sewer Contractor, as required, and all costs shall be borne by the property owner, including restoration of the public right of way. In the event that any property owner desires an additional lateral to be installed from the District's main to the property line, in addition to the single lateral installed by the District for the parcel, such additional laterals must be installed by a Bonded Side Sewer Contractor solely at the property owner's expense. [Resolution No. 785]

3.5.4 Water Meter Size

The Master Fees and Charges Schedule includes the current charges for a standard residential service installation. Charges for service installations larger than 5/8"x3/4" meters shall be on an actual cost basis. The meter fee charges shall be the actual cost of purchasing and installing the meter. [Resolution No. 834]

3.5.5 Extra Service Charges Pertaining to Service Installation

Whenever it is necessary for District staff to make return visits for additional inspections at the site of a water meter or sewer service installation because of customer action or at the customer's request, a charge will be made to the property owner. See the current Master Fees and Charges Schedule for the charges for time and materials. [Resolution Nos. 242A, 785]

3.5.6 Multiple Dwelling Connection Charge

There is established by District Resolution a connection charge and a permit fee for each unit of the multiple dwelling complex, regardless of location of such multiple family dwelling inside the District or any Utility Local Improvement District thereof. [Resolution No. 133]

3.5.7 Multiple Connections

An existing single parcel with a water service connection and/or sewer service connection lateral may request an additional water service connection and/or sewer service connection lateral to that parcel.

Multiple water services to an existing single parcel are allowed. Each water service connection shall be subject to the full amount of the current General Facilities, Service Installation, Permit Processing, and

Inspection Fees. Each meter shall be billed the monthly base charge and charged for overage above current volume included in the base charge.

Multiple sewer services to an existing single parcel are allowed. Each sewer ~~service connection~~lateral shall be subject to the full amount of the current General Facilities, Service Installation, Permit Processing, and Inspection Fees. Each sewer service connection shall be billed for at least one (1) ERU, but may be billed more depending on usage. [Resolution No. 711, 897]

3.5.8 Transfers and Refunds

Permits and Pre-Paid Connection Certificates are not transferable, nor are the fees or charges paid for them refundable- except under the following circumstance:

1. Where permit fees and/or connection charges have been paid for a property, and that property subsequently undergoes a lot consolidation process rendering the lot undevelopable, said fees and charges shall be refundable in full, with the exception of any administrative fees paid, provided that applicable documentation from the Whatcom County Assessor's Office indicating that the lot has been consolidated with an adjacent lot is provided within one year of payment of the fees and/or charges.

[Resolution No. 675, 897]

3.5.9 Segregation of Equivalent Residential Units and Water/Sewer Permits

Equivalent Residential Units (ERU) for the purposes of billing and issuing water/sewer permits may be segregated from an original parcel to lots that were subdivided from the original parcel provided that:

1. The newly subdivided lots are completely situated within the original parcel boundary.
2. The owner of the original parcel completes an "Assignment of Equivalent Residential Units and Water/Sewer Permits to Subdivided Lots Form". Once the completed form is received and processed by the District, the ERU and permits cannot be rolled back into the original parcel or transferred to any other lot. The District will assign or create new billing accounts for the newly subdivided lots. In no circumstance shall the number of ERUs or water/sewer permits increase through this assignment process.
3. Newly subdivided lots are subject to applicable water and sewer connection permit fees as set forth by current District policies. Newly subdivided lots that are not assigned an ERU or water and/or sewer permit will be subject to applicable connection fees and permits prior to receiving or continuing to receive water and/or sewer service.
4. See the current Master Fees and Charges Schedule for the applicable processing fees.

[Resolution No. 819]

3.5.10 Requests for Service

A property owner, or their authorized agent, requesting water and/or sewer service, shall apply for service as follows:

1. Schedule an appointment with District staff at the District office.
2. Provide proof of lot ownership.
3. Pay all current applicable connection charges and permit fees, with credit given for any charges paid for a Pre-Paid Connection Certificate.
4. Sign the permit and agree to these terms as a condition of permit issuance, but failure to do so shall not relieve the property owner of its responsibilities under this code.

5. Comply with all District regulations in effect at the time the District activates the permit.
[Resolution No. 675]

3.5.11 Permit Holder Responsibilities

1. Completion of Work. The property owner agrees that, as a condition of receiving permission to connect, ~~he or she~~they will diligently complete construction and obtain necessary approvals for occupancy of the completed improvements for which service is requested. The property owner agrees that the property owner is solely responsible for the completion and occupancy of the improvements on the property, and whether or not such utility service is actually used.
2. Billing. The property owner understands and agrees that utility billing will commence, and that property owner will be responsible for payment of utility billings, regardless of actual use, when the water meter is ~~installed~~unlocked following connection approval by District personnel, or in the case of a sewer-only customer, when the tap, tee or other connection is inspected and approved by District personnel.

[Resolution Nos. 675, 897]

3.5.12 Installment Payment Option

All persons whose property is located within 150 feet of a public sewer main shall connect to the district sewer system and the District shall compel such connection under the provisions of the RCW 57.08.005(9) should the property owner refuse to connect, subject to Sewer Comprehensive Plan conditions and Resolution No. 757. [Resolution No. 757]

Any property which is compelled to connect to the District system under the provisions of this section shall be given the option of paying the costs of physical connection and the connection fee in one lump sum or in installments over a period of not more than 15 years with interest at the rate imposed by the District at the arithmetic mean of the Districts' current bond issue. Any property which elects to pay in installments and fails to make an installment payment when due shall, at the District's option, immediately pay the entire unpaid balance of such charges, and failing such payment the District shall proceed to foreclose its lien against such property in the same manner as provided in RCW 57.08.081(3) regarding foreclosure of liens for charges. [Resolution No. 495, 842]

3.5.13 Installment Payment Option

For property compelled to connect to the District sewer system, the collection of the costs of physical connection and the connection fee due from owners qualifying as low-income seniors and low-income disabled persons (per section 2.10.97 of this code) may be delayed by agreement with the District until the property is transferred, under authority of RCW 57.08.014, so long as such obligations are secured by a lien or other security interest of the District's choosing against said property. Interest on said delayed payments of costs and charges by low-income seniors and low-income disabled persons for the period of deferment will be imposed by the district at the arithmetic mean of the District's current bond issue effective on the date of the lien or security interest and shall be collected with payment of principal upon transfer of the property. [Resolution No. 842]

3.7 Dispute Resolution

3.7.3 Appearance Request

A request for an appearance before the Commission must be made a minimum of ~~eight (8) business~~ten (10) calendar days prior to the desired Commission meeting by the Customer or by someone with legal authority to act on the Customer's behalf. Each appearance request should include a description of both the decision to be reviewed and the relief requested. The District may require that the request be in writing. The Customer's request must be directed to the Board of Commissioners, or General Manager at the District's office located at 1220 Lakeway Drive, Bellingham, Washington 98229. [Resolution Nos. 799, 897]

EXHIBIT B

3.1 Definition of Terms

Unless a specific definition is set forth in this Code, all words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning. Any text contained within this document that uses gender-specific language shall be assumed to encompass and apply to all genders.

The following words or phrases shall have the following meanings unless the context specifically indicates otherwise:

3.1.1 Accessory Dwelling Unit (ADU)

A second dwelling unit located on the same lot as, and subordinate to, a single-family dwelling unit as administered by Whatcom County under Title 20 of the Whatcom County Code. An ADU may consist of either of the following:

1. "Attached accessory dwelling unit" means an ADU located within or attached to a single-family residence. To be considered attached the roof and wall of the ADU must be an extension of the roof and wall of the existing single-family residence.
2. "Detached accessory dwelling unit" means an ADU that consists partly or entirely of a building that is accessory to a single-family dwelling unit.

Each ADU shall be considered a separate Equivalent Residential Unit for purposes of billings of all kinds. [Resolution No. 897]

3.1.2 Accessory Use

A land use customarily incidental and subordinate to and located on the same lot as the main use. [Resolution No. 897]

3.1.3 Administrative Authority

The Commissioners of Lake Whatcom Water and Sewer District, through the General Manager of the District, or other authorized representative. [Resolution Nos. 146, 242A, 785]

3.1.4 Applicant

A property owner that intends to connect to the District's water distribution system or discharge sanitary sewage to the District's sewage collection and conveyance system. [Resolution Nos. 779, 785]

3.1.5 Board

The elected or appointed Commissioners of Lake Whatcom Water and Sewer District, acting collectively as the legislative and policy-setting arm of the District. [Resolution Nos. 779, 785]

3.1.6 Bonded Gravity Side Sewer Contractor

A contractor who holds a bond that specifically benefits the District and is licensed to construct, install, repair, reconstruct, excavate, or connect any gravity side sewer to the public sewer of the District. The Bonded Gravity Side Sewer Contractor must comply with all provisions of this Administrative Code. [Resolution Nos. 779, 785]

3.1.7 Bonded Pressure Side Sewer Contractor

A contractor who holds a bond that specifically benefits the District and is licensed to construct, install, repair, reconstruct, excavate, or connect any pressure side sewer to the public sewer of the District. The Bonded Pressure Side Sewer Contractor must comply with all provisions of this Administrative Code. [Resolution Nos. 779, 785]

3.1.8 Building Drain

The lowest horizontal piping of a drainage system which receives the drainage from waste and other drainage pipes inside the walls of the building and conveys it to the side sewer. [Resolution Nos. 146, 785]

3.1.9 Building Occupant

A person that resides on a property that is connected to the District's water distribution system and/or discharges sanitary sewage to the District's sewage collection and conveyance system but is NOT the property owner. [Resolution No. 785]

3.1.10 City

The City of Bellingham or any of its duly authorized personnel. [Resolution Nos. 146, 242A, 785]

3.1.11 Commercial Customer

A non-residential customer who shall be billed a multiple of the single-family rate expressed in Equivalent Residential Units. Commercial connections shall be deemed at least one Equivalent Residential Unit or multiple based on 18 fixture units rounded up to the next whole number (i.e., 19 fixture units would be rounded up to 2 residential units) as defined in the Uniform Plumbing Code. When volumetric measurements are used, a "residential unit" shall be based upon the equivalent of 600 cubic feet or 4,488 gallons per two-month billing cycle. Note that the UPC "fixture units" are not a one-to-one correlation with the number of fixtures. [Resolution Nos. 146, 174, 242A, 785, 897]

3.1.12 Connection Charge

The current total monetary charge for general facilities charges, ULID or latecomer fees, as well as an administrative charge (permit fee), that developers or other property owners pay to the District for system capacity. The Connection Charge shall be determined by resolution of the Board and collected as provided in Section 3.5.2. [Resolution Nos. 675, 785, 799, 838]

3.1.13 Consulting Engineer

A professionally qualified engineer or engineering firm contracted by the District to offer advice, consultancy or technical assistance to the District. [Resolution No. 785]

3.1.14 County

Whatcom County or any of its duly authorized personnel. [Resolution No. 785]

3.1.15 Cover

The depth of material lying between the top of the sewer or water main and the finished grade immediately above it. [Resolution Nos. 146, 242A, 785]

3.1.16 Cross Connection

Any physical arrangement whereby a public water supply is connected, directly or indirectly with any other water supply system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or other

device which contains or may contain contaminated water, sewage, or other wastes or liquids of unknown or unsafe quality, which may be capable of imparting contamination to a public water supply as a result of back flow. [Resolution Nos. 227, 242A, 785]

3.1.17 Customer

A person receiving service from the District's water distribution system and/or discharges sanitary sewage to the District's sewage collection and conveyance system. A "Customer" may be a "Property Owner" or may be a "Building Occupant". [Resolution No. 785]

3.1.18 Developer Extension Agreement (DEA)

A contract between the District and a developer or property owner to construct water and/or sewer facilities on property owned by the developer, and in roads, easements, or other rights of way described in an approved application (RCW 57.22). [Resolution Nos. 675, 785]

3.1.19 District

Lake Whatcom Water and Sewer District. [Resolution Nos. 146, 242A, 681, 785]

3.1.20 District-Approved Connection

A water or sewer connection to a District-owned water or sewer system that has been inspected by authorized District personnel and found to comply with current District design and construction standards. [Resolution No. 897]

3.1.21 District Management

Lake Whatcom Water and Sewer District's General Manager, Engineering Manager/District Engineer, Finance Manager/Treasurer, or Operations and Maintenance Manager. [Resolution Nos. 785, 897]

3.1.22 District Water System

Any water system which is owned or controlled by the District; this term generally refers to the water source, treatment, storage and transmission/distribution facilities. [Resolution Nos. 242A, 785]

3.1.23 Domestic Sewage

What is commonly known as residential, institutional and commercial sewage and shall exclude industrial wastes. [Resolution No. 785]

3.1.24 Downspout

Leader or pipe above ground which is installed to conduct water from the roof gutter. [Resolution Nos. 146, 785]

3.1.25 Drain

Any conductor of liquids. [Resolution Nos. 146, 785]

3.1.26 Dump Station

A commercial facility whose purpose is to receive sewage from trailers, boats or recreational vehicles, and shall be considered as a commercial connection. [Resolution Nos. 146, 785, 897]

3.1.27 Duplex

A two-unit dwelling (including 2 trailers or 2 mobile homes not a part of a mobile home or trailer park) containing not more than two kitchens, designed and/or used to house not more than two households

living independently of each other and including all necessary facilities for each such household. Each dwelling unit shall be considered a separate Residential Unit for purposes of billings of all kinds. [Resolution Nos. 146, 242A, 785, 897]

3.1.28 Engineer

The District's engineer, or other engineers employed by the District. [Resolution Nos. 779, 785]

3.1.29 Equivalent Residential Unit (ERU) (or Residential Unit)

The basic unit used for purposes of billings of all kinds. One residential unit shall be based on 18 fixture units as defined in the Uniform Plumbing Code. When volumetric measurements are used, an Equivalent Residential Unit shall be based upon the equivalent of 600 cubic feet or 4,488 gallons per two month billing cycle. Note that the UPC "fixture units" are not a one-to-one correlation with the number of plumbing fixtures. [Resolution Nos. 146, 174, 242A, 785]

3.1.30 Garbage

Solid wastes from the preparation, cooking, and dispensing of food, and from the handling, storage and sale of produce. [Resolution Nos. 146, 785]

3.1.31 General Manager

The chief administrative officer appointed by the Board of Commissioners. The General Manager shall have the power to delegate their functions to authorized representatives. [Resolution Nos. 242A, 785]

3.1.32 Health Department

Whatcom County Health and Community Services Department. [Resolution No. 785]

3.1.33 Health Officer

A Whatcom County Health Department Officer responsible for the public health or that officer's authorized representative. [Resolution Nos. 146, 242A, 785]

3.1.34 Industrial Wastes

The liquid wastes from industrial manufacturing processes, trade or business, as distinct from domestic sewage. [Resolution Nos. 146, 785]

3.1.35 Inspector

The District's authorized representative assigned to make detailed inspections of a contractor's compliance with the District's specifications and standards. [Resolution Nos. 779, 785]

3.1.36 Land-Use and Zoning

The District recognizes that Whatcom County is the land-use planning and permitting authority for the District's service area. The District cannot and will not authorize uses that are inconsistent with current zoning regulations and land-use restrictions. [Resolution No. 785]

3.1.37 Latecomer Agreement

An agreement between the District and a developer who has paid for an extension of water and/or sewer facilities on a public right of way or easement and that is capable of providing water service to property that has not been assessed or has not contributed to the cost of the distribution line. The Latecomer Agreement shall provide for the reimbursement to the developer or the developer's assigns of a pro rata share of the costs of the facilities constructed (RCW 57.22). [Resolution Nos. 242A, 785]

3.1.38 Maintain or Maintenance

A preemptive action that preserves and sustains the design operating/flow parameters and physical integrity of a water or sewer system. [Resolution Nos. 779, 785]

3.1.39 Master Fees and Charges Schedule

The District's current rates and charges set by the Board in accordance with RCW 57.08.005. [Resolution Nos. 640, 774, 785, 798]

3.1.40 Multiple Family Dwelling

A multiple family dwelling designed and/or used to house three or more households living independently of each other and having a separate outside access and including all necessary fixtures for each household unit. Multiple Unit Dwellings shall also include mobile home parks or courts containing three or more mobile homes or trailer stalls; apartments, condominiums, cabins and cottages. Each dwelling unit shall be deemed a separate Residential Unit for purposes of billings of all kinds. [Resolution Nos. 242A, 785]

3.1.41 Permit

A District Water and/or Sewer Permit, or the signed authorization issued by a representative of the District for:

1. Any construction or repair of a water service connection or side sewer.
2. Work affecting the public water or public sewer system.

[Resolution Nos. 146, 242A, 779, 785]

3.1.42 Permit Fee

The permit administration and processing fee. The permit fee is a component of the Connection Charge. [Resolution Nos. 675, 785, 799]

3.1.43 Permit Holder

The owner and/or contractor who have jointly been granted a permit by the District. [Resolution Nos. 779, 785]

3.1.44 Person or Owner

May be any individual, firm, company, association, society, corporation, or group. [Resolution Nos. 146, 242A, 785]

3.1.45 Plumbing Fixture

A receptacle or device that is connected to a water supply system or discharges to a drainage system or both. Such receptacles or devices require a supply of water; or discharge liquid waste or liquid-borne solid waste; or require a supply of water and discharge waste to a drainage system, or as otherwise revised in future revisions of the International Plumbing Code. [Resolution Nos. 834, 897]

3.1.46 Point of Delivery

That point where the District ownership and maintenance responsibility terminates; specifically, the fitting on the customer's side of the water meter. [Resolution Nos. 242A, 785]

3.1.47 Pre-Paid Connection Certificate

A certificate that the District issues when a Developer makes the required payment to reserve capacity in District-owned water and/or sewer facilities as part of a Developer Extension Agreement, or when any

other person makes the same required payment to reserve capacity for future actual connection. This connection charge is effective for 365 days from the date of issuance of the certificate per Section 3.5.2, and thereafter shall be subject to such additional or higher fees adopted subsequent to the date of issuance of the certificate. [Resolution Nos. 675, 785, 838]

3.1.48 Pressure Reducing Valve (PRV)

A customer or District owned and maintained valve to protect customer plumbing and District water mains and fittings from possible high pressures and/or pressure spikes in the District's waterlines. [Resolution Nos. 785, 897]

3.1.49 Private Sewer

The sewage disposal system constructed, installed, or maintained where connection with a public sewer may not be required herein. [Resolution Nos. 146, 785]

3.1.50 Private Water Service

The customer owned, operated, and maintained water service line(s) that connects to the District's water meter and extends to the customer's building(s), structure(s) or facility(s). Private water systems will exist on the customer's property, and/or in an easement(s) benefiting the customer. [Resolution Nos. 242A, 785]

3.1.51 Property Owner

A person who owns property that is connected to the District's water distribution system and/or discharges sanitary sewage to the District's sewage collection and conveyance system. [Resolution No. 785]

3.1.52 Public Sewer System

Any sanitary sewers, including but not limited to trunks, laterals, service laterals and force mains and constructed within the public right-of-way or perpetual easement benefiting the District. [Resolution Nos. 146, 785]

3.1.53 Public Water Service

That portion of a water service connection between the District's water main and the point of delivery. A public water service exists only in a public right-of-way, and/or in an easement(s) benefiting the District. [Resolution No. 785]

3.1.54 Recreation Park

A plot of land in which two or more sites are occupied or intended for occupancy by recreation vehicles for short-term or seasonal travel, recreational or camping uses. No permanent residence, no matter how small, how simple, or how rustic, is permitted on a site designated for recreational uses. Three sites shall be equivalent to one Residential Unit as described and utilized in this code. [Resolution Nos. 242A, 785]

3.1.55 Recreation Vehicle

A vehicular type unit as defined by the Department of Labor and Industries, designed for temporary living quarters for recreational, camping or travel use which either has its own motor power or is mounted on or drawn by another vehicle. [Resolution Nos. 242A, 785]

3.1.56 Repair

A reactive action that restores a water or sewer systems design operating/flow parameters if interrupted or impaired, or physical integrity if damaged. [Resolution Nos. 779, 785]

3.1.57 Sewage or Sanitary Sewage

A combination of water-carried wastes from residences, business buildings, institutions and industrial establishments, which wastes contain polluted matter subject to treatment at the sewage treatment plant and to which storm, surface and groundwater are not intentionally admitted. [Resolution Nos. 146, 785]

3.1.58 Service Lateral

The District-owned lateral sewer that connects to a Sewer Main or to a District sewer manhole, and extends to the boundary of a public right-of-way, or the boundary of an easement benefiting the District. It connects a customer's side sewer to the Sewer Main. [Resolution Nos. 779, 785]

3.1.59 Sewage Treatment Plant or Works

Any arrangement of devices and structures used for treating sewage and may include collecting, pumping, treating, and disposing of sewage. [Resolution Nos. 146, 785]

3.1.60 Sewer

A pipe or conduit for carrying sewage. [Resolution Nos. 146, 779, 785]

3.1.61 Sewer Main

Main sewer conduits that receive and convey sanitary sewage from Lateral Sewers. Sewer mains exist only in a public right of way, and/or in an easement(s) benefiting the District. [Resolution Nos. 779, 785]

3.1.62 Shall - May

"Shall" is mandatory, "may" is permissive. [Resolution Nos. 146, 242A, 785]

3.1.63 Side Sewer

The property owner owned, operated, and maintained sewer that connects to the service lateral sewer and extends to the property owner's building(s), structure(s) or facility(s) that generate sanitary sewage. Side sewers will exist on the property owner's property, and/or in an easement(s) benefiting the property owner. [Resolution Nos. 779, 785]

3.1.64 Specifications or District Standards

The most current version of the District's Design and Construction Standards. [Resolution No. 785]

3.1.65 Substantial Development

Any land development or building program, including by any public agency, involving residences or structures for human occupancy within Lake Whatcom Water and Sewer District boundaries where the person or agency has control over the use of public or private water and/or sewer systems. [Resolution Nos. 146, 242A, 785]

3.1.66 Uniform Plumbing Code

The version of International Association of Plumbing and Mechanical Officials Code most recently adopted by the State of Washington and/or Whatcom County. [Resolution Nos. 146, 242A, 785]

3.1.67 Utility Local Improvement District (ULID)

The procedure used to extend water and/or sewer service to a group of properties whereby all property owners share in the cost (RCW 57.16). [Resolution No. 785]

3.1.68 Water Main

A District-owned or controlled pipe or conduit for supplying potable water. It does not include water service lines. Water mains exist only in a public right-of-way and/or in an easement(s) benefiting the District. [Resolution Nos. 242A, 785]

3.1.69 Water Service Connection

That portion of the public water line running from a water main or from a stub line of a water main in a street, right of way, or easement to the water meter of the customer to be served. A water service connection consists of a saddle, direct tap or tee and corporation stop, water service line, curb stop, meter setter, meter, meter box and appurtenances, or any combination thereof as may be required to furnish the requested service. The water service connection from the water main to the property line shall be owned, and installed by the District. [Resolution Nos. 242A, 785]

3.1.70 Water Treatment Plant or Works

Any arrangement of devices and structures used for water treatment and may include the collecting, pumping and treating of water. [Resolution Nos. 242A, 785]

3.5 Permits and Connection Charges

3.5.1 Permit Fees

At the time the Water and/or Sewer Permit is applied for, the applicant shall pay to the District, or its designated representative, the Permit Fee in accordance with the District's current Master Fees and Charges Schedule. The Permit Fee is a component of the connection charge. Water and/or Sewer Permits are not transferable, nor are the fees or charges paid for them refundable, except as allowed under Section 3.5.8. [Resolution Nos. 757, 799, 897]

3.5.2 Connection Charges

- A. Property owners seeking to connect serviceable properties to the District's water and/or sewer system will be charged a connection fee at the time of issuance of a connection permit so that they will bear an equitable share of the cost of the existing system and the cost of the facilities planned for construction within the next ten years. Connection charges shall be in accordance with the District's current Master Fees and Charges Schedule.
- B. Property owners issued connection permits shall have 365 days from the date of issuance of said connection permit to make a District-approved connection to the District water and/or sewer system without being subject to any increase or additional fees in the connection charge. After 365 days have elapsed, the connection permit shall be subject to any increase or additional fees in the connection charge adopted subsequent to the date of issuance of the permit.
- C. Property owners holding pre-paid connection certificates have 365 days from the date of said certificate to make a District-approved connection to the District water and/or sewer system at the prepaid amount. After 365 days have elapsed, the pre-paid connection charge shall be

subject to any increase or additional fees in the connection charge adopted subsequent to the date of issuance of the certificate.

- D. In the event the District performs a compulsory connection, the property owner shall pay the connection charge owing at the time of actual connection to the system, subject to interest and fees as designated in the Master Fees and Charges Schedule.

[Resolution Nos. 685, 779, 799, 838, 897]

3.5.3 Service Laterals

All costs and expenses incidental to the installation and connection of a side sewer shall be borne by the property owner. The property owner shall indemnify the District for any loss or damage to the District's facilities that may result directly or indirectly from the installation of a side sewer.

Properties with service laterals that have been installed by the District may be assessed a service lateral charge. For those not assessed, the lateral shall be installed by a Bonded Side Sewer Contractor, as required, and all costs shall be borne by the property owner, including restoration of the public right of way. In the event that any property owner desires an additional lateral to be installed from the District's main to the property line, in addition to the single lateral installed by the District for the parcel, such additional laterals must be installed by a Bonded Side Sewer Contractor solely at the property owner's expense. [Resolution No. 785]

3.5.4 Water Meter Size

The Master Fees and Charges Schedule includes the current charges for a standard residential service installation. Charges for service installations larger than 5/8"x3/4" meters shall be on an actual cost basis. The meter fee charges shall be the actual cost of purchasing and installing the meter. [Resolution No. 834]

3.5.5 Extra Service Charges Pertaining to Service Installation

Whenever it is necessary for District staff to make return visits for additional inspections at the site of a water meter or sewer service installation because of customer action or at the customer's request, a charge will be made to the property owner. See the current Master Fees and Charges Schedule for the charges for time and materials. [Resolution Nos. 242A, 785]

3.5.6 Multiple Dwelling Connection Charge

There is established by District Resolution a connection charge and a permit fee for each unit of the multiple dwelling complex, regardless of location of such multiple family dwelling inside the District or any Utility Local Improvement District thereof. [Resolution No. 133]

3.5.7 Multiple Connections

An existing single parcel with a water service connection and/or sewer lateral may request an additional water service connection and/or sewer lateral to that parcel.

Multiple water services to an existing single parcel are allowed. Each water service connection shall be subject to the full amount of the current General Facilities, Service Installation, Permit Processing, and Inspection Fees. Each meter shall be billed the monthly base charge and charged for overage above current volume included in the base charge.

Multiple sewer services to an existing single parcel are allowed. Each sewer lateral shall be subject to the full amount of the current General Facilities, Service Installation, Permit Processing, and Inspection Fees. Each sewer service connection shall be billed for at least one (1) ERU, but may be billed more depending on usage. [Resolution Nos. 711, 897]

3.5.8 Transfers and Refunds

Permits and Pre-Paid Connection Certificates are not transferable, nor are the fees or charges paid for them refundable, except under the following circumstance:

1. Where permit fees and/or connection charges have been paid for a property, and that property subsequently undergoes a lot consolidation process rendering the lot undevelopable, said fees and charges shall be refundable in full, with the exception of any administrative fees paid, provided that applicable documentation from the Whatcom County Assessor's Office indicating that the lot has been consolidated with an adjacent lot is provided within one year of payment of the fees and/or charges.

[Resolution Nos. 675, 897]

3.5.9 Segregation of Equivalent Residential Units and Water/Sewer Permits

Equivalent Residential Units (ERU) for the purposes of billing and issuing water/sewer permits may be segregated from an original parcel to lots that were subdivided from the original parcel provided that:

1. The newly subdivided lots are completely situated within the original parcel boundary.
2. The owner of the original parcel completes an "Assignment of Equivalent Residential Units and Water/Sewer Permits to Subdivided Lots Form". Once the completed form is received and processed by the District, the ERU and permits cannot be rolled back into the original parcel or transferred to any other lot. The District will assign or create new billing accounts for the newly subdivided lots. In no circumstance shall the number of ERUs or water/sewer permits increase through this assignment process.
3. Newly subdivided lots are subject to applicable water and sewer connection permit fees as set forth by current District policies. Newly subdivided lots that are not assigned an ERU or water and/or sewer permit will be subject to applicable connection fees and permits prior to receiving or continuing to receive water and/or sewer service.
4. See the current Master Fees and Charges Schedule for the applicable processing fees.

[Resolution No. 819]

3.5.10 Requests for Service

A property owner, or their authorized agent, requesting water and/or sewer service, shall apply for service as follows:

1. Schedule an appointment with District staff at the District office.
2. Provide proof of lot ownership.
3. Pay all current applicable connection charges and permit fees, with credit given for any charges paid for a Pre-Paid Connection Certificate.
4. Sign the permit and agree to these terms as a condition of permit issuance, but failure to do so shall not relieve the property owner of its responsibilities under this code.
5. Comply with all District regulations in effect at the time the District activates the permit.

[Resolution No. 675]

3.5.11 Permit Holder Responsibilities

1. **Completion of Work.** The property owner agrees that, as a condition of receiving permission to connect, they will diligently complete construction and obtain necessary approvals for occupancy of the completed improvements for which service is requested. The property owner agrees that the property owner is solely responsible for the completion and occupancy of the improvements on the property, and whether or not such utility service is actually used.
2. **Billing.** The property owner understands and agrees that utility billing will commence, and that property owner will be responsible for payment of utility billings, regardless of actual use, when the water meter is unlocked following connection approval by District personnel, or in the case of a sewer-only customer, when the tap, tee or other connection is inspected and approved by District personnel.

[Resolution Nos. 675, 897]

3.5.12 Installment Payment Option

All persons whose property is located within 150 feet of a public sewer main shall connect to the district sewer system and the District shall compel such connection under the provisions of the RCW 57.08.005(9) should the property owner refuse to connect, subject to Sewer Comprehensive Plan conditions and Resolution No. 757. [Resolution No. 757]

Any property which is compelled to connect to the District system under the provisions of this section shall be given the option of paying the costs of physical connection and the connection fee in one lump sum or in installments over a period of not more than 15 years with interest at the rate imposed by the District at the arithmetic mean of the Districts' current bond issue. Any property which elects to pay in installments and fails to make an installment payment when due shall, at the District's option, immediately pay the entire unpaid balance of such charges, and failing such payment the District shall proceed to foreclose its lien against such property in the same manner as provided in RCW 57.08.081(3) regarding foreclosure of liens for charges. [Resolution No. 495, 842]

3.5.13 Installment Payment Option

For property compelled to connect to the District sewer system, the collection of the costs of physical connection and the connection fee due from owners qualifying as low-income seniors and low-income disabled persons (per section 2.10.7 of this code) may be delayed by agreement with the District until the property is transferred, under authority of RCW 57.08.014, so long as such obligations are secured by a lien or other security interest of the District's choosing against said property. Interest on said delayed payments of costs and charges by low-income seniors and low-income disabled persons for the period of deferment will be imposed by the district at the arithmetic mean of the District's current bond issue effective on the date of the lien or security interest and shall be collected with payment of principal upon transfer of the property. [Resolution No. 842]

3.7 Dispute Resolution

3.7.3 Appearance Request

A request for an appearance before the Commission must be made a minimum of ten (10) calendar days prior to the desired Commission meeting by the Customer or by someone with legal authority to act on the Customer's behalf. Each appearance request should include a description of both the decision to be reviewed and the relief requested. The District may require that the request be in writing. The Customer's request must be directed to the Board of Commissioners, or General Manager at the


District's office located at 1220 Lakeway Drive, Bellingham, Washington 98229. [Resolution Nos. 799, 897]

DRAFT



**AGENDA
BILL
Item 6.B**

**Resolution No. 898
Revision to Certain Sections of
Administrative Code
Title—Water and Title 5—Sewer**

DATE SUBMITTED:	September 6, 2023	MEETING DATE:	September 13, 2023
TO: BOARD OF COMMISSIONERS	FROM: Justin Clary, General Manager		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. Draft Resolution No. 898		
TYPE OF ACTION REQUESTED	RESOLUTION <input checked="checked" type="checkbox"/>	FORMAL ACTION/ MOTION <input type="checkbox"/>	INFORMATIONAL /OTHER <input type="checkbox"/>

BACKGROUND / EXPLANATION OF IMPACT

District Administrative Code Title 4, Water, and Title 5, Sewer, defines District-specific policies relative to its water and sewer utilities. As it has been a number of years since the last comprehensive review of Titles 4 and 5, District management completed a review of the titles. Following is a summary of proposed revisions:

- Section 4.2. Cleanup of code language relative to water pressure.
- Section 4.4. Clarification to the process for initiation of water service and to expand District authority for response to private leaks.
- Section 5.1. Clarification of facilities that accept boat/RV wastewater as commercial and remove a section that was specific to a resolution adopted under prior operational circumstances (prior to construction of the detention basin and Lake Louise Road sewer interceptor).
- Section 5.2.1. Remove the requirement for board certification for allowance of private onsite septic systems as allowed under Administrative Code Sections 3.4.2 and 3.4.3.
- Section 5.4.8. Remove requirement for board verification of management approval of more than one building being service by one sewer lateral.
- Section 5.6.6. Clarification of District approval for side sewer disconnection.

FISCAL IMPACT

None anticipated.

APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)

Customer Satisfaction

RECOMMENDED BOARD ACTION

Staff recommends adoption of Resolution No. 898.

PROPOSED MOTION

A recommended motion is:

“I move to adopt Resolution No. 898 as presented.”

**LAKE WHATCOM WATER AND SEWER DISTRICT
RESOLUTION NO. 898**

A Resolution of the Board of Commissioners
Incorporating Clarifying Language within Certain Sections of
Administrative Code Title 4, Water, and Title 5, Sewer

WHEREAS, the Lake Whatcom Water and Sewer District ("District") is a special purpose district located in Washington State authorized under Title 57 Revised Code of Washington; and

WHEREAS, the District is responsible for planning, improvements, maintenance, and operation of comprehensive water and sewer systems capable of providing reliable service to District ratepayers; and

WHEREAS, the District Board of Commissioners has previously set policies, codified under Titles 4 and 5 of the District Administrative Code, to define policies specific to the District's water and sewer utilities, respectively; and

WHEREAS, the District Board of Commissioners wishes to revise certain portions of Titles 4 and 5 of the District Administrative Code for uniformity with current industry policies and to provide greater clarity for consistent policy implementation; and

WHEREAS, the District Board of Commissioners has reviewed and determined it appropriate to revise Sections 4.2 and 4.4 of Title 4, Water, and Sections 5.1.12, 5.1.13, 5.2.1, 5.4.8, and 5.6.6 of Title 5, Sewer, of the Administrative Code, as reflected in Exhibit A attached hereto for reference purposes only, which identifies specific amendments to those specific sections of Titles 4 and 5 with deletions in strikethrough and additions underlined; and

WHEREAS, the foregoing recitals are a material part of this Resolution;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake Whatcom Water and Sewer District, Whatcom County, Washington as follows:

Section 1. Sections 4.2 and 4.4 of Title 4 and Sections 5.1.12, 5.1.13, 5.2.1, 5.4.8, and 5.6.6 of Title 5 of the Administrative Code, as attached hereto as Exhibit B.

Section 2. Any resolutions or parts of resolutions in conflict herewith are hereby repealed insofar as they conflict with the provisions of this Resolution.

Section 3. If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Board of Commissioners hereby declare that it would have passed this Resolution and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or

phrases has been declared invalid or unconstitutional, and if, for any reason, this Resolution should be declared invalid or unconstitutional, then the original resolution or resolutions shall be in full force and effect.

Section 4. This Resolution shall be effective immediately.

ADOPTED by the Board of Commissioners of Lake Whatcom Water and Sewer District, Whatcom County, Washington, at a regular meeting thereof, on the 13th day of September, 2023.

Todd Citron, President, Board of Commissioners

Attest:

Rachael Hope, Recording Secretary

Approved as to form:

Robert Carmichael, Attorney for the District

EXHIBIT A

4.2 Water Pressure Adequacy

4.2.1 Substandard Water Pressure for Homes in Sudden Valley

Certain lots in Sudden Valley were platted at elevations that are too close to the distribution reservoirs to have adequate gravity water pressure and require the installation of a booster pump to maintain adequate pressure. ~~[Resolution No. 721]~~

~~The Lake Whatcom Water and Sewer~~ District allows a credit for the cost of an individual water pressure booster pump, against water bills for existing homes in Sudden Valley that cannot achieve gravity pressure of 30 pounds per square inch (psi) as determined by the District at the customer's side of the meter. The amount of the credit shall be determined by the District based upon its determination of reasonable cost, prior to installation of the booster pump, but shall not exceed the amount listed in the current Master Fees and Charges Schedule. The pump credit shall be allowed retroactively to those property owners whose lots meet the criteria above. ~~[Resolution Nos. 721, 778]~~

Those accepting the water pump credit shall sign an appropriate release form that establishes that the property owner owns the pump, accepts full responsibility for its operation, maintenance, or replacement, and accepts the system water pressure "as is" from the District water system. [Resolution Nos. 721, 778, 898]

4.2.2 Pre-connection Water Pressure Adequacy Testing

The District desires to prevent new Geneva and North Shore water service connections from inadvertently being made in areas of substandard water pressure as defined by the Washington State Department of Health under WAC 246-290. The current minimum pressure standard is 30 psi at the meter during Peak Hourly Demand. Applications for water service will be administered under the current standards. [Resolution Nos. 644, 785]

4.2.3 Comparison to Pressure Zone Maps

Upon receipt of any application for new water service in the Geneva and North Shore services areas, the District will first compare the proposed service location against the District's water pressure service area maps to determine theoretically-available pressures based on water system modeling. [Resolution No. 644]

4.2.4 Determination of Potentially Low Pressure Applications

Any service application located between 0-25 vertical feet lower in elevation than the mapped 30 pounds per square inch (psi) pressure limit contour will be deemed to be in a zone of potentially low pressure. The applicant will be notified in writing of the finding, and will be asked whether they wish to terminate the water service application or continue the investigation. [Resolution No. 644]

4.2.5 Applicant Requests to Continue Investigation

At the applicant's further request and sole cost, the District will perform a field verification of distribution system pressures for any proposed service meter that would be up to 25 vertical feet lower in elevation than the mapped 30 psi pressure limit contour. [Resolution No. 644]

4.2.6 Selection of Proposed Meter Location

An applicant for water service may request that the pressure test and meter location be favorably located in any accessible public right of way adjacent to his/her property boundaries. [Resolution No. 644]

4.2.7 Field Investigation of Available Pressure

District staff will install a pressure gauge and chart recorder to measure and record pressures for a minimum of seven days. The location and process for the pressure test will be determined by District staff to assure accuracy and minimize investigation costs to the applicant. If the test gauge is not installed at the exact proposed meter location, the District will require the District's consultant engineer to survey the elevations of the test gauge and the proposed meter location to relate the observed and anticipated pressures. [Resolution No. 644]

4.2.8 Minimum Pressure Requirement for Service

A continuous minimum pressure of 30 psi at the proposed meter location, as demonstrated by the District's gauge and associated elevation surveys, is required for any new service to be granted without additional public distribution system improvements being made. [Resolution No. 644]

4.2.9 Minimum Requirements to Change if Department of Health Regulations Change

This section intends to comply with the current and future Department of Health requirements. The current minimum pressure standard is 30 psi at the meter during Peak Hourly Demand. Applications will be administered in light of then-current standards. [Resolution No. 644]

4.2.10 Impacts of Peak Hourly Demand on Tests

The District recognizes that Peak Hourly Demand as defined by WAC 246-290 may not physically occur during the seven-day test period. The District nevertheless concludes that observance of a minimum of 30 psi at the proposed meter location for seven days substantially demonstrates distribution system pressures complying with current State Department of Health standards. [Resolution No. 644]

4.2.11 Denial Appeal Must Be Based on Hardship

The General Manager's denial of an application for water service under the terms of this Code may be appealed to the Board of Commissioners. The appeal must be in writing, and must document hardship that the applicant will suffer if public water is not obtained from the District. [Resolution No. 644]

4.4 Water Service Initiation, Interruption, Restoration and Tampering Policy

4.4.1 Original Water Service Installation

The District will close and lock the curb stop valve when the District, or others, installs the water service line from the water main to the property. [Resolution Nos. 768, 780]

4.4.2 Initial Water Service

Once a property owner has activated a Water and/or Sewer Permit for the property, the water service ~~to the property exists~~ and ~~the owner shows that~~ a water pressure ~~regulating~~reducing valve exists ~~in the building(s) sited~~ on the property, Whatcom County has approved all plumbing within the structure to be served, and the property owner makes a request to turn the water on and begin the water and sewer billing, the District will ~~install a water meter and~~ open the curb stop valve. [Resolution Nos. 768, 780, 898]

4.4.3 Water Service Interruption

1. Property Owner/Building Occupant Performs. Property owners or building occupants may close the curb stop valves serving the property after consultation with District staff to learn the proper procedures. Property owners are responsible for any damage to the curb stop valve, water meter, meter setter, or other District-owned facilities resulting from their attempts to interrupt water service. Property owners or building occupants may not lock the curb stop valve.
2. District Performs at Property Owner/Occupant Request. The District will close and lock the curb stop valve serving the property if the account is paid in full after receiving a written request from the property owner/occupant and payment of the fee outlined in the District's current Master Fees and Charges schedule.
3. Property Owner/Non-Occupant Requests that District Performs. District staff will not close or lock the curb stop valve serving a property if the property owner requests same, but property owner is not the occupant.
4. For Account Delinquency. Once an account becomes delinquent ~~(i.e., 60 days past due)~~, District staff may advise the occupant of the delinquency with a door hanger or a disconnect letter of the District's plan to discontinue water service unless the delinquent charges are paid, as well as any additional charges. District staff may also advise the property owner of the delinquency with a disconnect letter and a notice to interrupt service on the billing statement. These notices will advise the owner of the District's plan to discontinue water service unless the delinquent charges are paid, as well as any additional charges.

If the property owner or building occupant fails to pay the delinquent charges during the time period stated in the notice, the District may close and lock the curb stop valve serving the property, and charge the fee stated in its current Master Fees and Charges Schedule.

5. For Failure to Comply with District Orders to Curtail Water Consumption resulting from General Emergency Condition. If a building occupant fails to comply with general emergency orders to curtail water use, e.g., the District's water distribution system suffers a major failure and consequent loss of water, the District will close and lock the curb stop valve serving the property, and affix a door hanger notifying the building occupant that the District has done so for a stated reason. The District will charge the fee stated in its current Master Fees and Charges schedule.
6. For Failure to Eliminate Cross Connection. If a building occupant fails to eliminate a cross connection, District staff will close and lock the curb stop valve serving the property, and affix a door hanger notifying the building occupant that the District has done so for failure to eliminate cross connection. The District will charge the fee stated in its current Master Fees and Charges schedule.
7. For Failure to Repair Leak. If a possible leak is noted with overage exceeding 2500 cf a notification, consisting of a certified letter, will be sent to the known address of the property owner as soon as possible, usually within three business days. The District will also notify the building occupant of the possible leak by affixing a door hanger to the residence.

If a building occupant or property owner fails to repair a verified, but concealed, leak downstream of the water meter within ten working days of District notification of the leak, the District may close and lock the curb stop valve serving a property, and affix a door hanger notifying the building occupant that the District has closed and locked the curb stop valve serving the property for failure to repair a leak. The District will charge the fee stated in its current Master Fees and Charges Schedule.

8. For Agency Request or Order. If the State Department of Health, Whatcom County Health and Human Services, Whatcom County Sheriff, or a Fire District with jurisdiction, requests or orders interruption of water service to a particular property, the District will close and lock the curb stop valve serving a property, and affix a door hanger notifying the building occupant that the District has done so, citing the agency requesting or ordering same.
9. For Visible Leak ~~in Vacant Building~~. Upon discovering, or after receiving notification of, a leak ~~in a vacant building~~, the District may close and lock the curb stop valve serving the property. The District may affix a door hanger notifying the building occupant; also notifying the property owner at the known mailing address that the District has done so because a leak is visible ~~in the building~~.
10. For Disaster, Catastrophe, or Calamity. Upon discovering, or after receiving notification of, severe building or property damage resulting from a natural or man-made disaster or calamity (e.g., fire, earthquake, flood) that destroys or otherwise renders the building uninhabitable, the District will close, but not lock, the curb stop valve serving the property, and affix a door hanger notifying the building occupant that the District has done so for said reason.

[Resolution Nos. 768, 780, 799, ~~898~~]

4.4.4 Water Service Restoration

1. Property Owner/Building Occupant Performed. Property owners or building occupants that closed the curb stop valve may reopen the valve at no additional charge. Property Owners are responsible for any damage to the curb stop valve, water meter, meter setter, or other District-owned facilities resulting from their attempts to restore water service.
2. Property Owner/Occupant Requested/District Performed. The District will unlock and/or reopen the curb stop valve serving a property after a request for same from the property owner/occupant, and payment of the fee stated in the District's current Master Fees and Charges Schedule.
3. Involuntarily Interrupted. Where the District has closed and/or locked the curb stop valve, District staff will unlock and reopen the curb stop valve, under the following corresponding circumstances, upon receipt of a request by the property owner and payment of the fees set forth in the District's current Master Fees and Charges Schedule:
 - For account delinquency, upon receipt of payment of all delinquent charges.
 - For failure to comply with District order to curtail water consumption resulting from general emergency condition, upon agreement by the building occupant to comply with the emergency order.

- For failure to eliminate cross connection, after receiving evidence that the cross connection no longer exists, or approved backflow device is installed.
- For failure to repair leak, after receiving evidence that the leak no longer exists.

In all of the above cases, if the occupant requests that the District physically restores the water service outside of business hours, advise the occupant of the after-hours surcharge for this service and then, if the occupant still desires that the District restores service outside normal business hours, unlock and reopen the curb stop valve after receipt of the evidence.

The District will also unlock and reopen the curb stop valve, under the following corresponding circumstances, upon receipt of a request by the property owner:

4. For agency request or order, after receipt of the agency's permission to restore water service.
5. For visible leak ~~in vacant building~~, or for disaster, after receipt of the property owner's request to restore water service, at no charge.

[Resolution Nos. 768, 780, 898]

4.4.5 Water Service Tampering, Diversion, or Unauthorized Connections

Any person knowingly and maliciously damaging or tampering with District meters and other equipment, reconnecting a previously disconnected meter for the purpose of restoring utility service or tampering with any District equipment with the intent of defrauding or illegally diverting utility service shall be subject to prosecution in accordance with Chapter 9A.56 RCW (Theft and Robbery). In addition, in the event of unauthorized connection the District may collect from the customer the charge for estimated unmetered water, the cost of facility repairs and replacement including the time and expense of District personnel, administrative costs, attorney's fees, and other costs authorized or awarded. All unauthorized water service connections will be disconnected immediately upon discovery.

[Resolution Nos. 242A, 768, 780, 785]

5.1.12 Tank Trucks and Dump Stations

The District shall not accept, in any of its sewer facilities, sewage dumped from third party tank trucks. Persons in violation of this ban shall be charged a penalty for each occurrence in accordance with the most current Master Fees and Charges Schedule.

A commercial dump station for boat or recreational vehicle facilities, at any location within the District, shall be considered a separate and additional commercial unit and shall be equipped with suitable screening devices so as to prevent undesirable material, such as metal, from entering the sewer system. The owner of a commercial dump station found without suitable screening equipment shall be fined per the current Master Fees and Charges Schedule. [Resolution Nos. 146, 785, 799, 898]

~~**5.1.13 Trucking for Containment of Wet Weather Sewage Bypasses**~~

~~The General Manager of Lake Whatcom Water and Sewer District shall confirm arrangements with one or more trucking companies to provide on-call pumping truck services to the District to contain wet weather inflows and infiltration at appropriate points in the District's sewage collection and transmission system, to prevent sewage bypasses. [Resolution No. 626]~~

5.1.1~~43~~ Unlawful Damage to Sewage Works

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or piece of equipment which is part of the District sewage works. [Resolution No. 146]

5.2.1 Private Sewage Disposal Allowed

Where a public sanitary sewer is not available for use as provided in Titles 5.1.3 ~~and is so certified by the Board of Commissioners~~, the use of a private sewage disposal system which complies with applicable state and county regulations will be allowed. [Resolution Nos. 146, 785, ~~898~~]

5.4.8 Side Sewer for Each Building

A single side sewer shall be provided for each building unless the topography of the land makes it impractical to build a lateral, then District Management may authorize suitable alternate construction. The connection of more than one building to a single side sewer must be approved by District Management ~~and verified by the District Commissioners~~ prior to the construction of such side sewer. No more than one multiple dwelling or commercial building shall be connected to a side sewer, unless otherwise previously approved by District Management.

If the side sewer is to exist on two building sites, approved documents assuring that all properties involved shall have perpetual use of the side sewer, and having provisions for maintenance and access for repair purposes, shall be signed by the recorded owners. This document shall be acknowledged and recorded with the County Auditor. [Resolution Nos. 146, 785, ~~898~~]

5.6.6 Disconnection of Side Sewer

No structure may be disconnected from a side sewer, and no side sewer may be disconnected from a public sewer, for any reason without prior written notification to, and approval of, the District. No approval shall be given unless the disconnection is permitted under this Code and other applicable rules and regulations and satisfactory protection is given by the owner or his contractor to the public sewers and sewer works of the District, including, but not limited to, the satisfactory capping of the side sewer or public sewer. Sewer service charges for any structure disconnected, or to be disconnected, shall continue until such disconnection is approved by the District, and the side sewer or service lateral is capped to the satisfaction of the ~~manager~~District. The Service Lateral pipe shall be capped as close as possible to the Sewer Main and the end of the abandoned Side Sewer pipe completely filled with concrete for a minimum of length of 12-inches. The District must inspect the capping before it is covered.

[Resolution Nos. 146, 834, ~~898~~]

EXHIBIT B

4.2 Water Pressure Adequacy

4.2.1 Substandard Water Pressure for Homes in Sudden Valley

Certain lots in Sudden Valley were platted at elevations that are too close to the distribution reservoirs to have adequate gravity water pressure and require the installation of a booster pump to maintain adequate pressure.

The District allows a credit for the cost of an individual water pressure booster pump, against water bills for homes in Sudden Valley that cannot achieve gravity pressure of 30 pounds per square inch (psi) as determined by the District at the customer's side of the meter. The amount of the credit shall be determined by the District based upon its determination of reasonable cost, prior to installation of the booster pump, but shall not exceed the amount listed in the current Master Fees and Charges Schedule. The pump credit shall be allowed retroactively to those property owners whose lots meet the criteria above.

Those accepting the water pump credit shall sign an appropriate release form that establishes that the property owner owns the pump, accepts full responsibility for its operation, maintenance, or replacement, and accepts the system water pressure "as is" from the District water system. [Resolution Nos. 721, 778, 898]

4.2.2 Pre-connection Water Pressure Adequacy Testing

The District desires to prevent new Geneva and North Shore water service connections from inadvertently being made in areas of substandard water pressure as defined by the Washington State Department of Health under WAC 246-290. The current minimum pressure standard is 30 psi at the meter during Peak Hourly Demand. Applications for water service will be administered under the current standards. [Resolution Nos. 644, 785]

4.2.3 Comparison to Pressure Zone Maps

Upon receipt of any application for new water service in the Geneva and North Shore services areas, the District will first compare the proposed service location against the District's water pressure service area maps to determine theoretically-available pressures based on water system modeling. [Resolution No. 644]

4.2.4 Determination of Potentially Low Pressure Applications

Any service application located between 0-25 vertical feet lower in elevation than the mapped 30 pounds per square inch (psi) pressure limit contour will be deemed to be in a zone of potentially low pressure. The applicant will be notified in writing of the finding, and will be asked whether they wish to terminate the water service application or continue the investigation. [Resolution No. 644]

4.2.5 Applicant Requests to Continue Investigation

At the applicant's further request and sole cost, the District will perform a field verification of distribution system pressures for any proposed service meter that would be up to 25 vertical feet lower in elevation than the mapped 30 psi pressure limit contour. [Resolution No. 644]

4.2.6 Selection of Proposed Meter Location

An applicant for water service may request that the pressure test and meter location be favorably located in any accessible public right of way adjacent to his/her property boundaries. [Resolution No. 644]

4.2.7 Field Investigation of Available Pressure

District staff will install a pressure gauge and chart recorder to measure and record pressures for a minimum of seven days. The location and process for the pressure test will be determined by District staff to assure accuracy and minimize investigation costs to the applicant. If the test gauge is not installed at the exact proposed meter location, the District will require the District's consultant engineer to survey the elevations of the test gauge and the proposed meter location to relate the observed and anticipated pressures. [Resolution No. 644]

4.2.8 Minimum Pressure Requirement for Service

A continuous minimum pressure of 30 psi at the proposed meter location, as demonstrated by the District's gauge and associated elevation surveys, is required for any new service to be granted without additional public distribution system improvements being made. [Resolution No. 644]

4.2.9 Minimum Requirements to Change if Department of Health Regulations Change

This section intends to comply with the current and future Department of Health requirements. The current minimum pressure standard is 30 psi at the meter during Peak Hourly Demand. Applications will be administered in light of then-current standards. [Resolution No. 644]

4.2.10 Impacts of Peak Hourly Demand on Tests

The District recognizes that Peak Hourly Demand as defined by WAC 246-290 may not physically occur during the seven-day test period. The District nevertheless concludes that observance of a minimum of 30 psi at the proposed meter location for seven days substantially demonstrates distribution system pressures complying with current State Department of Health standards. [Resolution No. 644]

4.2.11 Denial Appeal Must Be Based on Hardship

The General Manager's denial of an application for water service under the terms of this Code may be appealed to the Board of Commissioners. The appeal must be in writing, and must document hardship that the applicant will suffer if public water is not obtained from the District. [Resolution No. 644]

4.4 Water Service Initiation, Interruption, Restoration and Tampering Policy

4.4.1 Original Water Service Installation

The District will close and lock the curb stop valve when the District, or others, installs the water service line from the water main to the property. [Resolution Nos. 768, 780]

4.4.2 Initial Water Service

Once a property owner has activated a Water and/or Sewer Permit for the property, the water service and a water pressure reducing valve exists on the property, Whatcom County has approved all plumbing within the structure to be served, and the property owner makes a request to turn the water on and begin the water and sewer billing, the District will open the curb stop valve. [Resolution Nos. 768, 780, 898]

4.4.3 Water Service Interruption

1. Property Owner/Building Occupant Performs. Property owners or building occupants may close the curb stop valves serving the property after consultation with District staff to learn the proper procedures. Property owners are responsible for any damage to the curb stop valve, water meter, meter setter, or other District-owned facilities resulting from their attempts to interrupt water service. Property owners or building occupants may not lock the curb stop valve.
2. District Performs at Property Owner/Occupant Request. The District will close and lock the curb stop valve serving the property if the account is paid in full after receiving a written request from the property owner/occupant and payment of the fee outlined in the District's current Master Fees and Charges schedule.
3. Property Owner/Non-Occupant Requests that District Performs. District staff will not close or lock the curb stop valve serving a property if the property owner requests same, but property owner is not the occupant.
4. For Account Delinquency. Once an account becomes delinquent, District staff may advise the occupant of the delinquency with a door hanger or a disconnect letter of the District's plan to discontinue water service unless the delinquent charges are paid, as well as any additional charges. District staff may also advise the property owner of the delinquency with a disconnect letter and a notice to interrupt service on the billing statement. These notices will advise the owner of the District's plan to discontinue water service unless the delinquent charges are paid, as well as any additional charges.

If the property owner or building occupant fails to pay the delinquent charges during the time period stated in the notice, the District may close and lock the curb stop valve serving the property, and charge the fee stated in its current Master Fees and Charges Schedule.

5. For Failure to Comply with District Orders to Curtail Water Consumption resulting from General Emergency Condition. If a building occupant fails to comply with general emergency orders to curtail water use, e.g., the District's water distribution system suffers a major failure and consequent loss of water, the District will close and lock the curb stop valve serving the property, and affix a door hanger notifying the building occupant that the District has done so for a stated reason. The District will charge the fee stated in its current Master Fees and Charges schedule.
6. For Failure to Eliminate Cross Connection. If a building occupant fails to eliminate a cross connection, District staff will close and lock the curb stop valve serving the property, and affix a door hanger notifying the building occupant that the District has done so for failure to eliminate cross connection. The District will charge the fee stated in its current Master Fees and Charges schedule.
7. For Failure to Repair Leak. If a possible leak is noted with overage exceeding 2500 cf a notification, consisting of a certified letter, will be sent to the known address of the property owner as soon as possible, usually within three business days. The District will also notify the building occupant of the possible leak by affixing a door hanger to the residence.

If a building occupant or property owner fails to repair a verified, but concealed, leak downstream of the water meter within ten working days of District notification of the leak, the District may close and lock the curb stop valve serving a property, and affix a door hanger notifying the building occupant that the District has closed and locked the curb stop valve serving the property for failure to repair a leak. The District will charge the fee stated in its current Master Fees and Charges Schedule.

8. For Agency Request or Order. If the State Department of Health, Whatcom County Health and Human Services, Whatcom County Sheriff, or a Fire District with jurisdiction, requests or orders interruption of water service to a particular property, the District will close and lock the curb stop valve serving a property, and affix a door hanger notifying the building occupant that the District has done so, citing the agency requesting or ordering same.
9. For Visible Leak. Upon discovering, or after receiving notification of, a leak, the District may close and lock the curb stop valve serving the property. The District may affix a door hanger notifying the building occupant; also notifying the property owner at the known mailing address that the District has done so because a leak is visible.
10. For Disaster, Catastrophe, or Calamity. Upon discovering, or after receiving notification of, severe building or property damage resulting from a natural or man-made disaster or calamity (e.g., fire, earthquake, flood) that destroys or otherwise renders the building uninhabitable, the District will close, but not lock, the curb stop valve serving the property, and affix a door hanger notifying the building occupant that the District has done so for said reason.

[Resolution Nos. 768, 780, 799, 898]

4.4.4 Water Service Restoration

1. Property Owner/Building Occupant Performed. Property owners or building occupants that closed the curb stop valve may reopen the valve at no additional charge. Property Owners are responsible for any damage to the curb stop valve, water meter, meter setter, or other District-owned facilities resulting from their attempts to restore water service.
2. Property Owner/Occupant Requested/District Performed. The District will unlock and/or reopen the curb stop valve serving a property after a request for same from the property owner/occupant, and payment of the fee stated in the District's current Master Fees and Charges Schedule.
3. Involuntarily Interrupted. Where the District has closed and/or locked the curb stop valve, District staff will unlock and reopen the curb stop valve, under the following corresponding circumstances, upon receipt of a request by the property owner and payment of the fees set forth in the District's current Master Fees and Charges Schedule:
 - For account delinquency, upon receipt of payment of all delinquent charges.
 - For failure to comply with District order to curtail water consumption resulting from general emergency condition, upon agreement by the building occupant to comply with the emergency order.

- For failure to eliminate cross connection, after receiving evidence that the cross connection no longer exists, or approved backflow device is installed.
- For failure to repair leak, after receiving evidence that the leak no longer exists.

In all of the above cases, if the occupant requests that the District physically restores the water service outside of business hours, advise the occupant of the after-hours surcharge for this service and then, if the occupant still desires that the District restores service outside normal business hours, unlock and reopen the curb stop valve after receipt of the evidence.

The District will also unlock and reopen the curb stop valve, under the following corresponding circumstances, upon receipt of a request by the property owner:

4. For agency request or order, after receipt of the agency's permission to restore water service.
5. For visible leak, or for disaster, after receipt of the property owner's request to restore water service, at no charge.

[Resolution Nos. 768, 780, 898]

4.4.5 Water Service Tampering, Diversion, or Unauthorized Connections

Any person knowingly and maliciously damaging or tampering with District meters and other equipment, reconnecting a previously disconnected meter for the purpose of restoring utility service or tampering with any District equipment with the intent of defrauding or illegally diverting utility service shall be subject to prosecution in accordance with Chapter 9A.56 RCW (Theft and Robbery). In addition, in the event of unauthorized connection the District may collect from the customer the charge for estimated unmetered water, the cost of facility repairs and replacement including the time and expense of District personnel, administrative costs, attorney's fees, and other costs authorized or awarded. All unauthorized water service connections will be disconnected immediately upon discovery.

[Resolution Nos. 242A, 768, 780, 785]

5.1.12 Tank Trucks and Dump Stations

The District shall not accept, in any of its sewer facilities, sewage dumped from third party tank trucks. Persons in violation of this ban shall be charged a penalty for each occurrence in accordance with the most current Master Fees and Charges Schedule.

A commercial dump station for boat or recreational vehicle facilities, at any location within the District, shall be considered a separate and additional commercial unit and shall be equipped with suitable screening devices so as to prevent undesirable material, such as metal, from entering the sewer system. The owner of a commercial dump station found without suitable screening equipment shall be fined per the current Master Fees and Charges Schedule. [Resolution Nos. 146, 785, 799, 898]

5.1.13 Unlawful Damage to Sewage Works

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or piece of equipment which is part of the District sewage works.

[Resolution No. 146]

5.2.1 Private Sewage Disposal Allowed

Where a public sanitary sewer is not available for use as provided in Titles 5.1.3, the use of a private sewage disposal system which complies with applicable state and county regulations will be allowed. [Resolution Nos. 146, 785, 898]

5.4.8 Side Sewer for Each Building

A single side sewer shall be provided for each building unless the topography of the land makes it impractical to build a lateral, then District Management may authorize suitable alternate construction. The connection of more than one building to a single side sewer must be approved by District Management prior to the construction of such side sewer. No more than one multiple dwelling or commercial building shall be connected to a side sewer, unless otherwise previously approved by District Management.

If the side sewer is to exist on two building sites, approved documents assuring that all properties involved shall have perpetual use of the side sewer, and having provisions for maintenance and access for repair purposes, shall be signed by the recorded owners. This document shall be acknowledged and recorded with the County Auditor. [Resolution Nos. 146, 785, 898]


5.6.6 Disconnection of Side Sewer

No structure may be disconnected from a side sewer, and no side sewer may be disconnected from a public sewer, for any reason without prior written notification to, and approval of, the District. No approval shall be given unless the disconnection is permitted under this Code and other applicable rules and regulations and satisfactory protection is given by the owner or his contractor to the public sewers and sewer works of the District, including, but not limited to, the satisfactory capping of the side sewer or public sewer. Sewer service charges for any structure disconnected, or to be disconnected, shall continue until such disconnection is approved by the District, and the side sewer or service lateral is capped to the satisfaction of the District. The Service Lateral pipe shall be capped as close as possible to the Sewer Main and the end of the abandoned Side Sewer pipe completely filled with concrete for a minimum of length of 12-inches. The District must inspect the capping before it is covered. [Resolution Nos. 146, 834, 898]



**AGENDA
BILL
Item 6.C**

**Flat Car Sewer Lift Station
Reverse Flow Retrofit Project
Professional Services Agreement**

DATE SUBMITTED:	September 1, 2023	MEETING DATE:	September 13, 2023
TO: BOARD OF COMMISSIONERS	FROM: Justin Clary, General Manager		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. Professional Services Agreement with Wilson Engineering		
TYPE OF ACTION REQUESTED	RESOLUTION <input type="checkbox"/>	FORMAL ACTION/ MOTION <input checked="" type="checkbox"/>	INFORMATIONAL /OTHER <input type="checkbox"/>

BACKGROUND / EXPLANATION OF IMPACT

The Lake Whatcom Water and Sewer District (District) owns and operates a sewer collection and conveyance system serving the Sudden Valley and Geneva communities, as well as much of the north shore of Lake Whatcom. The system is comprised of approximately 75 miles of sewer mains supported by 27 sewer lift stations that pump wastewater generated by District customers out of the Lake Whatcom watershed to the City of Bellingham's sewer conveyance system for treatment at the City's Post Point wastewater treatment plant.

Wastewater generated in the Sudden Valley community accounts for approximately two-thirds of all District-managed wastewater. Given topographical constraints, conveyance of wastewater out of Sudden Valley is limited to two sewer interceptors: 1) Lake Whatcom Boulevard sewer interceptor (LWBI), which was constructed in the early 1970s to serve the then recently platted Sudden Valley community; and 2) Lake Louise Road sewer interceptor (LLRI), which was constructed in 2003 to relieve capacity constraints on the LWBI.

The Flat Car sewer lift station is located in Area Z of Sudden Valley and receives approximately one-half of Sudden Valley-generated wastewater, which it then conveys (pumps) to Geneva (for ultimate conveyance to the City of Bellingham) via the LLRI. Recognizing a desire to create system resiliency, District staff identified an opportunity to re-direct wastewater flows from the Flat Car sewer lift station to the LWBI (and the 750,000-gallon Sudden Valley detention basin, if necessary) for instances where the LLRI is rendered unusable (examples include pipe failures that occurred in 2017 and on July 20th of this year). The District currently has a procedure for redirecting Flat Car lift station flows to the LWBI; however, it relies on setting up and connecting a portable pump and hose system, all of which takes significant effort and time. To mitigate the potential for sewage releases during emergency situations, the District created capital improvement program project No. C2113 and hired Wilson Engineering through the on-call consultant services

contract to perform an analysis of potential Flat Car sewer lift station flow redirection pumping and piping options. The recommended alternative consists of:

- Bypass Pumps. Reverse flow pumping using the existing lift station submersible pumps rather than the District's variable speed portable pump.
- Bypass Piping Alignment. Construct permanent forcemain piping approximately 100-feet in length that crosses Beaver Creek immediately northeast of the Flat Car lift station wet well and ties into existing District system near the retired Old Flat Car lift station.

With reverse flow preferred pump/piping system set, Wilson has generated a scope of work and budget for the design, permitting, and construction administration services necessary to construct the project.

The total contract cost is \$117,166, which is within the available project budget of \$132,408. The anticipated schedule is to complete design and permitting to allow for construction bid advertisement in February-March 2024, with construction in summer 2024.

FISCAL IMPACT

The remaining budget associated with Project No. C2113 is \$132,408 (\$20,592 has been incurred associated with development of the alternatives analysis). Approval of the professional services agreement for design and permitting is within the available budget; however, additional funding will require allocation for construction.

APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)

Infrastructure Strategy and Performance
Enterprise Resiliency

RECOMMENDED BOARD ACTION

Staff recommends that the Board authorize the general manager to execute the professional services agreement with Wilson Engineering.

PROPOSED MOTION

Recommended motion is:

"I move to authorize the general manager to execute the professional services agreement with Wilson Engineering for design, permitting, and construction administration services associated with District Project No. C2113, Flat Car Reverse Flow Project, for time and materials not to exceed \$117,166, as presented."

**PROFESSIONAL SERVICES AGREEMENT
FOR
FLAT CAR SEWER LIFT STATION REVERSE FLOW RETROFIT PROJECT**

THIS AGREEMENT, made and entered into by and between Lake Whatcom Water and Sewer District, Whatcom County, Washington, hereinafter referred to as "District", and Wilson Engineering, LLC ("Consultant"), a Washington limited liability company, with a place of business at 805 Dupont Street, Bellingham, WA 98225, collectively referred to as "Parties", shall be effective upon the authorized signatures of both Parties to this Agreement ("Effective Date").

WHEREAS, the District, a special purpose municipal corporation, provides water and sewer service to its constituents; and

WHEREAS, the District desires to retain the Consultant to perform certain professional services necessary to perform the **Flat Car Sewer Lift Station Reverse Flow Retrofit Project** ("Project"); and

WHEREAS, the District procured the professional services as required by RCW 39.80; and

WHEREAS, the Consultant represents it has available and offers to provide qualified personnel and facilities necessary to accomplish such services required for the Project within the required time.

The Parties enter into this Agreement. The term Agreement and Contract shall be used interchangeably and refer to this Agreement.

SECTION 1: PERIOD OF PERFORMANCE

- 1.1. All required work and services specified in the terms and conditions of this Agreement for the **Flat Car Sewer Lift Station Reverse Flow Retrofit Project** per Exhibit A, Scope of Work, shall be completed on **September 30, 2024** unless extended or terminated earlier by the District pursuant to the terms and conditions of this Agreement. The District reserves the right to let the Agreement expire and to select another consultant to perform the additional study and/or phases.
- 1.2. Time is a material consideration in the performance by the Consultant under this Agreement. The Consultant shall complete its work and services within the Project schedule, including any established milestones and task completion dates, and the Period of Performance, set forth in the Scope of Work. The completion dates for tasks may be modified by a written directive; however, the Period of Performance for the Agreement may only be modified through an amendment. No completion dates shall be extended because of any unwarranted delays attributable to the Consultant. Completion dates may be extended in the event of a delay caused by the District which results in a delay in the performance of an affected task, or because of unavoidable delay caused by any governmental action or other conditions beyond the control of the Consultant, which could not be reasonably anticipated and which results in a delay in the performance of an affected task.

- 1.3. Time Extensions. The Total Price, Period of Performance and task budgets shall not be increased because of any unwarranted delays or costs attributable to the Consultant. In the event of a delay not attributable to the Consultant which (1) delay could not be reasonably anticipated and (2) results in an increase in costs to perform the work, the District may, through the execution of an amendment, increase the Total Price, Period of Performance and/or task budget.

SECTION 2: ADMINISTRATION AND SUPERVISION

- 2.1. District. An employee of the District, hereinafter called the "Project Manager," who shall be designated in writing by the General Manager, shall perform day-to-day management of this contract. The General Manager or their designee will issue notices to proceed, approve all requests for payment, authorize termination or modification of tasks, and approve in writing changes to the task budgets. The Project Manager will be responsible for determining when the Consultant has satisfactorily performed all work and for ensuring that the Consultant complies with all provisions of this Agreement.
- 2.2. Consultant. The Consultant represents that it has, or will obtain, all personnel necessary to perform the services required under this Agreement and that such personnel shall be qualified, experienced and licensed as may be necessary or required by laws and regulations to perform such services. All services required under this Agreement shall be performed by the Consultant, its employees, or by subconsultants whose selection has been authorized by the District; provided, that the District's authorization shall not relieve the Consultant or its subconsultants from any duties or obligations under this Agreement or at law to perform in a satisfactory and competent manner. All contractual duties, requirements and obligations that the Consultant owes to the District shall also be owed to the District by the Consultant's subconsultants retained to perform the work pursuant to this Agreement. The term "Consultant" shall refer to **Wilson Engineering LLC** and all of its subconsultants.
- A. Authorized Subconsultants. The Contract shall identify in the Scope of Work, Exhibit A, the subconsultants who are authorized to perform work under this Contract.
- B. Process for Adding or Removing Subconsultants. If during the term of this Contract, the Consultant wishes to add or remove a subconsultant, the Consultant shall provide the General Manager with a written request identifying the proposed change. The written request shall include the following information:
1. Identity of the subconsultant and the work to be performed;
 2. Resumes and documentation outlining the subconsultant's experience;
 3. If the subconsultant is to perform work of the consultant or another subconsultant already identified in Exhibit A, an explanation of why the work is going to be transferred to a new subconsultant.
- C. District Approval of Subconsultants. The District has sole discretion in approving or rejecting proposed subconsultants. Each subcontract shall be available for review and the cost summary subject to review by the Project Manager prior to the subconsultant proceeding with the work. Before any subconsultant not already identified in the Contract can perform any work under this Contract, the District shall provide written authorization to the Consultant.

- D. Substitution of Personnel. The Consultant recognizes and agrees that if a change is made substituting or changing assigned key personnel, the Consultant shall be responsible for any and all costs associated with "Transfer of Knowledge and Information". The Transfer of Knowledge and Information shall be defined to include the labor hours spent reviewing project documentation, participating in meetings with Project personnel, and participating in site visits to familiarize oneself with the Project and project location(s). The District shall not pay for any time spent for the "Transfer of Knowledge and Information".
1. The Consultant shall provide sufficient advance notice of any intention to remove or reassign key personnel. The Consultant shall not remove or reassign the key personnel assigned to this Project without written consent from the District. Exhibit E, Key Personnel, is a listing of key individuals for this work. Notice for the substitution of individuals and positions identified as Key Personnel shall include the following:
 - a. An explanation of the reason for the reassignment or removal;
 - b. The name of the person proposed to replace the individual; and
 - c. Identification of the experience and qualifications of the individual proposed.
 2. For individuals who are not identified as "Key Personnel" in Exhibit E, the Consultant shall provide documentation supporting the labor rate for the substituted personnel prior to submitting an invoice and the labor rate shall not exceed 110 percent of the originally assigned personnel's labor rate.
 3. District Request Removal Personnel. The Consultant shall remove from the Project any personnel or subconsultant if, after the matter has been thoroughly considered by the District and the Consultant, the District considers such removal necessary and in the best interests of the Project and so advises the Consultant in writing. In this case, the District will compensate the consultant for Transfer of Knowledge costs associated with the removal of any personnel or subconsultant.

SECTION 3: SCOPE OF WORK

- 3.1. The District hereby retains the Consultant upon the terms and conditions contained herein to perform certain work and services on the Project. The work and services for the Project to be performed by the Consultant are set forth in Exhibit A, Scope of Work, attached hereto, and incorporated herein by this reference. The general Project Schedule is also set forth in Exhibit A, attached hereto and incorporated herein by reference.
- 3.2. The District shall make available to the Consultant, without cost, copies of as-built plans, drawings, survey notes, studies, soil reports, maintenance and performance records, and other relevant data, and property descriptions of various District facilities related to the Project, which are readily available, and on file at the District. These documents are available solely as additional Information to the Consultant and do not relieve the Consultant of its duties and obligations under this Agreement nor constitute any representation or warranty by the District as to conditions or other matters related to the Project.

- 3.3. It shall be the responsibility of the Consultant to gather and become familiar with all site information including existing improvements specific to each assigned Task Order.

SECTION 4: CHANGES IN WORK

- 4.1. Any direction from the District to perform work that results in an increase or decrease in scope, changes to the Total Price or Period of Performance, or changes impacting the Scope and Budget for the project shall be made only by an amendment prior to the work being performed.
- 4.2. In the event the Consultant identifies something that may impact the scope of work, Project Schedule and/or cost, Consultant shall inform the Project Manager within five (5) business days of the event and possible impacts to scope, schedule and cost. If appropriate, the parties shall execute an amendment.
- 4.3. The District may, at any time, by written amendment direct the Consultant to make additions within the general scope of the services or work to be performed under this Agreement, delete portions of the Project, or revise portions of the work. Any changes within the general scope of work, which result in an increase or decrease in time of performance or cost, shall only be made by amendment.

SECTION 5: RESPONSIBILITY OF THE CONSULTANT

5.1. Standard of Care

- A. The Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings, specifications, reports and other services prepared or performed pursuant to this Agreement. The Consultant shall perform its work to conform to generally accepted professional standards applicable to the types of services and work provided hereunder. The Consultant shall be responsible for the professional standards, performance and actions of all persons and firms performing work pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or specific breaches of a contractual obligation in such plans, designs, drawings, specifications, reports and other services.
- B. The District's approval of plans, drawings, designs, specifications, reports and other products of the professional services rendered hereunder shall not in any way relieve the Consultant of responsibility for the technical adequacy or accuracy thereof. Neither the District's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- C. The Consultant shall be knowledgeable and familiar with the District's Construction General Conditions and any District provided Division 0 (which includes General and Supplemental conditions and Bidding Provisions) and Division 1 (General Construction Requirements). Any technical specifications drafted by the Consultant shall be consistent with these Divisions and such

technical specifications should not create any ambiguity or conflict with these Divisions.

- D. Consistent with generally accepted professional standards, the Consultant shall promptly bring to the District's attention any concerns that the Consultant has regarding the design, or any finding, conclusions, or final decisions made by the District. The Consultant shall, at the District's request, provide the District with a written evaluation of its concerns, along with proposed solutions to any identified problems.

5.2. Maintenance of Project Documentation

- A. Upon written request by the Project Manager, the Consultant shall provide the District with access to all documents and correspondence, including e-mail communications, memoranda, and all other written materials prepared or used in performance of work on this Project.
- B. The Consultant is cautioned that information and documentation submitted to the District may become a public record in accordance with the Revised Code of Washington and may not be exempt from disclosure under the Washington State Public Records Act.
- C. The Consultant acknowledges that unauthorized disclosure of information or documentation concerning this Project may cause substantial economic loss or harm to the District. Except as otherwise required by Court Order or subpoena, the Consultant shall not without prior written authorization by the General Manager allow the release, dissemination, distribution, sharing, or otherwise publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Agreement.

SECTION 6: PRODUCTS

- 6.1. In the performance of this Agreement, the Consultant shall, to the extent practicable, design and draft specifications that provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods and processes.
- 6.2. The Consultant shall not, in the performance of work under this Agreement, produce a design or specification which would require the use of structures, machines, products, materials, construction methods, equipment, or processes which the Consultant knows to be available only from a single source, unless the Consultant has provided a written justification for the use of a single source in writing and the District concurs.
- 6.3. The Consultant shall not, in the performance of work under this Agreement, produce a design or specification which would be restrictive or written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment. The Consultant shall report to the District any single source or restrictive design or specification giving the reason(s) why, in the Consultant's professional judgment, it is

necessary to restrict the design or a particular specification. The Consultant shall substantiate in writing, and to the District's satisfaction, the basis for the single source or restrictive design or specification.

- 6.4. When one or more brand names or trade names of comparable quality or utility are listed, the words "or approved equal" shall follow the brand name(s) and the salient characteristics shall be identified.

SECTION 7: COMMENCEMENT AND MONTHLY REPORTS

- 7.1. Notice to Proceed. After execution of this Agreement by the District and the Consultant, the District will issue a written notice to proceed on the Project or specific tasks thereof. Such notices to proceed will be provided for specific tasks identified as necessary to produce specified work products and shall set forth the date of commencement of the work, a description of the work to be performed, the schedule for the work authorized, and the budgets for such tasks. Upon receipt of a notice to proceed, the Consultant shall promptly commence work.
- 7.2. Monthly Reports. Unless otherwise stated in the Scope of Work, not later than the 10th day of each calendar month during the performance of the Project, the Consultant shall submit to the Project Manager, a monthly report, in a format approved by the Project Manager, sufficient to show the activities completed and the Project progress as measured against the Project Schedule and Exhibit B, Cost Summary. At a minimum the monthly report shall identify work completed, costs incurred, budget status (budget vs. estimated balance to complete), amendments, project schedule, any variance between planned vs. actual project performance, all issues that may result in completion of any task beyond the established schedule or task budget, and all issues that may result in an increase in Total Price.

SECTION 8: COMPENSATION

- 8.1. Subject to the provisions set forth in this Agreement, the District will pay the **Wilson Engineering LLC** for authorized and satisfactorily completed work and services rendered under this Agreement. No more than monthly progress payments shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case shall the total progress payment exceed the Total Price as defined herein. The amount to be paid to the Consultant shall be computed as hereinafter set forth; provided, that such payment shall not exceed a maximum amount of **One Hundred Seventeen Thousand One Hundred Sixty-Six DOLLARS (\$117,166)** ("Total Price"). In the event the Consultant incurs costs in excess of the Total Price, the Consultant shall pay such excess from its own funds and the District shall not be required to pay any part of such excess and the Consultant shall have no claim against the District on account thereof.
- 8.2. Compensation for work and services shall be based on Labor Costs (fully burdened billing rates that include wages and salaries, benefits, overhead and profit), and Other Direct Costs.

- A. Labor Costs. Direct Labor Costs shall be the total number of allowable hours worked on each Task Order by each individual multiplied by the Billing Rates identified in Exhibit B.
 - 1. Billing Rates are "fully loaded," which includes salaries, overhead, and profit.
 - 2. The District shall only pay the Billing Rate and shall not pay any premium associated with overtime.
 - 3. The parties agree to the Billing Rates as set forth in Exhibit B. Billing Rates may be subject to reasonable adjustments, but only in accordance with paragraph 8.4 below.
 - B. Other Direct Costs. Other Direct Costs ("ODC") are those costs identified within Exhibit D or any Task Order-specific scope of work which can be specifically identified with the Contract objectives, are required for performance of the Contract, are approved in advance in writing by the Project Manager, and are actually incurred.
- 8.3. Unallowable Costs. The District shall not pay for any costs or direct charges associated with or relating to the following activities:
- A. Any resubmission, changes to or adjustments in the invoices, and fixing improper invoices and the preparation and submission of monthly invoices if this cost is not included in the Consultant's overhead.
 - B. Preparation of, discussion and/or negotiation of a request for adjustments in any Billing Rate and/or Labor Escalation percentage; and
 - C. Changing or reassigning personnel or subconsultants, including but not limited to preparing requests concerning Transfer of Knowledge for Key Personnel. Exception, the District will pay for costs associated with the change or reassignment resulting from a written request from the District requesting the specific personnel or subconsultant change.
 - D. Preparation of any documentation related to, discussion of, or negotiation of equitable adjustment, disputes, claims or Section 16, Disputes and Remedies.
 - E. Meals, except when in Travel Status outside of Whatcom and Skagit counties.
- 8.4. Limitations on Changes to Labor Rates.
- A. The Consultant agrees that all Billing Rates identified in this Agreement shall be effective for the entire Contract duration, including all amendments; provided however, Billing Rates may be increased at the sole discretion of the District on an annual basis.
 - B. Billing Rate increases must be based on actual and verifiable increases in labor costs.

- C. Should the Consultant seek an adjustment in Billing Rate(s) or ODC, Consultant must notify the District in writing of its request to modify the existing rate. Consultant shall submit only one request per year that must include all individual rate increase requests. This request shall include the amount of the increase for each rate in addition to the new rate.
- 8.5. Approval of Increases by District; Adjustments in Billing Rates, and the amount of any rate increase require the approval of the General Manager. The Consultant shall provide additional information as requested by the District. The District shall review the Consultant's request for a rate increase and respond in writing to the request within sixty (60) calendar days of receipt of such request.
- 8.6. Effective Period. Any change to the Billing Rates shall not be effective until the date the General Manager approves, in writing, the increase. Rates shall not be retroactive. Only services performed after the date the General Manager approves the rate increase shall be billed at the new Billing Rate. The written approval is considered a part of the Contract documents and shall be incorporated into the Contract in the next amendment.
- 8.7. Invoice Process. The Consultant shall submit to the Project Manager an invoice for payment for work completed to the end of the previous month associated with active Project Task Orders. Such invoices shall be for work performed subsequent to that work covered by all previously submitted invoices and shall be computed pursuant to the rates and limitations set forth hereinabove.
- A. Invoices shall detail the work by task, hours and employee name and level for which payment is being requested; include copies of all invoices from authorized subconsultants for which payment is being requested; and shall itemize, and include copies of, receipts and invoices for the Other Direct Costs.
 - B. At no time shall the total cumulative amounts paid for Project work exceed the total which would be due upon the completion of all Project work multiplied by the percentage of the required work satisfactorily completed, as determined by the District.
 - C. In the event of a disputed invoice, the District shall pay the undisputed amounts and withhold from payment the disputed portion of the invoice.
- 8.8. Prompt Payment of Subconsultants. Within ten (10) business calendar days of receipt of a progress payment from the District that includes dollars for work performed by subconsultants, Consultant shall pay such subconsultants out of such amounts as are paid by the District, for all work satisfactorily completed by the subconsultant.
- 8.9. Final Payment. Final payment of any Task Order balance earned by and payment to the Consultant for Project work will be made within sixty (60) calendar days after all of the following:
- A. Satisfactory completion of all work required by this Agreement;
 - B. Receipt by the District of the plans, studies, surveys, photographs, maps, calculations, notes, reports and all other documents and/or deliverables which

are required to be prepared and submitted by the Consultant under this Agreement;

- C. Delivery of all equipment/materials purchased specifically for the Project where the District has reimbursed the Consultant for such costs;
- D. Receipt by the District of a fully executed final statement of amounts invoiced by and paid to each subconsultant under this Agreement; and,
- E. Execution and delivery by the Consultant of a release of all claims against the District arising under or by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by the Consultant from the operation of the release in stated amounts to be set forth therein.
- F. No payment, whether monthly or final, to the Consultant for any Project work shall constitute a waiver or release by the District of any claims, right or remedy it may have against the Consultant under this Agreement or by law; nor shall such payment constitute a waiver, remission or discharge by the District of any failure or fault of the Consultant to satisfactorily perform the Project work as required under this Agreement.

SECTION 9: TERMINATION OF AGREEMENT

9.1. Termination for Default

- A. The District may terminate this Agreement, in whole or in part, in writing if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the District.
- B. If the District terminates all or part of this Contract for default, the District shall determine the amount of work satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the District incurs because of the Consultant's default. In such event, the District shall consider the actual costs incurred by the Consultant in performing the Project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, whether that work is in a form or of a type which is usable and suitable to the District at the date of termination, the cost to the District of completing the work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the District of the Project work performed to the date of termination. Under no circumstances shall payments made under this provision exceed the total price set forth in active Task Orders executed under this Agreement. This provision shall not preclude the District from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.
- C. Upon receipt of a termination notice the Consultant shall at no additional cost to the District:

1. Promptly discontinue all services affected (unless the notice directs otherwise);
2. Terminate all subcontracts to the extent they relate to the work terminated; and
3. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the District all data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, Official Project Documentation and other Project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the Project where the District has paid the Consultant for such items.

D. Termination for Convenience.

1. The District may terminate this Agreement, in whole or in part, for the convenience of the District. The District shall terminate by delivery to the Consultant a Notice of Termination specifying the extent of the termination and the effective date.
2. If the District terminates this Contract for convenience, the District shall pay the Consultant only for the following items:
 - a. An amount for Labor Costs and Indirect Costs in accordance with the Contract and Exhibit B for services satisfactorily performed to the date of termination;
 - b. Actual and reasonable Other Direct Costs, as allowed under Exhibit D, incurred before the termination; and
 - c. Actual and Reasonable termination settlement costs the Consultant reasonably incurs relating to commitments which had become firm before the termination, unless the District determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants and actual reasonable accounting and clerical costs related to preparing a termination settlement proposal.
3. Upon receipt of a termination notice the Consultant shall at no additional cost to the District:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated;
 - c. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the District all data,

drawings, specifications, calculations, reports, estimates, summaries, Official Project Documentation, other Project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the Project where the District has reimbursed the Consultant for such costs;

- d. Take any action necessary, or that the District may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the District has or may acquire an interest.

SECTION 10: OWNERSHIP AND USE OF DOCUMENTS

- 10.1. Reports, studies, drawings, specifications, calculations or other information developed under the terms of this Agreement shall become the property of the District after full payment to Consultant for their preparation. Any reuse of drawings/plans, specifications and/or calculations for another project without written verification or adaptation by Consultant will be at the District's sole risk and without liability or legal exposure to Consultant. District shall defend, indemnify and hold Consultant harmless from all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting therefor. The District further acknowledges that it may receive certain materials from Consultant by way of electronic file and agrees that should it modify such materials in connection with their subsequent use, that Consultant shall bear no responsibility for the contents thereof.

SECTION 11: THIRD-PARTY CLAIMS AND DISPUTES

- 11.1. At the District's request, Consultant will assist the District in review and evaluation claims and disputes, preparing information for the District's legal counsel, providing services as witness in litigation or arbitration to which the District is a party and providing other services in connection with actual or potential claims or disputes arising out of the work, regardless of whether or not consultant is named in such legal action. The parties shall cooperate to agree on the compensation for such services. If Consultant is determined to be responsible for the claim, dispute or litigation due to its negligence or breach of the contract herein, it shall remit back to the District the amounts paid under this section to the extent of such negligence or breach.

SECTION 12: AUDIT AND ACCESS TO RECORDS

- 12.1. The Consultant, including its subconsultants, shall maintain books, records, documents, and other evidence directly pertinent to performance of the work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The District, or any of its duly authorized representatives, shall, for the purpose of audit and examination, have access to and be permitted to inspect such books, records, documents, and other evidence for inspection, audit and copying for a period of six years after completion of the Project. The District shall also have access to such books, overhead data, records and documents during the performance of Project work if deemed necessary by the District to verify work performed and Invoices, to assist in negotiations for amendments to the Agreement or modifications to tasks, and to resolve claims and disputes.

- 12.2. Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

SECTION 13: LEGAL RELATIONS

- 13.1. The Consultant shall comply, and shall ensure its subconsultants comply, with all the terms of this Agreement and the District resolutions and federal, state and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.
- 13.2. In performing work and services hereunder, the Consultant and its subconsultants, employees, agents and representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of the District in any manner whatsoever. The Consultant shall not hold itself out as, nor claim to be, an officer or employee of the District by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the District. The Consultant shall be solely responsible for any claims/costs and/or losses arising from the Consultant's failure to pay wages, compensation, benefits or taxes and/or pay for services, supplies and/or materials provided by Consultant employees, agents and representatives, including subconsultants, and will protect, defend, indemnify and hold the District harmless there from.
- 13.3. To the maximum extent permitted by law, the Consultant agrees to indemnify and save harmless the District, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, reasonable attorney fees and expenses, penalties, judgments, settlements and damages of whatsoever kind or nature arising out of, in connection with, or incident to errors or omissions in the performance of contractual obligations, and/or the negligent performance of work or services provided by or on behalf of the Consultant, except to the extent caused by the negligence of the District. The Consultant's indemnity obligation includes an obligation to (a) satisfy any judgment or other final decision of a court or other tribunal; (b) pay any reasonable settlement negotiated by the District with respect to claims that are within the scope of the indemnity obligation; and (c) pay all claims against the District by an employee or former employee of the Consultant or its subconsultants, and for this purpose, by mutual negotiation, the Consultant expressly waives, as respects the District only, all Immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. The Consultant further agrees to defend all claims against the District and its officers, agents, and employees which, if proven, could result in liability of the District, its officers, agents, or employees for loss or damage caused by any such errors, omissions, or negligent work or services performed by the Consultant. The Consultant's obligation to defend shall include timely payment of all reasonable attorney fees, costs and expenses incurred in the defense of such claims. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney fees and expenses shall be allowed to the prevailing party.
- 13.4. The District's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

- 13.5. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

SECTION 14: INSURANCE

- 14.1. Prior to execution of the Agreement, the Consultant shall file with the District certificates of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and provides that the District receives notice at least thirty (30) calendar days prior to the effective date of any policy limit or cancellation of required coverages. The Consultant shall notify the District at least thirty (30) calendar days prior to the effective date of any cancellation or reduction in coverage in the policy. Documentation of coverage shall be provided on each insurance renewal date. The Consultant shall, upon demand of The District, make available to The District at Consultant's local office in The District all such policies of insurance and the receipts of payment of premiums thereon. Failure to provide such policies of insurance within a time acceptable to The District shall entitle The District to suspend or terminate the Consultant's work hereunder, Suspension or termination of this Agreement shall not relieve the Consultant from its insurance obligation hereunder.
- 14.2. The Consultant shall obtain and maintain at a minimum the limits of insurance set forth below. By requiring such minimum insurance, the District shall not be deemed or construed to have assessed the risks that may be applicable to the Consultant under this Agreement. The Consultant shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.
- 14.3. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, is acceptable on a "claims made" form.
- 14.4. If coverage is approved and purchased on a "claims made" basis, the Consultant shall continue coverage either through (1) policy renewals for not less than seven years from the date of completion of the work which is the subject of this Agreement or (2) the purchase of an extended discovery period for not less than seven years from the date of completion of the work which is the subject of this Agreement, if such extended coverage is available.
- 14.5. If, in order to meet the requirements of this Section, the Consultant must rely on the insurance to be provided by one or more subconsultant, then such subconsultant(s) shall be required to meet all of the requirements herein applicable to the insurance they are providing, and shall include District and Consultant as additional insureds on all liability policies except Professional Liability/Errors & Omissions and Workers Compensation. The District will not make any payments on work performed by subconsultants until all insurance documentation from such subconsultants have been received and accepted by the District.
- 14.6. Consultant hereby grants to District a waiver of any right to subrogation which any insurer of said Consultant may acquire against the District by virtue of the payment of

any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received waiver of subrogation endorsement from the insurer.

14.7. The Consultant shall maintain limits no less than, for:

- A. General Liability. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$1,000,000 aggregate limit. Coverage shall be at least as broad as Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY.
- B. Professional Liability Errors and Omissions. \$2,000,000 per claim and in the aggregate.
- C. Automobile Liability. \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number (CA 00 01) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.
- D. Workers' Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.
- E. Employer's Liability or "Stop Gap". Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

14.8. Any deductibles or self-insured retentions must be declared to, and approved by, the District. The deductible and/or self-insured retention of the policies shall not limit or apply to the Consultant's liability to the District and shall be the sole responsibility of the Consultant.

14.9. The insurance policies required in this Agreement are to contain, or be endorsed to contain the following provisions:

- A. Liability Policies except Professional Liability & Errors and Omissions and Workers Compensation:
 - 1. The District, its officers, officials, employees and agents are to be covered as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant in connection with this Agreement. Such additional insured status shall include Products-Completed Operations.
 - 2. To the extent of the Consultant's negligence, the Consultant's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees and agents. Any insurance and/or self-insurance

maintained by the District, its officers, officials, employees or agents shall not contribute with the Consultant's insurance or benefit the Consultant in any way.

3. The Consultant's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
4. When Consultant's scope of work involves a vessel on or around water the policy shall include Jones Act coverage.

14.10. If at any time of the foregoing policies shall fail to meet the minimum standards above, the Consultant shall, upon notice to that effect from the District, promptly obtain a new policy, and shall submit the same to the District, with the appropriate certificates and endorsements, for approval.

SECTION 15: DISPUTES AND REMEDIES

15.1. Choice of Law. This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the Effective Date.

15.2. General Manager Review. All claims, counter-claims, disputes and other matters in question between the District and the Consultant arising out of or relating to this Agreement or the breach of it shall be referred to the General Manager or a designee for determination, together with all facts, data, contentions and so forth which relate thereto. The General Manager shall make a determination within thirty (30) calendar days of such referral.

15.3. Mediation and Arbitration. The parties will first attempt to mediate any dispute arising under or in connection with this Agreement, in accordance with the provisions of the Washington Uniform Mediation Act, Ch. 7.07 RCW. In the event such mediation is unsuccessful, any such dispute will be settled by arbitration as set forth in this Section 15.3. No legal right of action may arise out of any such dispute until arbitration has been completed. Each party, however, will have full access to the courts to compel compliance with these arbitration provisions, to enforce an arbitration award or to seek injunctive relief, whether or not arbitration is available or under way. The arbitration will take place as follows:

- A. Notice. The party demanding arbitration must give the other parties a written notice. The written notice must contain, in addition to the demand for arbitration, a clear statement of the issue or issues to be resolved by arbitration, an appropriate reference to the provision of the Agreement which is involved, the relief the party requests through arbitration, and the name and address of the arbitrator requested by the demanding party.
- B. Response. The party receiving the notice of the demand for arbitration must provide a written response to the demand within fifteen (15) days following receipt of the notice. The response must contain a clear statement of the respondent's position concerning the issue or issues in dispute and the name and address of the arbitrator it selects as the arbitrator to hear the dispute. If the parties fail to agree upon an arbitrator within five (5) days following the time

allowed for this response to the demand for arbitration, the demanding party may apply to the presiding department of the Superior Court for Whatcom County, Washington to designate the arbitrator.

- C. Arbitration. The arbitrator will meet in Bellingham, Washington, within twenty (20) days after the selection of the arbitrator and will allow each party an opportunity to submit oral and written evidence and argument concerning the issue in dispute. The arbitrator may resolve only the question or questions submitted to arbitration and must include as part of his consideration a full review of the Agreement and all material incorporated in the Agreement by reference.
 - D. Decision. The decision of the arbitrator will be final and will bind the parties.
 - E. Consent to Change. By consent of all parties to any dispute under this Agreement, the method of selection of an arbitrator or arbitrators, or even the arbitrator(s) selected, may be changed at any time.
 - F. Payment of Costs. Subject to the provisions of Section 13.3, in any arbitration, each party will pay its own costs, witness fees and attorneys' fees. The fees charged by the arbitrator and the costs of the proceeding shall be borne equally.
 - G. State Law. Except to the extent inconsistent with the terms of this Agreement, the terms and provisions of Chapter 7.04A RCW are incorporated in and made a part of this Agreement.
- 15.4. Exhaustion of Administrative Remedies. Referral to and determination by the General Manager or a designee and mediation and arbitration shall be a condition precedent to the commencement of a civil action to adjudicate such dispute.
- 15.5. Jurisdiction & Venue. Subject to these provisions herein, the Superior Court of Whatcom County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement and the laws of the state of Washington shall apply.

SECTION 16: NOTICE

- 16.1. Any notice required to be given under the terms of this Agreement shall be in writing and directed to the party at the address set forth below. Notice shall be considered issued and effective upon receipt thereof by the addressee-party.

Wilson Engineering, LLC
Attn: Melanie Mankamyer
805 Dupont Street
Bellingham, WA 98225
Phone: 360.733.6100

Lake Whatcom Water and Sewer District
Attn: Justin Clary, General Manager
1220 Lakeway Drive
Bellingham, WA 98229
Phone: 360.734.9224

SECTION 17: ENTIRETY, AMENDMENT AND EXECUTION OF AGREEMENT

- 17.1. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof and constitutes the entire agreement between the Parties.

17.2. The Contract documents included in the Agreement are identified below. Any inconsistency or conflict between the Contract documents shall be resolved by giving precedence in the following descending order of importance:

- A. Professional Services Agreement for **Flat Car Sewer Lift Station Reverse Flow Retrofit Project**, as modified by the latest amendment;
- B. Exhibit A, Scope of Work, as modified by the latest amendment;
- C. Exhibit B, Cost Summary which includes Fee Estimate and 2023 Schedule of Rates and Charges, as modified by the latest amendment;
- D. Exhibit C, Insurance;
- E. Exhibit D, Allowable Other Direct Costs; and
- F. Exhibit E, Key Personnel List

17.3. This Agreement shall be executed in two (2) counterpart copies, any of which shall be considered for all purposes as the original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective authorized officers or representatives as of the day and year written below.

Wilson Engineering, LLC

By: _____
Melanie Mankamyer, Principal

Dated: _____

Lake Whatcom Water and Sewer District

By: _____
Justin Clary, General Manager

Dated: _____

Approved as to Form

By: _____
Robert Carmichael
Attorney for Lake Whatcom Water and Sewer District

Dated: _____

EXHIBIT A

SCOPE OF WORK

Lake Whatcom Water and Sewer District Flat Car Sewer Lift Station Reverse Flow Retrofit Project

DESCRIPTION:

Lake Whatcom Water and Sewer District would like to add a permanent means to change the direction of flow from the Flat Car Sewer Lift Station. The purpose is to be able to quickly select which direction the Flat Car Sewer Lift Station discharge is directed; either to the Beaver Sewer Lift Station (normal operations), or reverse flow back to the Sudden Valley Sewer Lift Station (special operations or emergencies).

Previous work was completed under Task Order 2021-011 and included analyzing options for a permanent emergency bypass/reverse flow configuration, including phased alternatives (e.g., use trailer pump until station pumps have variable frequency drives), and also provided a conceptual design, cost estimate, and permit requirements for the preferred option.

Work under this Scope of Work will include design and permitting of the preferred option selected during the prior analysis.

SECTION A: SCOPE OF WORK

Task 1 – Project Management/Meetings/Coordination

- Prepare monthly billing, cost tracking exhibits, and progress reports.
- Conduct quarterly coordination meetings with the District.
- Coordination with Sudden Valley Community Association (SVCA).
- Coordination with District engineering and operations staff.
- Conduct project quality assurance / quality control reviews.

Task 2 – Survey and Easements

- Topographic and utility survey of both the area around the Flat Car facility and the proposed tie-in area around Old Flat Car pump station of the northeast side of Beaver Creek.
- Topographic survey of creek bed for 30-ft on either side of the proposed pipe bridge including top-of-bank, toe-of-slope, trees, and outcroppings and/or obstructions.
- Boundary determination for Area U property boundary in the vicinity of the proposed work area.
- Subdivision guarantee for the Area U property adjacent to the proposed tie-in point.
- Legal description and exhibit support for temporary easement required for construction, and modification of permanent easement (assume two).

Task 3 – Geotechnical Engineering

A temporary access agreement must be executed with the owners of Parcel 370407 445381 0000 prior to accessing the site to perform geotechnical fieldwork and test pits.

3.1 Geotechnical Engineering Services

- a. GeoEngineers Inc. (GeoEngineers) will review available information from their files, available public references, and critical areas references.
- b. Visit the site to perform a visual reconnaissance and locate the site explorations to coordinate utility locates. Submit utility location information to the Washington Utility Notification Center, as required by Washington State law, to clear utility locations prior to the explorations. Public utility locators do not check on-site utilities, and locating the on-site utilities is the responsibility of the owner. GeoEngineers does not assume liability for any damage or losses related to encountering buried utilities that have been incorrectly located or were not located at all.
- c. Drill one boring at each bridge abutment location (estimated up to 40 feet below the ground surface [bgs] or 80 feet of drilling total). GeoEngineers will subcontract a driller with a small track-mounted drill rig for one day with the following assumptions:
 1. GeoEngineers will have right-of-entry for proposed explorations, and the District will coordinate access with nearby homeowners.
 2. No additional permits are required for the completion of the explorations.
 3. The drill cuttings may be dispersed and left on site.
- d. Evaluate pertinent physical and engineering characteristics of the site soils based on laboratory tests performed on samples obtained from the borings. Laboratory testing will include moisture content, grain size analysis, and Atterberg limits, as applicable to the soil types encountered.
- e. Evaluate shallow and deep foundation alternatives and impacts. Collaborate with the design team regarding design, cost, permitting, and other considerations to help select a preferred option. GeoEngineers assumes that preliminary axial and lateral foundation loads will be provided.
- f. If shallow spread footing support is possible, provide specific design recommendations including allowable bearing pressure and settlement estimates.
- g. If pile foundations are necessary, provide pile type, recommended length, vertical and lateral capacities. GeoEngineers will coordinate with the design team regarding bridge lateral and vertical loads and perform lateral pile analysis with LPILE software or provide parameters to the bridge designer.
- h. Provide seismic design considerations including the site acceleration, code required site class, and a discussion on the risks associated with liquefaction and mitigation strategies if appropriate.
- i. Provide lateral soil pressures and lateral resistance parameters for subsurface elements and abutments.
- j. Provide recommendations for earthwork including overexcavation and placement of structural fill for foundation elements, use of on-site soils for structural fill, imported soils, and compaction criteria.
- k. Provide an evaluation of site geologic hazards to meet county Critical Areas Ordinance (CAO) requirements, including an evaluation of erosion, landslide, seismic, and mine hazards in the project vicinity, and discussion mitigation measures for these hazards, as appropriate. GeoEngineers will incorporate CAO evaluation and mitigation measures into the final report.

- I. Provide a geotechnical report with conclusions and recommendations. exploration logs, a site plan, and any supporting test data will be included. The borings will be monitored by GeoEngineers geotechnical engineers or engineering geologists on a full-time basis, who will obtain samples of the various soils encountered, classify the materials, and maintain a detailed log of each exploration. The holes will be backfilled with bentonite chips, in general accordance with Washington State Department of Ecology procedures. The soil samples will be sealed and returned to GeoEngineers' laboratory for additional examination and laboratory testing, as appropriate.

3.2 Stream Stability Assessment

- a. Review Light Detection and Ranging (LiDAR) imaging, to evaluate stream characteristics such as sinuosity and entrenchment to help determine past channel processes.
- b. Visit the site to assess the stream at the crossing and within approximately 200 feet up and downstream of the crossing to ascertain dominant channel processes and observe indicators of channel stability.
- c. Provide a summary of findings and general characterization of stream stability and hazards in a brief memorandum or a section within the geotechnical report.

Task 4 – Design Development

- 4.1 Prepare 60% Design plans for District review.
- 4.2 Prepare 60% Cost Estimate for District review.
- 4.3 Prepare 90% Design plans for District review.
- 4.4 Prepare 90% Specifications for District review.
- 4.5 Prepare 90% Cost Estimate for District review.
- 4.6 Prepare Final Plans for construction.
- 4.7 Prepare Final Specifications for construction.
- 4.8 Prepare Final Cost Estimate for District review.
- 4.9 Structural Engineering: Prepare structural drawings and calculations for the bridge and foundations. Progress drawings to be provided at 30%, 60%, 100% completion. Attend coordination meetings as needed (3 assumed).

Task 5 – Permitting

- 5.1 Prepare JARPA Application and exhibits for HPA.
- 5.2 This task will include an update to the existing 2018 Critical Areas Report which is now greater than five years old and outdated. This includes a site investigation and delineation of wetlands, streams, shoreline, and habitat within this review area. Northwest Ecological Services LLC (NES) will flag the adjacent reach of Beaver Creek ordinary high-water mark consistent with state law as defined in RCW 90.58.030. During the site visit, the investigating ecologists will complete a stream characterization of basic stream attributes including depth, vegetation, substrate, and habitat features. All boundaries within the review area will be marked in the field for land surveying purposes. NES will then prepare a field sketch map showing the results of the field investigation; NES does not provide professional surveying. NES will use a GPS/GNSS receiver with reported sub-meter accuracy and 95% precision to collect waypoints around the flagged features. This geospatial data will be used to provide a map depicting the approximate locations of any flagged features drawn over an aerial photograph. This map will be suitable for use by a

professional land surveyor, should you want or need the wetlands surveyed. A technical report will be prepared that includes a description of the existing site conditions with an emphasis on vegetation, soils and hydrology, stream type, wildlife habitat, and a regulatory overview. Regulatory buffers will be determined and included in the report.

- 5.3 A mitigation report will be prepared based upon the site design provided by the District. The report will include, at a minimum, an assessment of the critical area impacts, mitigation to compensate for impacts, monitoring, maintenance and contingency planning, as may be required by the County. At this time, it is assumed that impacts will include a buffer impact and mitigation will include on-site buffer enhancement/ restoration.

Task 6 – Bidding Assistance

- 6.1 Provide bid documents to WCR Plan Center.
- 6.2 Receive and respond to contractor questions including distributing responses to other bidders.
- 6.3 Prepare addenda as needed (assume 2).
- 6.4 Conduct pre-bid conference.
- 6.5 Conduct Bid Opening and prepare Bid Tabulation.
- 6.6 Review bids and qualifications and make award recommendation.
- 6.7 Structural Engineering Bid Support: Respond to bidder questions and prepare addendum materials as needed.

Task 7 – Construction Administration

- 7.1 Construction contract administration.
- 7.2 Review equipment and materials submittals.
- 7.3 Respond to contractor questions.
- 7.4 Site visits (assume 2).
- 7.5 Prepare Record Drawings based on contractor-provided as-builts.
- 7.6 Structural Engineering Construction Support: Review submittals and inspection reports and respond to RFIs as needed.
- 7.7 Geotechnical Engineering Construction Support:
 - a. Review foundation submittal and provide email response regarding adequacy of the information provided by the contractor.
 - b. Monitor the pin pile installation to evaluate that design axial capacity is achieved based on industry standards and project requirements. GeoEngineers has planned for up to 3 part-time days in our budget for support services; the actual days required will depend on contractor's production rate, and not all piles may be observed within the allotted budget. (assumed part time as 4 hours on-site plus travel time and field report preparation.) Assist District and Contractor with mitigation recommendations, should capacity not be achieved based on the pile installation or an obstruction encountered. Should a shallow foundation option be preferred, GeoEngineers will evaluate the subgrade conditions and preparation for the footings.
 - c. Provide additional consultation as requested during construction (GeoEngineers has assumed 2 hours of Staff Engineer time and 2 hours of Associate time).

Assumptions and Limitations

- No permanent stormwater flow control, water quality, or conveyance design is required.
- No significant utility relocation is required.
- District will coordinate obtaining access permission and easements from property owners, in particular obtaining a temporary access agreement with the owners of Parcel 370407 445381 0000.
- District will coordinate with SVCA for any permits needed for geotechnical explorations / drilling.
- Geotechnical drill cuttings may be dispersed and left on site.

SECTION B: APPROVED SUBCONSULTANTS

The following are approved Subconsultants to Wilson Engineering, LLC for work performed under the Flat Car Sewer Lift Station Reverse Flow Retrofit Project:

- GeoEngineers.Inc.
- Northwest Ecological Services LLC

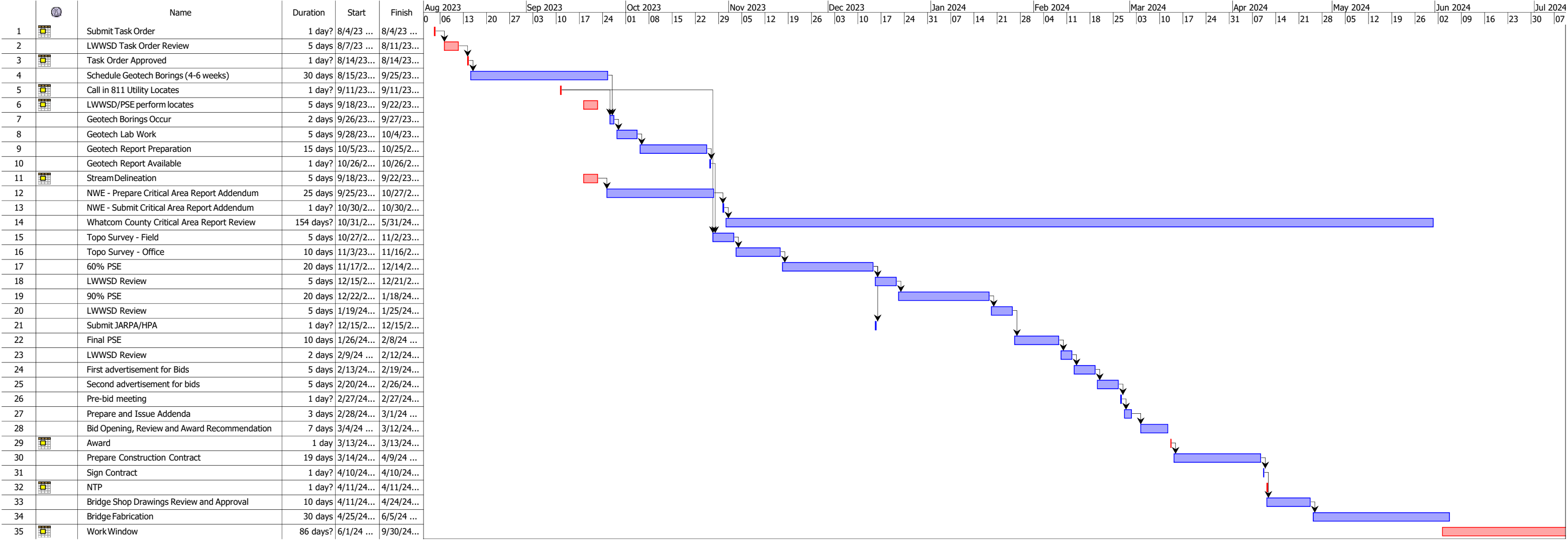


EXHIBIT B

COST SUMMARY

Lake Whatcom Water and Sewer District Flat Car Sewer Lift Station Reverse Flow Retrofit Project

Project Total Price (time & materials not to exceed):

Task 1 - Project Management/Meetings/Coordination	\$3,576
Task 2 - Survey & Easements	\$16,770
Task 3 - Geotechnical Engineering	\$20,412
Task 4 - Design Development	\$35,448
Task 5 - Permitting	\$21,164
Task 6 - Bidding Assistance	\$3,870
Task 7 - Construction Administration	\$15,886
Total =	\$117,166

LAKE WHATCOM WATER AND SEWER DISTRICT

Flat Car Pump Station Emergency Bypass/Reverse Flow Retrofit Project

Prepared by: M. Mankamy, P.E., Wilson Engineering LLC

Prepared for: Justin Clary, P.E., LWWSD General Manager

Proposal No.: 2023-001; Task Order 003

Date: August 24, 2023

Task Description	Direct Expense	Subconsultant Expense (Kingworks)	Subconsultant Expense (GeoEngineers)	Subconsultant Expense (N.W.Ecological)	Principal Engineer	Senior Engineer	Engineer III	Senior CAD Design Technician	Senior Professional Land	Senior Survey Technician	2-Person Survey Crew	
Rate (\$/hr) =	L.S.	L.S.	L.S.	L.S.	\$192	\$186	\$162	\$122	\$184	\$136	\$240	
Task 1: Project Management / Meetings / Coordination												
1.1 Track and report progress & expenditures monthly					8							\$ 1,536
1.2 Kick-off Meeting						2	2					\$ 696
1.3 Progress Meetings						2	6					\$ 1,344
Sub-Total	\$ -	\$ -	\$ -	\$ -	8	4	8	0	0	0	0	\$ 3,576
Task 2: Survey & Easements												
2.1 Topographic & Utility Survey around Flat Car Pump Station	\$ 1,080								2	4	10	\$ 4,392
2.2 Topographic & Utility Survey around Old Flat Car									2	4	10	\$ 3,312
2.3 Boundary Determination of Area U property in vicinity of project									8	4	8	\$ 3,936
2.4 Subdivision Guarentee for Area U property adjacent to tie in	\$ 650									1		\$ 786
2.5 Legal Description and Exhibit Support for Temp and Permanent Easements (assume 2)						2	2		8	16		\$ 4,344
Sub-Total			\$ -	\$ -	0	2	2	0	20	29	28	\$ 16,770
Task 3: Geotechnical Engineering												
3.1 Geotechnical Engineering Services			\$ 17,604				2					\$ 17,928
3.2 Stream Stability Assessment			\$ 2,160				2					\$ 2,484
Sub-Total			\$ 19,764		0	0	4	0	0	0	0	\$ 20,412
Task 4: Design Development												
4.1 60% Plans						2	20	12				\$ 5,076
4.2 60% Estimate						2	8					\$ 1,668
4.3 90% Plans						2	16	16				\$ 4,916
4.4 90% Specifications						4	16					\$ 3,336
4.5 90% Estimate						2	10					\$ 1,992
4.6 Final Plans						4	12	16				\$ 4,640
4.7 Final Specifications						4	12					\$ 2,688
4.8 Final Estimate						2	8					\$ 1,668
4.9 Structural Engineering		\$ 9,180					2					\$ 9,504
Sub-Total					0	22	104	44	0	0	0	\$ 35,488
Task 5 - Permitting												
5.1 JARPA/HPA Application						2	4	4				\$ 1,508
5.2 Critical Area Assessment Update				\$ 1,566			4					\$ 2,214
5.3 Mitigation Plan				\$ 4,320			2					\$ 4,644
5.4 Coordination (NW Ecological)				\$ 3,132			4					\$ 3,780
Sub-Total				\$ 9,018	0	2	14	4	0	0	0	\$ 21,164
Task 6 - Bidding Assistance												
6.1 Provide Bid Documents to WCR Plan Center							1					\$ 162
6.2 Respond to Bidder Inquiries						1	2					\$ 510
6.3 Addenda (assume 2)						1	4					\$ 834
6.4 Conduct Prebid Conference						2	6					\$ 1,344
6.5 Conduct Bid Opening							2					\$ 324
6.6 Review bids and qualifications, and award recommendation						2	2					\$ 696
6.7 Structural Engineering Bid Support		\$ 864				2	2					\$ 1,560
Sub-Total					0	6	17	0	0	0	0	\$ 3,870
Task 7 - Construction Administration												
7.1 Construction Contract Administration						4	16					\$ 3,336
7.2 Reiew Equipment and Materials Submittals						1	4					\$ 834
7.3 Respond to Contractor questions						1	4					\$ 834
7.4 Site Visit (assume 2)							12					\$ 1,944
7.5 Record (as-built) Drawings						1	2	8				\$ 1,486
7.6 Structural Engineering Construction Support		\$ 2,916										\$ 2,916
7.7 Geotechnical Engineering Construction Support			\$ 4,536									\$ 4,536
Sub-Total					0	7	38	8	0	0	0	\$ 15,886
Project Total	\$ 1,730	\$ 12,960	\$ 24,300	\$ 9,018	8	45	189	56	20	29	28	\$ 117,166

Assumptions:

\$ 44,992

EXHIBIT C

INSURANCE

**Lake Whatcom Water and Sewer District
Flat Car Sewer Lift Station Reverse Flow Retrofit Project**

[insert certificates of insurance per Section 14]



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/2/2021

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 have ADDITIONAL INSURED provisions or 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 Hall & Company 19660 10th Ave NE Poulsbo WA 98370	CONTACT NAME: Jim Ledbetter PHONE (A/C, No, Ext): 360-626-2019 E-MAIL ADDRESS: jledbetter@hallandcompany.com FAX (A/C, No): 360-598-3703
INSURED Wilson Engineering LLC 805 Dupont Street, Suite 7 Bellingham WA 98225	INSURER(S) AFFORDING COVERAGE INSURER A: NAVIGATORS INSURANCE COMPANY INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 1223679628**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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N <input checked="" type="checkbox"/> N / A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liab; Claims Made			CM21DPLZ08BC0IV	6/1/2021	6/1/2022	Per Claim Aggregate \$2,000,000 \$4,000,000

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

Project ID: 2021-001
Project Name: A2101 On-Call General Engineering Services

CERTIFICATE HOLDER**CANCELLATION**

Lake Whatcom Water and Sewer District
1220 Lakeway Drive
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

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/03/2021

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 have **ADDITIONAL INSURED** provisions or 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 Rice Insurance LLC 1400 Broadway P.O. Box 639 Bellingham WA 98227	CONTACT NAME: Rita Larsen PHONE (A/C, No, Ext): (360) 734-1161 E-MAIL ADDRESS: rita@riceinsurance.com FAX (A/C, No): (360) 734-1173
INSURED Wilson Engineering LLC 805 Dupont St Bellingham WA 98225	INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Accident and Indemnity Company INSURER B: Alaska National Insurance Co. INSURER C: INSURER D: INSURER E: INSURER F:
	NAIC # 29424 38733

COVERAGES**CERTIFICATE NUMBER:** CL2121780525**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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	52SBAAE2077	03/10/2021	03/10/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			52UECCD0116	03/10/2021	03/10/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Medical payments \$ 10,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			52SBAAE2077	03/10/2021	03/10/2022	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ PER STATUTE OTH-ER
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N	N / A	52SBAAE2077 - WA Stop Gap	03/10/2021	03/10/2022	E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	USL&H			21AWU08617	01/13/2021	01/13/2022	Each Accident 100,000 Disease Policy Limit 500,000 Disease Each Employee 1000,000

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

RE: 2021-001 A2101 On-Call General Engineering Services

Lake Whatcom Water and Sewer District is named Additional Insured, Waiver of Subrogation and Primary Non Contributory and Completed Operations per attached forms SS 00 08 04 05 and HA 99 16 03 12.

CERTIFICATE HOLDER**CANCELLATION**

Lake Whatcom Water and Sewer District 1220 Lakeway Drive 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
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is a partnership or joint venture,
 - (b) That is an "insured" under any other policy,
 - (c) That has exhausted its Limit of Insurance under any other policy, or
 - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (1) The agreement requires you to provide direct primary insurance for the lessor and
 - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

D. Additional Insured if Required by Contract

- (1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:
 - f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - OF SECTION IV - BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

E. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

2. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

- a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

9. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

14. HIRED AUTO - COVERAGE TERRITORY

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

- e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

- c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

- a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.
- b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

19. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

BUSINESS LIABILITY COVERAGE FORM

**QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY**

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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **C.** - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G.** - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (b) The "bodily injury" or "property damage" occurs during the policy period; and

- (c) Prior to the policy period, no insured listed under Paragraph 1. of Section **C.** - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- (2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section **C.** - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

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- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES

Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:
- (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
- (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph **1.b.(b)** of Section **B.** – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph (6) above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

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g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

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o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

- (a) An "advertisement" for others on your web site;
- (b) Placing a link to a web site of others on your web site;
- (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
- (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions **c.** through **h.** and **k.** through **o.** do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance.

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2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees And Volunteer Workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;

- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or

- (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a)** Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

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contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
 - (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In connection with your premises; or
 - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
 This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
 - (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
 - (a) In the performance of your ongoing operations;
 - (b) In connection with your premises owned by or rented to you; or
 - (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
 - "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance**.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions**.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

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This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision – Permits

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1)** "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2)** "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a.** WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b.** The insurance afforded to the vendor is subject to the following additional exclusions:

- (1)** This insurance does not apply to:
 - (a)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b)** Any express warranty unauthorized by you;
 - (c)** Any physical or chemical change in the product made intentionally by the vendor;
 - (d)** Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e)** Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f)** Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g)** Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h)** "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i)** The exceptions contained in Subparagraphs **(d)** or **(f)**; or

- (ii)** Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2)** This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a.** Their financial control of you; or
- b.** Premises they own, maintain or control while you lease or occupy these premises.

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This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in **a.** above;
 - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D. – Liability and Medical Expenses Limits of Insurance.**
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph **f.** does not include that part of any contract or agreement:

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- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
- (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.**
- 19. "Products-completed operations hazard";**
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20. "Property damage" means:**
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:**
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.**
- 23. "Volunteer worker" means a person who:**
- a. Is not your "employee";

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- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.

EXHIBIT D

ALLOWABLE OTHER DIRECT COSTS Lake Whatcom Water and Sewer District Flat Car Sewer Lift Station Reverse Flow Retrofit Project

Subdivision guarantee and private utility locates, as needed. Fee included in Task subtotal.

EXHIBIT E

KEY PERSONNEL LIST

**Lake Whatcom Water and Sewer District
Flat Car Sewer Lift Station Reverse Flow Retrofit Project**

Wilson Engineering

Key Personnel


9/5/2023

Dept.	Name	Title
Civil Engineering	Andrew Law, PE	President
	Jeff Christner, PE	Senior Project Manager, Principal
	Melanie Mankamyer, PE	Senior Project Manager, Principal
	Michael Matthes, PE	Senior Project Manager, Principal
	Curt Schoenfelder, PE	Senior Project Manager, Principal
	Liz Sterling, PE	Senior Project Manager, Principal
	Scott Wilson, PE	Senior Project Manager, Principal
	Danielle Johnston, PE, LEED AP	Senior Project Manager
	Rhett Winter, PE, LEED AP	Senior Project Manager
	Ben Gibson, PE, LEED AP	Project Engineer
	Bill Hunter, PE	Project Engineer
	Mathew Kulp, PE	Project Engineer
	Brian Smith, PE	Project Engineer
	Tracy Svanda, PE	Project Engineer
	Kenna Wurden-Foster, PE	Project Engineer
	Tom Gagliardi, EIT	Design Engineer
	Eric Hull, EIT	Design Engineer
	Jeff Smith	CAD Manager/Inspector
	Cheri Pendarvis	CAD Technician
	Benton Seay	CAD Technician
	Steve Elliott	Inspector
Land and Hydrographic Survey	Tom Brewster, PLS	Survey Manager, Principal
	Paul Darrow, PLS	Senior Project Surveyor
	Joe Hertzog, LSIT	Senior Survey Technician
	Bruce Raper	Senior Survey Technician
	Colette McNabb	Survey Technician
	Renny Beal	Survey Technician
	Colin Hopps	Survey Technician
Administrative Staff	Anthony Cavender	Marketing Coordinator
	Diana McLean	Accounting Manager
	Analise Bos	Marketing Development Manager
	Tom Dorr	Business Development Manager



**AGENDA
BILL
Item 8**

**General Manager's
Report**

DATE SUBMITTED:	September 7, 2023	MEETING DATE:	September 13, 2023
TO: BOARD OF COMMISSIONERS	FROM: Justin Clary, General Manager		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. General Manager's Report		
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.



LAKE WHATCOM WATER AND SEWER DISTRICT

General Manager's Report

Upcoming Dates & Announcements

Regular Meeting – Wednesday, September 13, 2023 – 6:30 p.m.

Important Upcoming Dates

Lake Whatcom Water & Sewer District			
Regular Board Meeting	Wed Sep 27, 2023	8:00 a.m.	Board Room/Hybrid
Employee Staff Meeting	Thu Sep 14, 2023	8:00 a.m.	Board Room/Hybrid Commissioner Holland to attend
Investment Comm. Meeting	Wed Nov 29, 2023	10:00 a.m.	Board Room/Hybrid
Safety Committee Meeting	Thur Sep 28, 2023	8:00 a.m.	Board Room
Lake Whatcom Management Program			
Policy Group Meeting	Wed Dec 6, 2023	3:00 p.m.	City of Bellingham Fireplace Room 625 Halleck Street/Hybrid
Joint Councils Meeting	March 2024	TBD	TBD
Other Meetings			
WASWD Section III Meeting	Thur Sep 21, 2023	7:00 a.m.	WASWD Fall Conference Clearwater Casino Resort
Whatcom Water Districts Caucus Meeting	Wed Sep 20, 2023	2:00 p.m.	Remote Attendance
Whatcom County Council of Governments Board Meeting	Wed Oct 11, 2022	3:00 p.m.	Council of Governments Offices 314 E Champion Street/Hybrid

Committee Meeting Reports

Safety Committee:

- The committee met on August 31; discussion included status of respirator fit testing, findings of jobsite inspections conducted over the past month, and status of safety programs currently under review.

Investment Committee:

- No committee meeting has been held since the last board meeting.

Upcoming Board Meeting Topics

- Facilities security assessment professional services agreement approval
- 2023-24 Budget Amendment No. 1 adoption
- Division 7 reservoir replacement project free falling contract approval
- General Manager annual performance evaluation

2023 Initiatives Status

Administration and Operations

Performance Management

- Explore various approaches to performance management (PerformanceStat, Lean/Six Sigma, etc.) for implementation in coming years (Six-Year Strategic Business Plan goal).
J Clary is in the process of conducting calls with other local government managers that have implemented performance management processes to gain lessons learned prior to initiating the District's analysis.

Operations Manager Support

- To facilitate the success of Jason Dahlstrom in his new role as O&M Manager, devote more time to coordinating and assisting Mr. Dahlstrom than has been recently provided to this position.
Monthly one-on-one check-in meetings are scheduled throughout 2023; attended the Evergreen Rural Water Assoc. annual conference; registered to participate in the NW Public Works Institution program; approval granted to pursue personnel management training through the APWA emerging leaders academy.

Records Management System Overhaul

- Implement new records management system (Six-Year Strategic Business Plan goal).
The District contracted with an enterprise content management (ECM) expert that identified the most-applicable records management system for the District. Executed interlocal agreement for purchase of preferred system WISPC; staff is considering a revised proposal from FreeDoc consultant received on August 18 relative to available funding.

Safety Program Update

- Continue systematic review and revision of District's safety programs by updating eight programs in 2023.
The safety committee has finalized updates to four (4) programs (hand & power tools, flagging & traffic control, securing loads, and accident investigation) and is reviewing the construction equipment, and welding, cutting, and brazing programs.

Capital Improvement Program Support

- Support the Engineering Department through management of specific capital improvement project(s).
Due to workload issues within the Engineering Department, the general manager has taken on a support role (either in the form of project manager or providing technical support) for several District capital improvement projects.

Emergency Response/System Security

Emergency Readiness

- Continue use of Whatcom County Department of Emergency Management services to hold tabletop and/or field emergency response field exercises.
A field exercise was conducted May 17 (facilitated by Whatcom County personnel). Staff attended a meeting on August 16 regarding participating agency status in implementation of the actions defined in the Whatcom County Natural Hazards Mitigation Plan.

Cybersecurity Assessment

- Hire an IT-service provider to perform a third-party assessment of the District's vulnerability to cybercriminal attack.

A USEPA-provided confidential cybersecurity assessment of the District's systems was completed in 2022. The District's IT consultant has reviewed the assessment and provided response to each action identified in the assessment (either as already completed or means necessary to complete). J Clary is coordinating the prioritization of action implementation with the consultant.

Business Continuity Plan

- Develop a District-specific business continuity plan following FEMA guidance that leads District transition from emergency response (District Emergency Response Plan) to return to normal operation following a disruptive event.

A draft of the plan is under preparation.

Community/Public Relations

General

- Website
The District's web content is reviewed and updated on a regular basis.
- Social Media
Posts are made to District Facebook, LinkedIn, and Nextdoor (new) pages regularly; Nextdoor is also regularly monitored for District-related posts.
- Press Releases
Press releases were issued on January 26 (District's clean audit), March 29 (Commissioner Abele's resignation), April 13 (Commissioner Holland's appointment), May 11 (Kevin Cook's Commitment to Excellence award), and July 20 (Lake Louise Rd forcemain wastewater overflow).

Intergovernmental Relations

- *J Clary is scheduled to attend a WASWD webinar on September 11 regarding PFAS settlement.*
- *J Clary and B Ford are scheduled to meet with Bellingham mayor candidate Kim Lund on September 11.*
- *J Clary and B Ford are scheduled to meet with Whatcom County executive candidate Dan Purdy on September 11.*

Lake Whatcom Water Quality

Lake Whatcom Management Program

- Participate in meetings of Lake Whatcom Management Program partners.
J Clary met with Whatcom County and City of Bellingham staff on August 29 in coordination of the upcoming policy group meeting and attended the policy group meeting on September 6.