



Lake Whatcom Water & Sewer District Board Meeting Access Information

Next Meeting:

Wed May 8, 2024
6:30 p.m.

Meeting Access

Meetings are held in person at our Administrative offices at 1220 Lakeway Drive in Bellingham. If you prefer to attend remotely, access information is below.

Join the meeting from your computer, tablet smartphone:

<https://meet.goto.com/lwwsd/boardmeeting>

You can also dial in using your phone.

Call: +1 (224) 501-3412 Access Code: 596-307-141

*Press *6 to mute/unmute your microphone*

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<https://meet.goto.com/install>

Attending a Meeting

Lake Whatcom Water & Sewer District's regular Board meetings take place on the second Wednesday of each month at 6:30 pm and the last Wednesday of each month at 8:00 am.

Meetings are open to the public per the Open Public Meetings Act.

All meetings are hybrid, available in person or online. 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 your display name to "Observation Only."

Public Comment Periods

Public comment periods are built in to the agenda, one near the beginning of the meeting and one near the end.

Commissioners will listen, but will not respond or engage in dialogue during the comment period. Direct questions or requests are noted by staff for follow-up.

For the sake of time, and to leave plenty of time for scheduled agenda items, public comments are limited to 3 minutes per person and 45 minutes per comment period.

Comments may be submitted at any time through mail, email, our online contact form, or by phone.

For more information about communicating with the Board of Commissioners, [please visit our website!](#)



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.



LAKE WHATCOM WATER AND SEWER DISTRICT

1220 Lakeway Drive
Bellingham, WA 98229

REGULAR MEETING OF THE BOARD OF COMMISSIONERS

AGENDA

May 8, 2024


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. Rocky Ridge/Lakewood Sewer Lift Stations Improvements Project Public Works Contract Award
 - B. Rocky Ridge/Lakewood Sewer Lift Station Improvements Project Professional Services Agreement Amendment No. 4
 - C. Sudden Valley Water Treatment Plant Chlorine Contact Basin Replacement Project Hazard Mitigation Grant No. D24-048-Revised Approval
 - D. Sudden Valley Water Treatment Plant Chlorine Contact Basin Replacement Design and Permitting Professional Services Agreement Approval
7. OTHER BUSINESS
8. STAFF REPORTS
 - A. General Manager
9. PUBLIC COMMENT OPPORTUNITY
10. ADJOURNMENT



**AGENDA
BILL
Item 5**

Consent Agenda

DATE SUBMITTED:	May 2, 2024	MEETING DATE:	May 8, 2024
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 05.08.2024****

BACKGROUND / EXPLANATION OF IMPACT

- Minutes for the 4.24.24 Regular Board Meeting
- Payroll for Pay Period #9 (04.13.2024 through 04.26.2024) totaling \$47,339.85
- Benefits for Pay Period #9 totaling \$54,790.74
- 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 2023-2024 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.”



1220 Lakeway Dr • Bellingham, WA 98229

REGULAR SESSION OF THE BOARD OF COMMISSIONERS

Minutes

April 24, 2024

Board President Todd Citron called the Regular Session to order at 8:00 a.m.

Attendees:	Commissioner Todd Citron (v)	General Manager Justin Clary
	Commissioner John Carter (v)	Engineering Manager Greg Nicoll
	Commissioner Bruce Ford	Finance Manager Jenny Signs
	Commissioner Jeff Knakal	Operations Manager Jason Dahlstrom
	Commissioner David Holland	Recording Secretary Rachael Hope

Attendees noted with a (v) attended the meeting virtually.

Changes to Agenda

At the request of staff, item 6.B, Notice of SMP Bond Rating Withdrawal, was added to the agenda.

Consent Agenda

Action Taken

Knakal moved, Holland seconded, approval of:

- **Minutes for the 3.27.24 Regular Board Meeting**
- **Minutes for the 4.10.24 Regular Board Meeting**
- **Payroll for Pay Period #8 (03.31.2024 through 04.12.2024) totaling \$47,325.69**
- **Benefits for Pay Period #8 totaling \$53,817.44**
- **Accounts Payable vouchers totaling \$133,548.95**

Motion passed.

Commissioner Insurance Discussion

Clary recalled that under section 57.08.100 of the Revised Code of Washington (RCW), which governs the District, water/sewer districts are given the option of providing health insurance to commissioners. District employees are currently provided health insurance through Washington State's Public Employees Benefit Board (PEBB) Program. The Board last discussed whether to extend health insurance coverage to commissioners in 2019, at which time the Board opted to conclude consideration without formal action.

A District commissioner recently inquired if they may acquire insurance through the District's plan if they agree to pay the full premium. PEBB representatives indicated that commissioners may participate by amending the District's current contract with PEBB to add commissioners as a separate

“group,” even if participation is not by all five commissioners. Discussion followed, and the Board directed staff to return at a future date with a proposed policy for consideration.

Notice of SMP Bond Rating Withdrawal

Signs explained that on April 10, 2024, staff became aware that the District’s bond rating had been withdrawn by S&P Global Ratings on April 8. The notice stated that the withdrawal was due to S&P not being able to obtain the District’s 2022 state financial audit in a timely manner. Following the notice, staff learned that S&P has been issuing warnings to the Washington State Auditor’s Office that they would start withdrawing bond ratings of local governments within the state of Washington if they did not complete audits in a timelier manner. The District was one of five other agencies within the state of Washington to have their rating withdrawn. Signs provided background information about the purpose of the bond rating and potential impacts of the withdrawal, as well as options moving forward. Discussion followed.

General Manager’s Report

Clary updated the Board on several topics, including next week’s Division 7 Reservoir groundbreaking event, planning for an upcoming Emergency Response drill this summer facilitated by the WEMD, progress on the 2024 Salary Survey, and recent interest in the Lake Whatcom Management Program. Discussion followed.

Engineering Department Report

Nicoll highlighted several projects, including scheduling for the Division 7 Reservoir Replacement Project, Geneva Reservoir & SVWTP Pump Station RFQs received, and easement acquisition and bid opening for the Rocky Ridge & Lakewood Sewer pump stations. Discussion followed.

Finance Department Report

Signs’ report focused on the first quarter 2024 financial report, including purchase of Waterworth financial planning software, transition of the District’s billing cycles, and interest revenue received in first quarter that exceeded expectations. Signs recognized District employees Trish Gilmore and Miguel Gillis for work done to reduce shutoffs due to non-payment.

Operations & Maintenance Department Report

Dahlstrom reported on field crew operations, including 100% completion of annual safety training by staff, no time loss injuries, completion of railing installation on one of District’s reservoirs. Both plants operating as they should be, progress on EPA lead service line inventory, anticipation of new sewer van camera delivery, and potential erosion & sediment control training for staff.

With no further business, Citron adjourned the regular session at 9:15 a.m.

Board President, Todd Citron

Attest: _____
Recording Secretary, Rachael Hope

Minutes approved by motion at Regular Special Board Meeting on _____

CHECK REGISTER

Lake Whatcom W-S District

Time: 13:41:40 Date: 04/29/2024

05/02/2024 To: 05/02/2024

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
1269	05/02/2024	Payroll	5	EFT		3,745.71	04/13/2024 - 04/26/2024 PR 09
1270	05/02/2024	Payroll	5	EFT		2,775.85	04/13/2024 - 04/26/2024 PR 09
1271	05/02/2024	Payroll	5	EFT		3,507.85	04/13/2024 - 04/26/2024 PR 09
1272	05/02/2024	Payroll	5	EFT		3,097.08	04/13/2024 - 04/26/2024 PR 09
1274	05/02/2024	Payroll	5	EFT		2,041.69	04/13/2024 - 04/26/2024 PR 09
1275	05/02/2024	Payroll	5	EFT		3,181.42	04/13/2024 - 04/26/2024 PR 09
1276	05/02/2024	Payroll	5	EFT		2,456.49	04/13/2024 - 04/26/2024 PR 09
1277	05/02/2024	Payroll	5	EFT		2,379.34	04/13/2024 - 04/26/2024 PR 09
1278	05/02/2024	Payroll	5	EFT		2,764.34	04/13/2024 - 04/26/2024 PR 09
1279	05/02/2024	Payroll	5	EFT		2,620.53	04/13/2024 - 04/26/2024 PR 09
1280	05/02/2024	Payroll	5	EFT		3,298.55	04/13/2024 - 04/26/2024 PR 09
1281	05/02/2024	Payroll	5	EFT		1,523.62	04/13/2024 - 04/26/2024 PR 09
1282	05/02/2024	Payroll	5	EFT		2,341.42	04/13/2024 - 04/26/2024 PR 09
1283	05/02/2024	Payroll	5	EFT		3,751.15	04/13/2024 - 04/26/2024 PR 09
1284	05/02/2024	Payroll	5	EFT		2,182.45	04/13/2024 - 04/26/2024 PR 09
1285	05/02/2024	Payroll	5	EFT		4,031.00	04/13/2024 - 04/26/2024 PR 09
1273	05/02/2024	Payroll	5	15213		1,641.36	04/13/2024 - 04/26/2024 PR 09
						13,095.26	
						34,244.59	
						47,339.85 Payroll:	47,339.85

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 4/29/2024
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 May 7, 2024
Date Approved

CHECK REGISTER

BENEFITS

Lake Whatcom W-S District

Time: 11:42:02 Date: 05/01/2024

05/02/2024 To: 05/02/2024

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
1286	05/02/2024	Payroll	5	EFT	DEPARTMENT OF RETIREMENT SYSTEMS	5,592.50	Pay Cycle(s) 05/02/2024 To 05/02/2024 - DCP; Pay Cycle(s) 05/02/2024 To 05/02/2024 - ROTH DCP
1287	05/02/2024	Payroll	5	EFT	UNITED STATES TREASURY	17,498.54	941 Deposit for Pay Cycle(s) 05/02/2024 - 05/02/2024
1288	05/02/2024	Payroll	5	EFT	WA ST PUBLIC EMP RET PLAN 2	8,590.22	Pay Cycle(s) 05/02/2024 To 05/02/2024 - PERS 2
1289	05/02/2024	Payroll	5	EFT	WA ST PUBLIC EMP RET PLAN 3	3,301.65	Pay Cycle(s) 05/02/2024 To 05/02/2024 - PERS 3
1290	05/02/2024	Payroll	5	EFT	WA ST SUPPORT ENFORCEMENT REGISTRY		DRS credited to wrong vendor
1308	05/02/2024	Payroll	5	EFT	WA ST SUPPORT ENFORCEMENT REGISTRY	897.64	Pay Cycle(s) 05/02/2024 To 05/02/2024 - SUP ENF
1291	05/02/2024	Payroll	5	15214	AFLAC	354.85	Pay Cycle(s) 05/02/2024 To 05/02/2024 - AFLAC PRE-TAX; Pay Cycle(s) 05/02/2024 To 05/02/2024 - AFLAC POST-TAX
1292	05/02/2024	Payroll	5	15215	AFSCME LOCAL	334.80	Pay Cycle(s) 05/02/2024 To 05/02/2024 - UNION DUES; Pay Cycle(s) 05/02/2024 To 05/02/2024 - UNION FUND
1293	05/02/2024	Payroll	5	15216	HRA VEBA TRUST (PAYEE)	560.00	Pay Cycle(s) 05/02/2024 To 05/02/2024 - VEBA
1294	05/02/2024	Payroll	5	15217	WA ST HEALTH CARE AUTHORITY	17,660.54	Pay Cycle(s) 05/02/2024 To 05/02/2024 - PEBB MEDICAL; Pay Cycle(s) 05/02/2024 To 05/02/2024 - PEBB ADD LTD; Pay Cycle(s) 05/02/2024 To 05/02/2024 - PEBB SMK Surcharge; Pay Cycle(s) 05/02/2024 To 05/02/2024

401 Water Fund
402 Sewer Fund

40,461.31
14,329.43

54,790.74 Payroll: 54,790.74

CHECK REGISTER

BENEFITS

Lake Whatcom W-S District

Time: 11:42:02 Date: 05/01/2024

05/02/2024 To: 05/02/2024

Page: 2

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
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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 5/1/2024
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



AGENDA
BILL
Item 6.A

Rocky Ridge/Lakewood Sewer
Lift Stations Improvement
Project Public Works
Contract Award

DATE SUBMITTED:	May 2, 2024	MEETING DATE:	May 8, 2024
TO: BOARD OF COMMISSIONERS	FROM: Greg Nicoll, District Engineer		
GENERAL MANAGER APPROVAL	<i>Greg Nicoll</i>		
ATTACHED DOCUMENTS	1. Bid tabulation 2. RH2 letter regarding Red Point Construction bidder responsibility criteria compliance (pending)		
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 Lakewood and Rocky Ridge sewer lift stations are located along the southerly shore of Lake Whatcom at approximate addresses of 2460 and 2526 Lake Whatcom Boulevard, respectively. Both stations have not been significantly upgraded since their original installation in the 1970s.

This project consists of the replacement of the pumps, motors, controls and power drop at both stations.

The District published an advertisement for bids in the Bellingham Herald on March 6, 2024. A non-mandatory pre-bid meeting was held on March 26, 2024. Bids were due on April 23, 2024. Three (3) bids were received.

Staff and the District’s consultant engineer, RH2, have completed review of the mandatory and supplemental bidder responsibility criteria and determined that additional information is required to confirm that Red Point Contracting is the lowest responsive, responsible bidder. Additional information has been requested from Red Point and staff will provide the completed review and recommendation prior to the board meeting.

FISCAL IMPACT

The low bid amount is within the District’s 2023-24 adopted budget for the Lakewood/Rocky Ridge Sewer Lift Station Improvements construction contract.

The adopted 2023-24 Budget includes \$1,672,000 for the construction contract. The low bid amount is \$1,314,211.52 (including 8.8% sales tax) if all the unit price work is performed.

APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)

Product Quality

Operational Optimization

Infrastructure Strategy and Performance

RECOMMENDED BOARD ACTION

Staff recommends that the Board award the Lakewood/Rocky Ridge Sewer Lift Stations Improvement Project contract to the lowest responsible bidder, Red Point Contracting.

PROPOSED MOTION

Recommended motion is:

"I move to award the Lakewood/Rocky Ridge Sewer Lift Stations Improvement Project public works contract to Red Point Contracting for a total contract price of \$1,314,211.52, including 8.8% sales tax, and authorize the general manager to execute the contract."



BID TABULATION

PROJECT NAME	PROJECT #	BID OPENING DATE & TIME	PAGE # OF #	LOCATION
Rocky Ridge & Lakewood Pump Station Improvements	C2112	4/23/2024: 2:05 PM	1 OF 1	LAKE WHATCOM WATER & SEWER DISTRICT BOARD ROOM
NAME OF FIRM	ENGINEER'S ESTIMATE	RED POINT CONTRACTING	GARY HARPER CONSTRUCTION	FABER CONSTRUCTION

Item	Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	
SCHEDULE A - ROCKY RIDGE SEWER PUMP STATION												
A1	Mobilization / Demobilization	1	LS	\$ 85,000.00	\$ 85,000.00	NA	\$ 63,000.00	NA	\$ 60,000.00	NA	\$ 51,329.00	
A2	Sewer Pump Station Improvements	1	LS	\$ 315,000.00	\$ 315,000.00	NA	\$ 438,400.00	NA	\$ 475,000.00	NA	\$ 447,716.00	
A3	Power and Telephone Lines	600	LF	\$ 327.00	\$ 196,200.00	\$ 123.00	\$ 73,800.00	\$ 155.00	\$ 93,000.00	\$ 572.00	\$ 343,200.00	
A4	Rock Excavation Requiring Special Equipment, Including Stockpiling and/or Haul	N/A	FA	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	
A5	Trench Safety and Shoring	1	LS	\$ 1,000.00	\$ 1,000.00	NA	\$ -	NA	\$ 2,600.00	NA	\$ 3,403.00	
A6	Unscheduled Excavation	50	CY	\$ 50.00	\$ 2,500.00	\$ 88.00	\$ 4,400.00	\$ 40.00	\$ 2,000.00	\$ 47.00	\$ 2,350.00	
A7	Unscheduled Backfill	100	Ton	\$ 45.00	\$ 4,500.00	\$ 43.00	\$ 4,300.00	\$ 20.00	\$ 2,000.00	\$ 30.00	\$ 3,000.00	
A8	Miscellaneous Owner Directed Extra Work	1	LS	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	
A9	O&M Manuals and On Site Owner Training	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	
A10	Construction Records	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	
A11	HMA Driveway	52	Ton	\$ 220.00	\$ 11,440.00	\$ 585.00	\$ 30,420.00	\$ 429.00	\$ 22,308.00	\$ 288.46	\$ 14,999.92	
Total Schedule A Base Bid (does not include Washington State Sales Tax)					\$ 633,640.00		\$ 632,320.00		\$ 674,908.00		\$ 883,997.92	

SCHEDULE B - LAKEWOOD SEWER PUMP STATION												
Item	Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	
B1	Mobilization / Demobilization	1	LS	\$ 51,000.00	\$ 51,000.00	NA	\$ 56,800.00	NA	\$ 50,000.00	NA	\$ 51,329.00	
B2	Sewer Pump Station Improvements	1	LS	\$ 309,000.00	\$ 309,000.00	NA	\$ 426,095.00	NA	\$ 474,600.00	NA	\$ 463,338.00	
B3	Power and Telephone Lines	400	LF	\$ 341.00	\$ 136,400.00	\$ 175.00	\$ 70,000.00	\$ 113.00	\$ 45,200.00	\$ 251.00	\$ 100,400.00	
B4	Rock Excavation Requiring Special Equipment, Including Stockpiling and/or Haul	N/A	FA	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	
B5	Trench Safety and Shoring	1	LS	\$ 1,000.00	\$ 1,000.00	NA	\$ -	NA	\$ 2,600.00	NA	\$ 3,403.00	
B6	Unscheduled Excavation	50	CY	\$ 50.00	\$ 2,500.00	\$ 88.00	\$ 4,400.00	\$ 40.00	\$ 2,000.00	\$ 47.00	\$ 2,350.00	
B7	Unscheduled Backfill	100	Ton	\$ 45.00	\$ 4,500.00	\$ 43.00	\$ 4,300.00	\$ 20.00	\$ 2,000.00	\$ 30.00	\$ 3,000.00	

LAKE WHATCOM WATER & SEWER DISTRICT
 1220 LAKEWAY DRIVE
 BELLINGHAM, WA 982298
 (360) 734-9224



BID TABULATION

PROJECT NAME	PROJECT #	BID OPENING DATE & TIME	PAGE # OF #	LOCATION
Rocky Ridge & Lakewood Pump Station Improvements	C2112	4/23/2024: 2:05 PM	1 OF 1	LAKE WHATCOM WATER & SEWER DISTRICT BOARD ROOM
NAME OF FIRM	ENGINEER'S ESTIMATE	RED POINT CONTRACTING	GARY HARPER CONSTRUCTION	FABER CONSTRUCTION

Item	Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
B8	Miscellaneous Owner Directed Extra Work	1	LS	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00
B9	O&M Manuals and On Site Owner Training	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
B10	Construction Records	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
Total Schedule B Base Bid (does not include Washington State Sales Tax)					\$ 518,400.00	\$ 575,595.00	\$ 590,400.00	\$ 637,820.00			
Total Base Bid (does not include Washington State Sales Tax)					\$ 1,152,040.00	\$ 1,207,915.00	\$ 1,265,308.00	\$ 1,521,817.92			

BID BOND SIGNED?: (YES OR NOT)	N/A	YES	YES	YES
BID BOND RECEIVED?: (YES OR NOT)	N/A	YES	YES	YES
ADDENDUM ACKNOWLEDGED? (YES OR NO)	N/A	YES	YES	YES

Note: Highlighted cell(s) indicate math error, discrepancy with Bid Proposal Form



**AGENDA
BILL
Item 6.B**

**Rocky Ridge/Lakewood Sewer
Lift Stations Improvement
Project Professional Service
Agreement Amendment No. 4**

DATE SUBMITTED:	May 1, 2024	MEETING DATE:	May 8, 2024
TO: BOARD OF COMMISSIONERS	FROM: Greg Nicoll, District Engineer		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. RH2 Engineering, Inc. Professional Services Agreement Amendment No. 4		
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 Lakewood and Rocky Ridge sewer lift stations are located along the southerly shore of Lake Whatcom at approximate addresses of 2460 and 2526 Lake Whatcom Boulevard, respectively. Both stations have not been significantly upgraded since their original installation in the 1970s.

In 2021, the District publicly advertised a request for qualifications to design, permit and provide construction administration for a project to replace the pumps, motors, controls and power drop at both stations. The District selected and contracted with RH2 Engineering, Inc. to complete preliminary design for the project. The District subsequently issued three amendments to complete additional scopes of work:

- Amendment No. 1 – Increased the budget to provide additional land surveying services to locate and map existing buried utilities on the Rocky Ridge Lift Station site.
- Amendment No. 2 – Increased the budget to provide additional land surveying services to further establish reliable parcel and existing easement boundaries.
- Amendment No. 3 - Increased the budget to complete design and permitting for the alternative selected during the preliminary design phase of the project.

RH2 recently completed the final design plan set and bid documents and provided bid support services during the advertisement for bids for the construction phase of the project, completing the scope of work included in the existing contract. The District requires assistance from RH2 to provide field oversight, technical review and documentation during the construction phase of the project. Amendment No. 4 has been prepared to add this additional scope of work, extend the contract duration, and fund the additional services provided by RH2.

FISCAL IMPACT

The cost of proposed Professional Services Agreement Amendment No. 4 is \$99,959.00, which is accommodated within the overall construction budget.

The budget associated with the professional services agreement with RH2, including Amendment No. 4, is summarized as follows:

Phase 1 – Preliminary Design	\$ 176,085.00
Amendment No. 1	\$ 3,968.00
<i>(Additional buried utility survey)</i>	
Amendment No. 2	\$ 2,300.00
<i>(Additional parcel and easement boundary survey)</i>	
Amendment No. 3	\$ 102,561.00
<i>(Phase 2 – Design and Permitting services)</i>	
Proposed Amendment No. 4	\$ 99,959.00
<i>(Phase 3 – Construction assistance)</i>	
<hr/>	
Proposed Total Price incl. Amend. No. 4	\$ 384,873.00

APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)

- Product Quality
- Operational Optimization
- Infrastructure Strategy and Performance

RECOMMENDED BOARD ACTION

Staff recommends that the Board authorize the General Manager to execute the amendment to the professional services agreement with RH2 Engineering, Inc.

PROPOSED MOTION

Recommended motion is:

“I move to authorize the General Manager execute Amendment No. 4 to the Professional Services Agreement with RH2 Engineering, Inc. for the Rocky Ridge and Lakewood Lift Stations Improvement Project as presented.”

**AMENDMENT 4
TO
AGREEMENT FOR A/E PROFESSIONAL SERVICES
FOR
ROCKY RIDGE AND LAKEWOOD
SEWER LIFT STATION IMPROVEMENT PROJECT**

A PROFESSIONAL SERVICES AGREEMENT (“Agreement”), was made and entered into by and between Lake Whatcom Water and Sewer District, Whatcom County, Washington, hereinafter referred to as "District", and RH2 Engineering, Inc. (“Consultant”), a corporation with a place of business at 4164 Meridian Street, Suite 302, Bellingham, WA 98226, collectively referred to as "Parties", effective December 20, 2021.

WHEREAS, the District executed the Agreement with the Consultant following solicitation for professional services as required by RCW 39.80; and

WHEREAS, the District selected top-mounted replacement options for Rocky Ridge and Lakewood Sewer Pump Stations following alternatives analysis documented in the predesign report completed in July 2022; and

WHEREAS, Amendment No. 1 to the Agreement was executed between the Parties on December 20, 2022, to create an accurate survey of utility locations serving the Rocky Ridge sewer pump station; and

WHEREAS, Amendment No. 2 to the Agreement was executed between the Parties on February 21, 2023, to accurately depict identified utility easements associated with the Rocky Ridge sewer pump station on the proposed site plan to allow for determination of additional easement needs; and

WHEREAS, Amendment No. 3 to the Agreement was executed between the Parties on July 31, 2023, to complete design and permitting, preparation of bid documents and bidding support services; and

WHEREAS, all prior scoped work is nearing completion, enabling initiation of Phase 2—Design, as defined within Exhibit A attached hereto; and

WHEREAS, Consultant cost to complete the work and current billing rates are defined in Exhibit B and Exhibit C, respectively.

The Parties amend the original Agreement as follows:

SECTION 1: PERIOD OF PERFORMANCE

The original scope of work along with all additional work defined in Amendment Nos. 1, 2, 3, and 4 shall be completed by **December 31, 2024**, unless extended or terminated earlier by the District pursuant to the terms and conditions of the Agreement.

SECTION 8: COMPENSATION

The Total Price is amended to **Three Hundred Eighty-Four Thousand Eight Hundred Seventy Three DOLLARS (\$384,873).**

Phase 1 – Rocky Ridge and Lakewood Predesign	\$ 176,085
Amendment No. 1 – Supplemental Surveying for Utilities by Pacific Surveying and Engineering Subconsultant (\$3,450 + 15% RH2 Markup)	\$ 3,968
Amendment No. 2 – Existing Easement Linework by Pacific Surveying and Engineering Subconsultant (\$2,000 + 15% RH2 Markup)	\$ 2,300
Amendment No. 3 – Phase 2 – Rocky Ridge and Lakewood Design	\$ 102,561
Amendment No. 4 – <u>Phase 3 – Construction Administration</u>	<u>\$ 99,959</u>
Total Price	\$ 384,873

EXHIBITS

Exhibit A, B and C – Phase 3 — Construction Administration, Rocky Ridge and Lakewood Sewer Pump Station Improvements

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

Lake Whatcom Water and Sewer District

RH2 Engineering, Inc.

By: _____
Justin Clary, General Manager

By: _____

Printed Name: _____

Title: _____

Dated: _____

Dated: _____

EXHIBIT A
Scope of Work
Contract Amendment No. 4
Lake Whatcom Water and Sewer District
Rocky Ridge and Lakewood Sewer Pump Stations Improvements
Phase 3 – Services During Construction
April 2024

Background

RH2 Engineering, Inc., (RH2) has completed the design phase of the Rocky Ridge and Lakewood Sewer Pump Station Improvements project for the Lake Whatcom Water and Sewer District (District). The project currently is in the bidding phase, with bids anticipated to be opened in April 2024. Construction will occur in the spring and summer months. RH2 will assist District staff with services during construction (SDC) as described in this Scope of Work.

PHASE 3 – SERVICES DURING CONSTRUCTION

Assumptions

- *This Scope of Work for SDC assumes there will be one (1) contractor working on the project. Special inspections will be performed by others via direct contract with the District and are not included in this Scope of Work. District staff will be responsible for scheduling special inspections.*
- *RH2 is not responsible for site safety, or for determining means and methods or directing the contractor or others in their work.*
- *RH2 will perform the services described up to the amounts included in the attached Fee Estimate. If additional effort is needed, that extra work will be mutually determined by the District and RH2.*
- *Deliverables will be submitted in electronic format (PDF) unless otherwise noted.*

Task 1 – Temporary Construction Easements

Objective: Assist the District with obtaining temporary construction easements (TCEs) for the project.

Approach:

- 1.1 Prepare draft TCEs. Attend four (4) meetings with property owners to discuss TCEs. Coordinate with District staff during the easement negotiation process and revise TCEs as requested. Prepare one (1) project addendum.

RH2 Deliverables:

- One (1) addendum.
- TCE maps

Task 2 – Construction Contract Administration

Objective: Organize, manage, and coordinate RH2’s engineering disciplines. Selectively support the District during the construction phase.

Approach:

- 2.1 Coordinate and attend a pre-construction meeting that will include the District, RH2, and the contractor. Provide agenda and minutes in electronic format (MS Word).
- 2.2 Attend construction meetings every two (2) weeks with involved parties at the District office or project site. Prepare and distribute meeting minutes. Coordinate with the District’s personnel throughout the construction phase, as requested. *Twelve (12) hours of RH2’s time is assumed for this effort. Additional effort, as needed, will be mutually determined between RH2 and the District.*
- 2.3 Respond to requests for information (RFIs) submitted by the contractor. Respond to technical questions posed by the contractor. *Eight (8) hours of RH2’s time is assumed for this effort. Additional effort, as needed, will be mutually determined between RH2 and the District. The District will lead this effort and RH2 will assist.*
- 2.4 Complete project management review, including schedule, budget, and monthly invoices.

District Responsibilities and Products:

- Coordinate delivery of construction plans and specifications to the contractor and District. *It is assumed that production of the plans will be completed by Applied Digital Imaging and paid for directly by the District, separate from this Contract Amendment No. 4.*
- Review monthly invoices and provide ongoing progress and scheduling communication.

RH2 Products:

- Meeting agendas and minutes for meetings listed in Task 1 in electronic format (PDF and MS Word).
- RFI responses in electronic format (PDF and MS Word).
- Monthly invoices and ongoing correspondence.

Task 3 – Submittal Reviews

Objective: Provide submittal reviews during construction.

Approach:

3.1 Review and approve or reject, if necessary, shop drawings, equipment submittals, specifications, schedules, and construction sequence regarding pumps, mechanical, electrical, and control components required for the project.

District Responsibilities and Products:

- Review and approve or reject, if necessary, shop drawings, equipment submittals, specifications, schedules, and construction sequence regarding site civil components required for the project.

RH2 Products:

- Submittal response forms to the District and contractor.

Task 4 – On-Site Construction Observation

Objective: Assist with on-site construction observation and review change orders.

Approach:

4.1 Provide engineer(s) to observe construction. Engineers will review whether elements of construction observed are in accordance with the plans and specifications developed by RH2, including mechanical, structural, and electrical construction. *RH2 and the District will schedule construction observations to occur during certain portions of construction progress. Prepare a written report of each visit and provide it to the District. The level of involvement required of RH2 will be re-evaluated during construction and may be adjusted based on contractor qualifications and project schedule. For the purposes of estimation and District direction regarding time involvement, RH2 has estimated one (1) site visit every two (2) weeks at three (3) hours each to be performed by one (1) RH2 staff person (either Orin Paul, PE, or Kaylie Dennehy) for the duration of July 2024 to the end of September 2024 plus up to two (2) additional site visits to fill in during District staff vacations. In addition, on-site construction observation includes twice weekly electrical reviews that will be completed by RH2 (Brian Coyne or Mark Braaksma, PE) for the second half of the project construction duration. It is assumed that on-site construction observations will occur separately from the construction meetings identified in Task 1.*

4.2 Support the District in reviewing change orders and supporting information, as required. Submit change orders and supporting information to the District for execution.

Assumptions:

- *Special inspections are not included with this Scope of Work. The District will contract separately for this work, specifically for subgrade and asphalt compaction. Changes to RH2's level of involvement in construction observation that affect the assumption of hours in the attached Fee Estimate shall be mutually negotiated between RH2 and the District.*

District Responsibilities and Products:

- Lead change order review and coordination of information with RH2 staff.
- Review and process pay requests from the contractor, including ascertaining quantities and percent completion of the work as stated by the contractor, and preparing progress reports, including contract time remaining statements.
- Shared role in construction observation.
- Coordination and payment of special inspections.

RH2 Products:

- Construction observation reports with photographs to the District at the end of each month.
- Change order forms, as requested, throughout the construction phase.

Task 5 – Testing and Startup

Objective: Assist the District with pump testing and startup.

Approach:

- 5.1 Provide on-site review by the project manager and electrical engineer during pump testing and startup. *The site visit is assumed to be one (1) eight (8)-hour day per pump station (two (2) total) with off-site support as requested by the District.*
- 5.2 Conduct final on-site construction observation. Perform final walkthrough for completion of punchlist items and specified construction by the contractor. *It is anticipated that the contractor will complete the punchlist items prior to the final on-site construction observation.*

Assumptions:

- *The contractor will complete the punchlist review with two (2) meetings lasting two (2) hours per meeting.*

RH2 Products:

- On-site review during testing, startup, and final walkthrough.
- Start-up completion reports and punchlist items for the contractor.

Task 6 – SCADA Software Development

Objective: Develop supervisory control and data acquisition (SCADA) system software and provide testing services and technical assistance with the startup of the updated system.

Approach:

- 6.1 Provide the District with data point definition for the control components in the design. Attend a control system software workshop with District staff to discuss control software development. *This data will be used by RH2 for software development purposes and by the District for integrating the facility controller with the human machine interface (HMI) computer systems.*
- 6.2 Perform programmable logic control (PLC) software development for each of the two (2) sewer pump stations.
- 6.3 Perform operator interface software development for the sewer pump stations.
- 6.4 Attend control system field testing of telemetry panel hardware and software, and the pump control panel at the project sites.
- 6.5 Provide software training and operations and maintenance (O&M) manual material for the PLC and operator interface software.

Assumptions:

- *The District will be responsible for programming the communications equipment and HMI upgrades at the District offices. Facility data point definitions will be provided by RH2 to the District at least two (2) weeks in advance of Task 4 – Testing and Startup. If needed, changes in RH2’s level of effort that affect the assumption of hours in the attached Fee Estimate shall be mutually negotiated between RH2 and the District.*
- *No panel testing will be performed at the panel shop or pump manufacturer shop.*
- *Control system field testing by RH2 staff is assumed to take forty (48) hours total.*

District Responsibilities and Products:

- Address potential HMI and communications issues.

RH2 Products:

- Data point definitions, PLC programming, and operator interface programming at the site; O&M manual materials; and copies of the PLC and operator interface programs.
- Attendance at control system field testing of the telemetry panel hardware and software, and pump control panel.

Task 7 – Construction Records

Objective: Prepare construction record drawings.

Approach:

- 7.1 Review field records provided by the contractor against RH2 and District construction observation reports.
- 7.2 Prepare construction record drawings from the contractor-provided as-built drawings.
- 7.3 Provide all construction records generated during construction, including but not limited to submittals, RFIs, field directives, and field reports.

Assumptions:

- *Contractor will prepare O&M manuals for the District. Design changes will be minimal with no significant changes to site layout, structural, mechanical, or electrical systems. RH2 will rely on the accuracy and completeness of contractor-provided as-built markup records.*

RH2 Products:

- One (1) half-size set of construction record plans and one (1) electronic PDF sent via email.
- One (1) half-size set of construction record plans for RH2 records.
- Electronic copies of all construction records generated during construction, including but not limited to submittals, RFIs, field directives, and field reports.

District Responsibilities and Products for Phase 3 – Services During Construction

- Pay for construction plan production by others.
- Pay Puget Sound Energy (PSE) power drop costs and coordinate with PSE during construction.
- Provide construction observation personnel to monitor construction progress and respond to questions relating to existing facilities and utilities.
- Provide emergency power generators, as requested, during construction at the site.
- Provide comments during the submittal process.
- Coordinate, contract, and pay for all special inspection services, such as soil compaction and hot mix asphalt (HMA) inspection.
- Attendance at the following:
 - Pre-construction meeting;
 - Lead construction meetings every two (2) weeks;
 - Daily on-site construction observation during active construction;

- Testing and startup; and
- Final project punchlist walkthrough.

RH2 Products for Phase 3 – Services During Construction

- Meeting agendas for above-listed meetings that RH2 attends.
- Meeting minutes for above-listed meetings that RH2 attends.
- One (1) addendum.
- Draft and final TCEs.
- RFI and submittal responses supporting the District Lead.
- Change order forms supporting the District Lead.
- Construction observation reports for days onsite.
- Punchlist.
- SCADA system programming.
- Construction record drawings.
- Construction documents.

EXHIBIT B

Fee Estimate

Contract Amendment No. 4

Lake Whatcom Water and Sewer District

Rocky Ridge and Lakewood Sewer Pump Station Improvements

Phase 3 - Services During Construction

Apr-24

Description		Total Hours	Total Labor	Total Expense	Total Cost
Task 1	Temporary Construction Easements	38	\$ 8,916	\$ 64	\$ 8,980
1.1	Coordinate and attend meetings to obtain TCEs	38	\$ 8,916	\$ 64	\$ 8,980
Task 2	Construction Contract Administration	42	\$ 9,750	\$ 47	\$ 9,797
2.1	Coordinate and attend pre-construction meeting	10	\$ 2,322	\$ 19	\$ 2,341
2.2	Attend construction meetings and coordinate with District staff	11	\$ 2,610	\$ 27	\$ 2,637
2.3	Respond to RFIs and technical questions	7	\$ 1,608	\$ 0	\$ 1,608
2.4	Complete project management review	14	\$ 3,210	\$ -	\$ 3,210
Task 3	Submittal Reviews	92	\$ 19,046	\$ 582	\$ 19,628
3.1	Review and respond to shop drawings and submittals	92	\$ 19,046	\$ 582	\$ 19,628
Task 4	On-Site Construction Observation	67	\$ 14,548	\$ 399	\$ 14,947
4.1	Provide on-site construction observation and prepare observation reports	53	\$ 11,352	\$ 336	\$ 11,688
4.2	Support the District in reviewing change orders	14	\$ 3,196	\$ 63	\$ 3,259
Task 5	Testing and Startup	45	\$ 9,611	\$ 432	\$ 10,043
5.1	Provide on-site review during pump testing and startup	35	\$ 7,418	\$ 312	\$ 7,730
5.2	Conduct final on-site observation and final walkthrough	10	\$ 2,193	\$ 120	\$ 2,313
Task 6	SCADA Software Development	123	\$ 30,795	\$ 128	\$ 30,923
6.1	Provide data point definition for control components	8	\$ 2,072	\$ 11	\$ 2,083
6.2	Perform PLC software development	45	\$ 11,363	\$ 28	\$ 11,391
6.3	Perform operator interface software development	12	\$ 3,108	\$ -	\$ 3,108
6.4	Attend control system field testing	48	\$ 11,848	\$ 43	\$ 11,891
6.5	Provide software training and O&M manual material	10	\$ 2,404	\$ 47	\$ 2,451
Task 7	Construction Records	23	\$ 4,580	\$ 324	\$ 4,904
7.1	Review field records	10	\$ 2,039	\$ 116	\$ 2,155
7.2	Prepare construction record drawings	13	\$ 2,541	\$ 208	\$ 2,749
7.3	Provide construction records	3	\$ 736	\$ -	\$ 736
PROJECT TOTAL		433	\$ 97,982	\$ 1,977	\$ 99,959

Exhibit C Consultant Fee Determination - Summary Sheet (Negotiated Hourly Rates of Pay) Fee Schedule				
Subconsultant: RH2 ENGINEERING, INC				
Staff Classification	Negotiated Hourly Rate	Overhead Multiplier	Fee Multiplier	Negotiated Rate Per Hour
		211.77%	12.00%	
Professional I	\$ 48.11	\$ 101.89	\$ 18.00	\$ 168.00
Professional II	\$ 53.27	\$ 112.80	\$ 19.93	\$ 186.00
Professional III	\$ 59.28	\$ 125.54	\$ 22.18	\$ 207.00
Professional IV	\$ 65.01	\$ 137.67	\$ 24.32	\$ 227.00
Professional V	\$ 70.16	\$ 148.59	\$ 26.25	\$ 245.00
Professional VI	\$ 74.17	\$ 157.08	\$ 27.75	\$ 259.00
Professional VII	\$ 80.76	\$ 171.03	\$ 30.21	\$ 282.00
Professional VIII	\$ 84.77	\$ 179.52	\$ 31.71	\$ 296.00
Professional IX	\$ 89.92	\$ 190.43	\$ 33.64	\$ 314.00
Technician I	\$ 37.80	\$ 80.05	\$ 14.14	\$ 132.00
Technician II	\$ 41.24	\$ 87.33	\$ 15.43	\$ 144.00
Technician III	\$ 46.39	\$ 98.25	\$ 17.36	\$ 162.00
Technician IV	\$ 50.69	\$ 107.35	\$ 18.96	\$ 177.00
Technician V	\$ 55.27	\$ 117.05	\$ 20.68	\$ 193.00
Technician VI	\$ 61.00	\$ 129.18	\$ 22.82	\$ 213.00
Technician VII	\$ 66.15	\$ 140.10	\$ 24.75	\$ 231.00
Technician VIII	\$ 69.59	\$ 147.37	\$ 26.04	\$ 243.00
Administrative I	\$ 25.20	\$ 53.37	\$ 9.43	\$ 88.00
Administrative II	\$ 29.50	\$ 62.47	\$ 11.04	\$ 103.00
Administrative III	\$ 35.23	\$ 74.60	\$ 13.18	\$ 123.00
Administrative IV	\$ 41.24	\$ 87.33	\$ 15.43	\$ 144.00
Administrative V	\$ 47.54	\$ 100.67	\$ 17.79	\$ 166.00

In-House Copies	B/W - 8.5x11	\$	0.09
In-House Copies	B/W - 8.5x14	\$	0.14
In-House Copies	B/W - 11x17	\$	0.20
In-House Copies	Color - 8.5x11	\$	0.90
In-House Copies	Color - 8.5x14	\$	1.20
In-House Copies	Color - 11x17	\$	2.00
CAD Plots	Large	\$	25.00
CAD Plots	Full	\$	10.00
CAD Plots	Half	\$	2.50
CAD/GIS System	Per Hour	\$	27.50
Mileage			Current IRS Rate
Subconsultants will be billed at cost plus 15			15%
Outside Services			At Cost

Outside direct costs for permit fees, reports, maps, data, reprographics, couriers, postage, and non-mileage related travel expenses that are necessary for the execution of the project and are not specifically identified elsewhere in the contract will be billed at cost.



April 6, 2023

RH2 Engineering, Inc.
22722 29th Drive SE, Suite 210
Bothell, WA 98021

Subject: Acceptance FYE 2022 ICR – Audit Office Review

Dear Thad Vesely:

Transmitted herewith is the WSDOT Audit Office's memo of "Acceptance" of your firm's FYE 2022 Indirect Cost Rate (ICR) of 211.77% of direct labor. This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

This was not a cognizant review. Any other entity contracting with your firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at **(360) 705-7019** or via email consultanrates@wsdot.wa.gov.

Regards;

Schatzie Harvey

Schatzie Harvey (Apr 10, 2023 04:52 PDT)

SCHATZIE HARVEY, CPA
Contract Services Manager


Apr 10, 2023

SH:mya



**AGENDA
BILL
Item 6.C**

**Sudden Valley Water Treatment
Plant Chlorine Contact Basin
Replacement Project Hazard
Mitigation Grant Agreement
No. D24-048-Revised Approval**

DATE SUBMITTED:	May 1, 2024	MEETING DATE:	May 8, 2024
TO: BOARD OF COMMISSIONERS	FROM: Greg Nicoll, District Engineer		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. Hazard Mitigation Grant Agreement No. D24-048-Revised		
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 District provides potable water to its South Shore water system, which includes the Sudden Valley and Geneva communities, wholly by water treated at its Sudden Valley Water Treatment Plant (SVWTP). The SVWTP is a rapid-rate, direct filtration plant with a rated capacity of 2.0 million gallons per day (mgd) that was constructed as part of the Sudden Valley development in the early 1970s. An essential component of the SVWTP system is the 225,000-gallon, 40-foot diameter, 24-foot high welded-steel chlorine contact basin (CCB) that was constructed in 1994. The CCB is outfitted with internal baffling that provides filtered water the necessary chlorine contact time, as regulated by the Washington State Department of Health (DOH), for adequate disinfection under current operating flow rates prior to conveyance to the public via the District’s water distribution system.

In 2016, BHC Consultants performed a seismic vulnerability assessment of the District’s steel reservoirs, including the CCB. The assessment identified two structural deficiencies with the CCB (inadequate uplift resistance of the foundation and lack of piping flexibility) that would prohibit the CCB from surviving a significant earthquake. Subsequent assessments of the CCB’s treatment capacity were performed by Gray & Osborne Engineers in 2017 and 2020, which recommended construction of a new CCB that can provide sufficient chlorine contact time for full design flow (2.0 mgd). In addition, a 2020 assessment of the interior and exterior CCB coatings by Evergreen Coating Engineers revealed that the coatings are nearing the ends of their useful service lives.

As a result, the District identified the need to replace the existing CCB with a new CCB that meets current seismic standards and that is sized to accommodate full design flow of the SVWTP.

In 2022, the District submitted a FEMA Hazard Mitigation Grant application to replace the existing CCB with a new 307,000-gallon, 44-foot diameter, 27-foot high welded-steel tank CCB. The grant application was developed in conjunction with Washington State Emergency Management Division (WA-EMD) of the Washington State Military Department and the Federal Emergency Management Agency (FEMA) as a hazard mitigation project. The cost sharing is as follows: FEMA 75% (\$1,472,250), WA-EMD 12.5% (\$245,375), and Lake Whatcom Water and Sewer District 12.5% (\$245,375).

The project has been split into two phases: Phase 1 – Design/Permitting; and Phase 2 – Construction. The goal is to approve an initial Hazard Mitigation Grant agreement for Phase 1 and a professional services agreement with an engineering consultant to enable completion of design/permitting in 2025. Phase 2 targets construction during the summer of 2026.

The attached agreement provides for receipt of Phase 1 funding, which is administered through WA-EMD (\$220,955.25 in federal funding and \$36,825.87 in State funding, with a District match of \$36,825.88).

FISCAL IMPACT

The Water Utility System Reinvestment Fund will finance the grant match of \$36,825.88. However, as the fate of the HMG application was unknown at the time of development of the 2023-24 budget, this expenditure is not defined in the approved biennial budget and will be addressed in an upcoming budget amendment.

APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)

Product Quality
Infrastructure Strategy and Performance
Community Sustainability

RECOMMENDED BOARD ACTION

Staff recommends that the Board authorize the General Manager to execute the Hazard Mitigation Grant Agreement with the Washington Military Department.

PROPOSED MOTION

Recommended motion is:

“I move to authorize the general manager to execute the Hazard Mitigation Grant Agreement No. D24-048-Revised with the Washington State Military Department to enable receipt of federal and state funds supporting Phase 1 of the Sudden Valley Water Treatment Plant Chlorine Contact Basin Replacement Project as presented.”

**Washington State Military Department
HAZARD MITIGATION GRANT AGREEMENT FACE SHEET**

1. Subrecipient Name and Address: Lake Whatcom Water and Sewer District 1220 Lakeway Dr. Bellingham, WA 98229	2. Total Grant Amount Phase I (excluding SubMC): \$294,607.00 State: \$36,825.87 Federal: \$220,955.25 Local: \$36,825.88 SubMC: \$14,730.35	3. Grant Number: D24-048-Revised
4. Subrecipient Contact, phone/email: Rich Munson, 360-734-9224 rich.munson@lwwsd.org	5. Grant Start Date: August 11, 2023	6. Grant End Date: May 5, 2025
7. Department Program Manager, phone/email: Tim Cook, (253) 512-7072 tim.cook@mil.wa.gov	8. Unique Entity ID (UEI): X3UWVU38UAJ8	9. UBI # (state revenue): 600-151-207
10. Funding Authority: Washington State Military Department (the "DEPARTMENT"), and Federal Emergency Management Agency (FEMA)		
11. Federal Funding Identification #: FM-5395 FM-5395-10-R	12. Federal Award Date August 11, 2023	13. Assistance Listing # & Title: 97.039 (HMGP)
14. Program Index # & OBJ/SUB-OBJ: (Fed) 724FF NZ, (State) 722FS NZ, (SubMC) 722FL		15. TIN or SSN: 20-4196340
16. Service Districts: (BY LEGISLATIVE DISTRICT): 40th (BY CONGRESSIONAL DISTRICT): 2nd	17. Service Area by County(ies): Whatcom	18. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____
19. Contract Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other _____	20. Contract Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency	
21. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO _____	22. Contractor Type (check all that apply) <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input checked="" type="checkbox"/> SUBRECIPIENT <input checked="" type="checkbox"/> OTHER	
23. PURPOSE/DESCRIPTION: FEMA's Hazard Mitigation Grant Program provides grants for mitigation planning and cost-effective mitigation actions after a Presidential disaster declaration to reduce the risk of loss of life and property damage in future disasters. Title: <u>SVWTP CHLORINE CONTACT BASIN REPLACEMENT – Phase 1</u> . The purpose of this Agreement is to provide funds to the SUBRECIPIENT for the herein proposed project as noted in Statement of Work and/or Description of the Project (Attachment 3), Project Development Schedule (Attachment 4), Project Budget (Attachment 5), and the FEMA approved project application, each of which are incorporated herein by this reference. The DEPARTMENT is the Recipient and Pass-through Entity of the <u>FM-5395-10-R SVWTP CHLORINE CONTACT BASIN REPLACEMENT</u> and FEMA State Agreement, which are incorporated by reference, and makes a subaward of Federal award funds to the SUBRECIPIENT pursuant to this Agreement. The SUBRECIPIENT is accountable to the DEPARTMENT for use of Federal award funds provided under this Agreement and the associated matching funds.		
IN WITNESS WHEREOF, the DEPARTMENT and SUBRECIPIENT acknowledge and accept the terms of this Agreement, including all referenced attachments which are hereby incorporated and made a part hereof, and have executed this Agreement as of the date below. This Agreement Face Sheet; Special Terms & Conditions (Attachment 1); General Terms and Conditions (Attachment 2); Statement of Work and/or Description of Project (Attachment 3); Project Development Schedule (Attachment 4); Project Budget (Attachment 5); and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.		
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: 1. Applicable Federal and State Statutes and Regulations 4. Special Terms and Conditions 2. DHS/FEMA Award and program documents 5. General Terms and Conditions, and, 3. Work Plan, Schedule, and Budget 6. Other provisions of the Agreement incorporated by reference		
WHEREAS the parties hereto have executed this Agreement on the day and year last specified below. FOR THE DEPARTMENT: _____ Signature _____ Date _____ Regan Anne Hesse, Chief Financial Officer Washington State Military Department BOILERPLATE APPROVED AS TO FORM: <u>Dierk Meierbachtol 4/4/2023</u> Assistant Attorney General		
FOR THE SUBRECIPIENT: _____ Signature _____ Date _____ Justin Clary, General Manager Lake Whatcom Water and Sewer District APPROVED AS TO FORM: _____ Date _____		

**Washington State Military Department
SPECIAL TERMS AND CONDITIONS**

ARTICLE I. KEY PERSONNEL:

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

SUBRECIPIENT		MILITARY DEPARTMENT	
Name	Rich Munson	Name	Tim Cook
Title	Engineering Technician	Title	State Hazard Mitigation Officer
E-Mail	rich.munson@lwwsd.org	E-Mail	tim.cook@mil.wa.gov
Phone	360-296-4590	Phone	253-512-7072
Name	Justin Clary	Name	Matthew Lebens
Title	General Manager	Title	HMA Program Supervisor
E-Mail	justin.clary@lwwsd.org	E-Mail	matthew.lebens@mil.wa.gov
Phone	360-734-9224	Phone	253-433-5293
Name	Jennifer Signs	Name	Patrick Joseph
Title	Finance Manager/Treasurer	Title	HMA Program Coordinator
E-Mail	jenny.signs@lwwsd.org	E-Mail	patrick.joseph@mil.wa.gov
Phone	360-734-9224	Phone	253-213-0562

ARTICLE II ADMINISTRATIVE REQUIREMENTS

The SUBRECIPIENT shall comply with all applicable state and federal laws, rules, regulations, requirements, and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the Hazard Mitigation Grant Program including, but not limited to, all criteria, restrictions, and requirements of the Presidential Disaster Declaration, the federal regulations commonly applicable to FEMA grants, and the FEMA Award Letter and its attachments, all of which are incorporated herein by reference.

The SUBRECIPIENT acknowledges that since this Agreement involves federal award funding, the period of performance described herein may begin prior to the availability of appropriated federal funds. The SUBRECIPIENT agrees that it will not hold the DEPARTMENT, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR HAZARD MITIGATION GRANTS:

The following requirements apply to all DHS/FEMA Hazard Mitigation Grants administered by the DEPARTMENT.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

- a. The SUBRECIPIENT must make a case-by-case determination whether each agreement it makes for the disbursement of Hazard Mitigation Grant Program funds received under this Agreement casts the party receiving the funds in the role of a SUBRECIPIENT or contractor in accordance with 2 CFR 200.331.
- b. If the SUBRECIPIENT becomes a pass-through entity by making a subaward to a non-federal entity as its subrecipient:
 - i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of Hazard Mitigation Grant Program funds, including, but not limited to, those contained in 2 CFR 200.
 - ii. The Subrecipient shall require its subrecipient(s) to comply with all applicable state and federal laws, rules, regulations, requirements, and program guidance identified or referenced in this Agreement and the informational documents

published by DHS/FEMA applicable to **FM-5395-10-R**, including, but not limited to, all criteria, restrictions, and requirements of the Presidential Disaster Declaration Hazard Mitigation Grant Program document, the Manual, the DHS Award Letter for the Grant, and the federal regulations commonly applicable to DHS/FEMA grants.

- iii. The SUBRECIPIENT shall be responsible to the DEPARTMENT for ensuring that all Hazard Mitigation Grant Program federal award funds provided to its subrecipients, and associated matching funds, are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in Attachment 2 of this Agreement.

2. PROJECT FUNDING

The DEPARTMENT will administer FM-5395-10-R and will pass through the federal match and commit the available state match. The SUBRECIPIENT will commit the required local match.

- a. The total cost of the project for the purposes of this Agreement is **\$294,607.00** dollars; PROVIDED that, if the total cost of the project when completed, or when this Agreement is terminated, is actually less than above, the actual cost shall be substituted herein.
- b. The value of the contributions by the SUBRECIPIENT to the project shall be **\$36,825.88** dollars, or 12.5 percent, at minimum, of the total project cost. The SUBRECIPIENT's contributions may be cash or in-kind, must be from a non-federal source, must be reasonable, allowable and allocable, and must comply with all Federal requirements and regulations.
- c. When the DEPARTMENT enters into an agreement with the Federal Emergency Management Agency (FEMA) to contribute federal funds to this project, that federal contribution will be **\$220,955.25** dollars, or 75 percent of the total project cost, whichever is less.
- d. The value of the contributions by the DEPARTMENT to the project shall be **\$36,825.87** dollars, or 12.5 percent, at minimum, of the total project cost and is contingent on legislative approval of DEPARTMENT funding pursuant to the prerequisites provided in subsection g. The DEPARTMENT's contributions must be from a non-federal source and must comply with all Federal requirements and regulations.
- e. The Federal Emergency Management Agency (FEMA) has contributed federal funds for SUBRECIPIENT Management Costs (SubMC). SubMC includes costs for administering the grant and indirect costs. This federal contribution is in addition to the federal award for project costs and is suitable for 100% reimbursement for eligible expenses. The maximum amount available for SubMC is **\$14,730.35** dollars, limited to 5% of the eligible project expenditures for administrative, indirect, or overhead costs, whichever is less.
- f. The DEPARTMENT shall not be obligated to pay any amount beyond that set out in Subsections c, d, and e above, unless that additional amount has been approved in advance by both the DEPARTMENT and SUBRECIPIENT and is incorporated by written amendment into this Agreement.
- g. The Washington State Legislature may authorize the DEPARTMENT to provide a match to the SUBRECIPIENT's non-federal share of eligible projects. Provision of a match by the DEPARTMENT, if authorized by the Washington State Legislature, shall not require amendment of this Agreement. If DEPARTMENT match funds are committed to the non-federal share by the DEPARTMENT pursuant to legislative authorization, the DEPARTMENT will formally notify the SUBRECIPIENT of the match in writing which will include information identifying any related reduction in the SUBRECIPIENT's percentage commitment.
- h. A written amendment will be required if the SUBRECIPIENT expects cumulative transfers between project budgets, as identified in the Project budget (Attachment 5) and the Statement of Work and/or description of Project (Attachment 3), to exceed 10% of the

Grant Agreement Amount. Any changes to project budgets other than in compliance with this paragraph will not be reimbursed.

3. GRANT AGREEMENT PERIOD

Activities payable under this Agreement and to be performed by the SUBRECIPIENT under this Agreement shall only be those after the obligation of federal funds on **August 11, 2023** and shall terminate on **May 5, 2025**. This period shall be referred to herein as the Grant Agreement Period and/or Period of Performance, unless expressly stated otherwise. Costs incurred during the Grant Agreement Period shall include pre-award costs authorized in writing by FEMA as well as eligible costs incurred after the effective date of the Grant Agreement Period and before termination.

- a. The SUBRECIPIENT shall complete the project as described in the FEMA approved project application FM-5395-10-R, incorporated in and made a part of this Agreement by reference, and as described in Attachments 3, 4, and 5. In the event of extenuating circumstances, the SUBRECIPIENT may request, in writing, that the DEPARTMENT extend the deadline for Grant Agreement completion.
- b. The Grant Agreement Period shall only be extended by (1) written notification of FEMA approval of the Grant Agreement Period followed by execution of a mutually agreed written amendment, or (2) written notification from the DEPARTMENT to the SUBRECIPIENT addressing extensions of the DEPARTMENT'S underlying federal grant performance period or to provide additional time for completion of the SUBRECIPIENT's project(s).
- c. No expenditure made, or obligation incurred, before or after the Grant Agreement Period shall be eligible, in whole or in part, for grant funds with the exception of pre-award costs authorized in writing by FEMA. In addition to any remedy the DEPARTMENT may have under this Agreement, the amounts set out in Article II, section A.2 **Project Funding**, above, may be reduced to exclude any such expenditure from participation.
- d. Failure to complete the project in a timely manner, as outlined in Attachment 4, is a material breach of this Agreement for which the DEPARTMENT is entitled to termination or suspension under Attachment 2, section A.37.

4. REIMBURSEMENT AND BUDGET REQUIREMENTS

The DEPARTMENT, using mitigation funds from PL 93-288, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and the State of Washington, for the Hazard Mitigation Grant Program, shall issue payments to the SUBRECIPIENT as follows:

- a. All payment requests shall be made to the SUBRECIPIENT upon submission and approval of eligible, reimbursable work completed and billed on an A-19, form, State of Washington Invoice Voucher Distribution. Approval is subject to receipt of acceptable documentation by the DEPARTMENT, to include, but not limited to, copies of receipts for all goods and services purchased, copies of invoices from contractors and subcontractors for work completed, and copies of timesheets for staff involved with the project, sign-in/sign-out sheets for donated personnel and/or volunteer time spent on the project, and documentation to support other in-kind contributions.
- b. The DEPARTMENT reserves the right to withhold disbursement of up to 10 percent of the total project cost to the SUBRECIPIENT until the project has been completed and given final approval by the DEPARTMENT.
- c. Final Payment: Final payment of any remaining, or withheld, funds will be made within 60 days after submission by the SUBRECIPIENT of the final report, final A-19, Voucher Distribution, and completion of all final inspections by the DEPARTMENT.

Final payment by the DEPARTMENT also may be conditioned upon a financial review, if determined necessary by the DEPARTMENT. Adjustments to the final payment may be made following any audits conducted by the DEPARTMENT, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.
- d. Within the total Grant Amount of this Agreement, budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.

- e. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Amount of this Agreement.
- f. For travel costs, SUBRECIPIENT shall comply with 2 CFR 200.475 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without written approval by DEPARTMENT's Key Personnel.
- g. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the SUBRECIPIENT consistent with record retention requirements of this Agreement, and be made available upon request by the DEPARTMENT, and local, state, or federal auditors.
- h. The SUBRECIPIENT will submit reimbursement requests to the DEPARTMENT by submitting a properly completed State A-19 Invoice Form, Interagency Electronic Funds Transfer, or Agency/Business invoice with support documentation detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted by email to both the DEPARTMENT's Hazard Mitigation Program Coordinator and the Program Manager no later than the due dates listed within the Grant Timeline (Attachment 4), but not more frequently than monthly.
- i. All work under this Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the DEPARTMENT within 45 days after the Grant Agreement End Date, except as otherwise authorized by written amendment of this Agreement and issued by the DEPARTMENT.
- j. If applicable, no costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the SUBRECIPIENT, its contractor, or any non-federal entity to which the SUBRECIPIENT makes a subaward, and is invoiced by the vendor.
- k. Failure to timely submit complete reports and reimbursement requests as required by this Agreement (including but not limited to those reports in the Project Development Schedule Attachment 4) will prohibit the SUBRECIPIENT from being reimbursed until such complete reports and reimbursement requests are submitted and the DEPARTMENT has had reasonable time to conduct its review. Final reimbursement requests will not be approved for payment until the SUBRECIPIENT is current with all reporting requirements contained in this Agreement.
- l. SUBRECIPIENTS shall only use federal award funds under this Agreement to supplement existing funds, and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose.

The SUBRECIPIENT may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

5. REPORTING REQUIREMENTS

In addition to the reports as may be required elsewhere in this Agreement, the SUBRECIPIENT shall promptly prepare and submit the following reports to the DEPARTMENT's Key Personnel:

- a. Quarterly progress reports, no later than the 15th day following the end of the fiscal quarter, indicating the status of the project, to include a brief narrative on progress during the quarter. The report shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project, and whether cost under runs or over runs are expected. In addition, the SUBRECIPIENT should note any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the SUBRECIPIENT until a complete quarterly report is received by the DEPARTMENT.

- b. A final report when the project is completed, prematurely terminated, or project assistance is terminated. The report shall include a final accounting of all expenditures and a description of work accomplished. If the project is not completed, the report shall contain an estimate of the percentage of completion, and shall indicate the degree of usefulness of the completed project. The report shall account for all expenditures not previously reported and shall include a summary for the entire project.
- c. The SUBRECIPIENT shall submit a quarterly progress report describing current activities as outlined in the Timeline.
- d. The SUBRECIPIENT shall submit a Final Report with final reimbursement no later than 45 days after Agreement End Date.
- e. The SUBRECIPIENT shall comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the DEPARTMENT an *Audit Certification/FFATA* Form. This form is required to be completed once per calendar year, per SUBRECIPIENT, and not per agreement. The DEPARTMENT'S Contracts Office will request the SUBRECIPIENT submit an updated form at the beginning of each calendar year in which the SUBRECIPIENT has an active agreement.

6. PROCUREMENT

- a. The SUBRECIPIENT shall comply with all procurement requirements of 2 CFR Part 200.317 through 200.327 and as specified in the General Terms and Conditions, **Attachment 2**, A.11.
- b. For all contracts expected to exceed \$250,000, the DEPARTMENT may request pre-procurement documents, such as request for proposals, invitations for bids and independent cost estimates. This request may apply to any non-federal entity to which the SUBRECIPIENT makes a subaward, at which point the SUBRECIPIENT will be responsible for reviewing and approving procurement requests of any non-federal entity to which the SUBRECIPIENT makes an award.
- c. For all sole source contracts expected to exceed the micro-purchase threshold per 2 CFR 200.1, the SUBRECIPIENT must submit justification to the DEPARTMENT for review and approval. This requirement must be passed on to any non-federal entity to which the SUBRECIPIENT makes a subaward, at which point the SUBRECIPIENT will be responsible for reviewing and approving sole source justifications to any non-federal entity to which the SUBRECIPIENT makes an award.

7. TIME EXTENSIONS

A time extension request for Agreement completion must be submitted by the SUBRECIPIENT to the DEPARTMENT no later than 60 days before the end of the Period of Performance. A time extension request must be in writing and identify the project, the reason the project will not be completed within the approved Period of Performance, a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to timely submit a complete time extension request may result in denial of the time extension and loss of funding for the project.

8. SUBRECIPIENT MONITORING

- a. The DEPARTMENT will monitor the activities of the SUBRECIPIENT from award to closeout. The goal of the DEPARTMENT'S monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the SUBRECIPIENT shall complete and return to the DEPARTMENT "2 CFR Part 200 Subpart F Audit Certification Form" located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> along with the signed Agreement. The SUBRECIPIENT shall complete and return the form to the DEPARTMENT each fiscal year

thereafter until the Agreement is closed. The form is incorporated by reference herein and made a part of this Agreement.

- c. Monitoring activities may include, but are not limited to:
 - i. Review of financial and performance reports;
 - ii. Monitoring and documenting the completion of Agreement deliverables;
 - iii. Documentation of phone calls, meetings, e-mails, and correspondence;
 - iv. Review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement work plan, budget, and federal requirements;
 - v. Observation and documentation of Agreement related activities, such as exercises, training, funded events, and equipment demonstrations; and
 - vi. On-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The SUBRECIPIENT is required to meet or exceed the monitoring activities, as outlined above and in 2 CFR Part 200, for any non-federal entity to which the SUBRECIPIENT makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan.

9. CLOSE-OUT

To initiate close-out, the SUBRECIPIENT is required to certify in writing the date completed and total amount expended on the project on FINAL PROJECT REPORT form to the DEPARTMENT. After receipt of the FINAL PROJECT REPORT form, the DEPARTMENT will conduct a site inspection and review supporting documentation for compliance with the requirements of the Agreement.

Prior to project close-out, the SUBRECIPIENT shall provide the DEPARTMENT with acceptable documentation supporting compliance with the Agreement. General documentation supporting compliance with the Agreement typically includes, but is not limited to, the following:

- a. Photographs of the structures or properties involved in the project **prior** to project implementation **and after** project implementation.
- b. Digital geospatial coordinates (latitude and longitude) for each structure with an accuracy of ± 20 meters (64) feet.
- c. Certificate of occupancy or equivalent documentation from the appropriate regulatory authority for each structure to certify it is code-compliant.
- d. Certification that the SUBRECIPIENT has met the environmental and historic preservation conditions of the grant award as described in this Agreement.
- e. Copies of all compliance and consultation documentation required by the grant award as described in the Agreement (e.g., coastal zone management consistency determination from Department of Ecology).
- f. Copies of all documentation related to inspection for and removal and disposal of asbestos and other hazardous materials from each property.

Specific additional documentation requirements for projects to acquire properties for open space include, but are not limited to, the following:

- a. Signed Statement of Voluntary Participation from the owner of each acquired property.
- b. Documentation of dates of acquisition and structure demolition or removal from property for each property.
- c. Copy of recorded open space deed restrictions for each acquired property.
- d. Copy of the AW-501 form filed with the NFIP for each acquired repetitive loss property.

- e. Documentation of consultation with the Army Corps of Engineers and Washington State Department of Transportation regarding future use of each property.

Specific additional documentation requirements for projects to elevate structures above the base flood elevation include, but are not limited to, the following:

- a. Photographs of the structures prior to elevation, and front, rear and side photos post-elevation.
- b. Copies of the pre-project elevation certificate for each structure, or documentation of methodology used to calculate the first-floor elevations.
- c. Copies of the post-project elevation certificate for each structure.
- d. Copies of the certificate of occupancy for each elevated structure to certify that it is code compliant.
- e. Certification by an engineer, floodplain manager or other senior official of the SUBRECIPIENT that each completed structural elevation is in compliance with local ordinances and NFIP regulations and technical bulletins.
- f. Copy of the AW-501 form filed with the NFIP for each elevated repetitive loss property.
- g. Copies of proof of flood insurance for each elevated structure.
- h. Copies of the recorded deed restriction related to maintenance of flood insurance for each property within the Special Flood Hazard Area.

The DEPARTMENT will consult with the SUBRECIPIENT regarding other documentation requirements of the Agreement throughout the Period of Performance.

The SUBRECIPIENT is required to retain all documentation which adequately identifies the source and application of all mitigation grant funds for six years following the closure of this grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.

10. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

All SUBRECIPIENTS must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that SUBRECIPIENTS of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

11. ENVIRONMENTAL AND HISTORICAL PRESERVATION

- a. The SUBRECIPIENT shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) program. EHP program information can be found at <https://www.fema.gov/grants/guidance-tools/environmental-historic>, which is incorporated into and made a part of this Agreement.
- b. Projects that have historical impactors or the potential to impact the environment, including, but not limited to, construction of communication towers; modification or

renovation of existing buildings, structures and facilities; or new construction including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to interior walls, and training or exercises occurring outside in areas not considered previously disturbed, also require a DHS/FEMA EHP review before project initiation.

- c. The EHP review process involves the submission of a detailed project description that includes the entire scope of work, including any alternatives that may be under consideration, along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.
- d. The SUBRECIPIENT agrees that to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process **must be completed, and FEMA approval received by the SUBRECIPIENT, before any work is started** for which reimbursement will be later requested. Expenditures for projects started before completion of the EHP review process, and receipt of approval by the SUBRECIPIENT will not be reimbursed.

12. ADDITIONAL SPECIAL CONDITIONS

a. Construction Documents, Contracts, Change Orders

- i. Construction Document Approval: Upon request, the SUBRECIPIENT agrees to submit one copy of all construction plans and specifications to the DEPARTMENT prior to solicitation of bids. This request is to ensure bid set consistency with the subgrant's approved scope of work.
- ii. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. Copies of all bids and contracts awarded shall be submitted to the DEPARTMENT upon request. Where all bids are substantially in excess of project estimates, the DEPARTMENT may, by notice in writing, suspend the project for determination of appropriate action, which may include termination of the Agreement.
- iii. Construction Change Order: All change orders must be in writing and shall be submitted to the DEPARTMENT. The SUBRECIPIENT shall pay any increase in the cost of the project as the result of a change order, unless the DEPARTMENT has agreed to the change with a written amendment to this Agreement.

13. EQUIPMENT AND TRACKABLE ASSETS MANAGEMENT

- a. If applicable, the SUBRECIPIENT and any non-federal entity to which the SUBRECIPIENT makes a subaward shall comply with 2 CFR 200.317 through 200.327, and all Washington State procurement requirements, when procuring any equipment or trackable assets under this Agreement, 2 CFR 200.313 for management of equipment, and 2 CFR 200 to include but not limited to:
 - i. Upon successful completion of the terms of this Agreement, all equipment and trackable assets purchased through this Agreement will be owned by the SUBRECIPIENT, or a recognized non-federal entity to which the SUBRECIPIENT has made a subaward, for which a contract or other means of legal transfer of ownership is in place.
 - ii. All equipment, and trackable assets as applicable, purchased under this Agreement will be recorded and maintained in the SUBRECIPIENT's inventory system.
 - iii. Inventory records shall include:
 - A. Description of the property
 - B. Manufacturer's serial number, or other identification number

- C. Funding source for the property, including the Federal Award Identification Number (FAIN) (Face Sheet, Box 11)
 - D. Assistance Listings Number (formerly CFDA Number) (Face Sheet, Box 13)
 - E. Who holds the title
 - F. Acquisition date
 - G. Cost of the property and the percentage of federal participation in the cost
 - H. Location, use, and condition of the property at the date the information was reported
 - I. Disposition data including the date of disposal and sale price of the property.
- iv. The SUBRECIPIENT shall take a physical inventory of the equipment, and trackable assets as applicable, and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the SUBRECIPIENT to determine the cause of the difference. The SUBRECIPIENT shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
 - v. The SUBRECIPIENT shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and trackable assets including all questions of liability. The SUBRECIPIENT shall develop appropriate maintenance schedules and procedures to ensure the equipment and trackable assets are well maintained and kept in good operating condition.
 - vi. The SUBRECIPIENT shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated, and a report generated and sent to the DEPARTMENT'S Key Personnel.
 - vii. The SUBRECIPIENT must obtain and maintain all necessary certifications and licenses for the equipment.
 - viii. If the SUBRECIPIENT is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return. For disposition, if upon termination or at the Grant Agreement End Date, when original or replacement trackable assets or equipment acquired under a federal award are no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, the SUBRECIPIENT must comply with the following procedures:
 - A. For Trackable assets: If there is a residual inventory of unused trackable assets exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the trackable assets are not needed for any other federal award, the SUBRECIPIENT must retain the trackable assets for use on other activities or sell them, but must, in either case, compensate the federal government for its share. The amount of compensation must be computed in the same manner as for equipment.
 - B. For Equipment:
 - 1. Items with a current per-unit fair-market value of \$5,000 or less may be retained, sold, transferred, or otherwise disposed of with no further obligation to the federal awarding agency.
 - 2. Items with a current per-unit fair-market value in excess of \$5,000 may be retained or sold. The SUBRECIPIENT shall compensate the

federal awarding agency in accordance with the requirements of 2 CFR 200.313 (e) (2).

- ix. Records for equipment shall be retained by the SUBRECIPIENT for a period of six years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the SUBRECIPIENT until all litigation, claims, or audit findings involving the records have been resolved.
- b. The SUBRECIPIENT shall comply with the DEPARTMENT'S Purchase Review Process, which is incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.
- c. Unless Expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using federal award funds.
- d. If funding is allocated to emergency communications, the SUBRECIPIENT must ensure that all projects comply with SAFECOM Guidance on Emergency Communications Grants, located at <https://www.cisa.gov/safecom/funding>, ensuring the investments are compatible, interoperable, resilient, and support national goals and objectives for improving emergency communications.
- e. Effective August 13, 2020, FEMA recipients and SUBRECIPIENT, as well as their contractors and subcontractors, may not obligate or expend any FEMA award funds to:
 - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
 - iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

This prohibition regarding certain telecommunications and video surveillance services or equipment is mandated by section 889 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA)*, Pub. L. No. 115-232 (2018). Recipients and SUBRECIPIENTS may use DHS/FEMA grant funding to procure replacement equipment and services impacted by this prohibition, provided the costs are otherwise consistent with the requirements of the Manual and applicable NOFO.

Per subsections 889(f)(2)-(3) of the FY 2019 NDAA, and 2 CFR 200.216, covered telecommunications equipment or services means:

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or
- iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The SUBRECIPIENT must pass through equipment and trackable assets management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the SUBRECIPIENT makes a subaward under this Agreement.

B. DHS FFY23 STANDARD TERMS AND CONDITIONS

As a SUBRECIPIENT of Hazard Mitigation Grant Program funding, the SUBRECIPIENT shall comply with all applicable FEMA/DHS terms and conditions of the FEMA Award Letter and its associated documents for DHS, which are incorporated in and made a part of this Agreement.

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the following terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. "Agreement" means this Grant Agreement.
- b. "**DEPARTMENT**" means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the DEPARTMENT, or any of the officers or other officials lawfully representing that DEPARTMENT. The DEPARTMENT is a recipient of a federal award directly from a federal awarding agency and is pass-through entity making a subaward to a SUBRECIPIENT under this Agreement.
- c. "**SUBRECIPIENT**" when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the DEPARTMENT. However, the definition of "SUBRECIPIENT" is the same as in 2 CFR 200.93 for all other purposes.
- d. "**Monitoring Activities**" means all administrative, construction, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- e. "**Project**" means those actions funded through the Hazard Mitigation Assistance Grant Program and described in approved Project Worksheets. Projects may include one or more of the following: reimbursement of costs for emergency response, debris removal and/or repair or restoration of damaged public facilities. A project may be a small, large, improved, or alternate project.

A.2 ADVANCE PAYMENTS

The DEPARTMENT shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement, except as required under 2 CFR 200.305 for federal grants. SUBRECIPIENT shall not invoice the DEPARTMENT in advance of delivery and invoicing of such goods or services, except as authorized under 2 CFR 200.305.

Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C §5121-5207), Advance Payment process, FEMA may process a SUBRECIPIENT project worksheet which is provided to the state of Washington for direct disbursement to SUBRECIPIENT Pursuant to these provisions and RCW 43.88.160(5), these grant funds are not subject to the advance payments prohibition and will be disbursed immediately to SUBRECIPIENT as grants authorized by law with subsequent authentication and certification of expenditures.

A.3 AMENDMENTS AND MODIFICATIONS

The SUBRECIPIENT or the DEPARTMENT may request, in writing, an amendment or modification of this Agreement. Modifications may be requested for Grant Agreement end date, budget or scope change. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the DEPARTMENT and the SUBRECIPIENT. No other understandings or agreements, written or oral, shall be binding on the parties.

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The SUBRECIPIENT must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

A.5 APPLICATION REPRESENTATION-MISREPRESENTATION, INACCURACY AND BREACH

The DEPARTMENT relies upon the SUBRECIPIENT's application in making its determinations as to eligibility for, selection for, and scope of funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

A.6 ASSURANCES

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations. In addition, as a SUBRECIPIENT of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS terms and conditions as specified in B.3. Statement of Assurances of the Hazard Mitigation Assistance Program and Policy Guide dated March 23, 2023.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the SUBRECIPIENT certifies that the SUBRECIPIENT is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The SUBRECIPIENT shall complete, sign, and return a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms>. Any such form completed by the SUBRECIPIENT for this Agreement shall be incorporated into this Agreement by reference.

Further, the SUBRECIPIENT agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The SUBRECIPIENT certifies that it will ensure that potential sub-contractors or sub-recipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to sub-recipients for any amount. With respect to covered transactions, the SUBRECIPIENT may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the System for Award Management (<http://www.sam.gov>) maintained by the federal government. The SUBRECIPIENT also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx>).

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the SUBRECIPIENT hereby certifies that to the best of their knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the SUBRECIPIENT to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the SUBRECIPIENT will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the SUBRECIPIENT will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

A.9 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The SUBRECIPIENT and all its contractors shall comply with, and the DEPARTMENT is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, as supplemented by Department of Labor regulations (41 CFR chapter 60); Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29

CFR Part 3); Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5); Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR part 15); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5); Energy Policy and Conservation Act (PL 94-163, 89 Stat. 871, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Title 44 of the Federal Regulations, 2 CFR Part 3002, Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

In the event of the SUBRECIPIENT's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the DEPARTMENT may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion.

The SUBRECIPIENT is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.10 CONFLICT OF INTEREST

No officer or employee of the DEPARTMENT; no member, officer, or employee of the SUBRECIPIENT or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such the SUBRECIPIENT who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The SUBRECIPIENT shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

A.11 CONTRACTING & PROCUREMENT

a. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.327, Contract Provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the SUBRECIPIENT under this Agreement must include the following provisions, as applicable:

1. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
3. Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of "federally assisted construction contract" in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, "Equal Employment Opportunity" ([30 FR 12319](#), [12935](#), [3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at [41 CFR part 60](#), "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
4. Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and

- [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
5. Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
 6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or SUBRECIPIENT wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or SUBRECIPIENT must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
 7. Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
 8. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
 9. Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C.](#)

1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10. Procurement of recovered materials -- As required by 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
11. Notice of Federal awarding agency requirements and regulations pertaining to reporting.
12. Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
13. Access by the DEPARTMENT, the SUBRECIPIENT, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
14. Retention of all required records for six years after the SUBRECIPIENT has made final payments and all other pending matters are closed.
15. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
16. Pursuant to Executive Order 14005 and Build America, Buy America Act (BABAA) OMB Memo-22-11, the DEPARTMENT requires that SUBRECIPIENTS shall not use funds made available for a Federal financial assistance program for infrastructure, unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. Any previously obligated awards may be subject to BABAA requirements if award revisions are made after January 1, 2023. The Act requires the following Buy America preference:
 - a. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; AND
 - b. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; AND
 - c. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Such requirements must be consistent with the law, including cost and contracting requirements of 2 CFR Part 200. Further guidance on BABAA can be found at: <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>.

17. The DEPARTMENT reserves the right to review the SUBRECIPIENT procurement plans and documents, and require the SUBRECIPIENT to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 2 CFR 200.327. The SUBRECIPIENT must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the SUBRECIPIENT and DEPARTMENT to make a determination on eligibility of project costs.
18. All sub-contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.12 DISCLOSURE

The use or disclosure by any party of any information concerning the DEPARTMENT for any purpose not directly connected with the administration of the DEPARTMENT's or the SUBRECIPIENT's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the DEPARTMENT or as required to comply with the state Public Records Act, other law, or court order.

A.13 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the SUBRECIPIENT and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member.

A.14 DUPLICATION OF BENEFITS

The SUBRECIPIENT agrees that the funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same loss from any other source. The SUBRECIPIENT will pursue, and require sub-recipients to pursue, full payment of eligible insurance benefits for properties or any other losses covered in a project under this Agreement. The SUBRECIPIENT will repay the DEPARTMENT any funds provided under this grant agreement that are duplicated by other benefits, funds, or insurance proceeds. The SUBRECIPIENT will also seek recovery against any party or parties whose negligence or other intentional or tortious conduct may have caused or contributed to the expenditures for which these grants funds are provided. The SUBRECIPIENT will repay the DEPARTMENT any funds recovered by settlement, judgment or other court order in an action to recover funds provided by this grant. The SUBRECIPIENT shall notify the DEPARTMENT as early as possible and work in conjunction with the DEPARTMENT and FEMA to ensure appropriate apportionment of any duplicated or recovered payment.

A.15 HAZARDOUS SUBSTANCES

The SUBRECIPIENT shall inspect and investigate the proposed development/construction site for the presence of hazardous substances. The SUBRECIPIENT shall fully disclose to the DEPARTMENT the results of its inspection and investigation and all other knowledge the SUBRECIPIENT has as to the presence of any hazardous substances at the proposed development/construction project site. The SUBRECIPIENT will be responsible for any associated clean-up costs. "Hazardous Substance" is defined in RCW 70A.305.020.

A.16 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the SUBRECIPIENT, its successors or assigns, will protect, save and hold harmless the DEPARTMENT, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the SUBRECIPIENT, its sub-contractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the SUBRECIPIENT further agrees to defend the DEPARTMENT and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the DEPARTMENT; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the DEPARTMENT, and (2) the SUBRECIPIENT, its agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the SUBRECIPIENT, or SUBRECIPIENT's agents or employees.

Insofar as the funding source, the DEPARTMENT of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

44 CFR 206.9 Non-liability. The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.17 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the DEPARTMENT's Authorized Signature and the Authorized Signature of the assigned SUBRECIPIENT Agent or Alternate for the SUBRECIPIENT Agent, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives. Further, only the Authorized Signature representative or Alternate for the SUBRECIPIENT shall have authority to sign reimbursement requests, certification of project completion, time extension requests, amendment and modification requests, requests for changes to project status, and other requests, certifications and documents authorized by or required under this Agreement.

A.18 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the DEPARTMENT may unilaterally reduce the scope of work and budget or unilaterally terminate or suspend all or part of the Agreement as a "Termination for Cause" without providing the SUBRECIPIENT an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the DEPARTMENT has no obligation to do so.

A.19 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the SUBRECIPIENT.

A.20 NONDISCRIMINATION

The SUBRECIPIENT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.21 NOTICES

The SUBRECIPIENT shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

A.22 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The SUBRECIPIENT represents and warrants that its workplace does now or will meet all applicable federal and state safety and health regulations that are in effect during the SUBRECIPIENT's performance under this Agreement. To the extent allowed by law, the SUBRECIPIENT further agrees to indemnify and hold harmless the DEPARTMENT and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the DEPARTMENT, as a result of the failure of the SUBRECIPIENT to so comply.

A.23 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the SUBRECIPIENT. The SUBRECIPIENT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and the State of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.24 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.25 PRIVACY

Personal information collected, used or acquired in connection with this Agreement shall be used solely for the purposes of this Agreement. SUBRECIPIENT and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the DEPARTMENT or as provided by law or court order. SUBRECIPIENT agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The DEPARTMENT reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the SUBRECIPIENT through this Agreement. The monitoring, auditing or investigating may include but is not limited to "salting" by the DEPARTMENT. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the Agreement and the demand for return of all personal information. The SUBRECIPIENT agrees to indemnify and hold harmless the DEPARTMENT for any damages related to the SUBRECIPIENT's unauthorized use, loss or disclosure of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

A.26 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement provided; however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.27 PUBLICITY

The SUBRECIPIENT agrees to submit to the DEPARTMENT prior to issuance all advertising and publicity matters relating to this Agreement wherein the DEPARTMENT's name is mentioned or language used from which the connection of the DEPARTMENT's name may, in the DEPARTMENT's judgment, be inferred or implied. The SUBRECIPIENT agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT. The SUBRECIPIENT may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

The SUBRECIPIENT shall include language which acknowledges the funding contribution of the DEPARTMENT and FEMA to this project in any release or other publication developed or modified for, or referring to, the project.

Publication resulting from work performed under this Agreement shall include an acknowledgement of the DEPARTMENT and FEMA's financial support, by CFDA number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.28 RECAPTURE PROVISION

In the event the SUBRECIPIENT fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the SUBRECIPIENT of funds under this recapture provision shall occur within 30 days of demand. In the event the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs and expenses thereof, including attorney fees.

A.29 RECORDS AND REPORTS

- a. The SUBRECIPIENT agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the SUBRECIPIENT's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The SUBRECIPIENT's records related to this Agreement and the projects funded may be inspected and audited by the DEPARTMENT or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the SUBRECIPIENT with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the SUBRECIPIENT for such inspection and audit, together with suitable space for such purpose, at any and all times during the SUBRECIPIENT's normal working day.
- d. The SUBRECIPIENT shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) year must be followed.

A.30 RECOVERY OF FUNDS

Any person who intentionally causes a condition for which funds are provided under this Agreement shall be liable for the costs incurred by the state and federal governments in responding to such disaster. In addition to its own duty to recover duplicated funds or funds expended due to the intentional or negligent actions of others. SUBRECIPIENT will cooperate in a reasonable manner with the DEPARTMENT and the United States in efforts to recover expenditures under this Grant Agreement.

A.31 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the DEPARTMENT undertakes to assist the SUBRECIPIENT with the project/statement of work/work plan (project) by providing grant funds pursuant to this Agreement, the project itself remains the sole responsibility of the SUBRECIPIENT. The DEPARTMENT undertakes no responsibility to the SUBRECIPIENT, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the SUBRECIPIENT, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the SUBRECIPIENT shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The SUBRECIPIENT shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the SUBRECIPIENT in connection with the project. The SUBRECIPIENT shall not look to the DEPARTMENT, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.32 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.33 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

Non-federal entities as subrecipients that expend **\$750,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than **\$750,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a State, local

government, Indian Tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or SUBRECIPIENT.

SUBRECIPIENTS that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The SUBRECIPIENT has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200 Subpart F.

The SUBRECIPIENT shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any SUBRECIPIENTS or contractors also maintain auditable records.

The SUBRECIPIENT is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The SUBRECIPIENT must respond to DEPARTMENT requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The DEPARTMENT reserves the right to recover from the SUBRECIPIENT all disallowed costs resulting from the audit.

Once the single audit has been completed and includes and audit findings, the SUBRECIPIENT must send a full copy of the audit to the DEPARTMENT and its corrective action plan no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to:

Contracts.Office@mil.wa.gov

Subject: Lake Whatcom Water and Sewer District, Single Audit and Corrective Action Plan

OR

**Contracts Office
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

If Contractor claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT must send a letter identifying this Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to the address listed above.

The DEPARTMENT retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The SUBRECIPIENT shall include the above audit requirements in any subawards.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT's failure to comply with said audit requirements may result in one or more of the following actions in the DEPARTMENT's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.34 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The SUBRECIPIENT, and/or employees or agents performing under this Agreement are not employees or agents of the DEPARTMENT in any manner whatsoever. The SUBRECIPIENT will not be presented as nor claim to be an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, nor will the SUBRECIPIENT make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the State of Washington by

reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the SUBRECIPIENT is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the State of Washington in their own right and not by reason of this Agreement.

A.35 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the SUBRECIPIENT shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the SUBRECIPIENT or its staff required by statute or regulation that are applicable to Agreement performance.

A.36 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the SUBRECIPIENT may terminate this Agreement by providing written notice of such termination to the DEPARTMENTs Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the DEPARTMENT, in its sole discretion and in the best interests of the State of Washington, may terminate this Agreement in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after e-mailing to the SUBRECIPIENT. Upon notice of termination for convenience, the DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds. In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.37 TERMINATION OR SUSPENSION FOR CAUSE

In the event the DEPARTMENT, in its sole discretion, determines the SUBRECIPIENT has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the SUBRECIPIENT unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the DEPARTMENT has the right to immediately suspend or terminate this Agreement in whole or in part.

The DEPARTMENT may notify the SUBRECIPIENT in writing of the need to take corrective action and provide a period of time in which to cure. The DEPARTMENT is not required to allow the SUBRECIPIENT an opportunity to cure if it is not feasible as determined solely within the DEPARTMENT's discretion. Any time allowed for cure shall not diminish or eliminate the SUBRECIPIENT's liability for damages or otherwise affect any other remedies available to the DEPARTMENT. If the DEPARTMENT allows the SUBRECIPIENT an opportunity to cure, the DEPARTMENT shall notify the SUBRECIPIENT in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the DEPARTMENT, or if such corrective action is deemed by the DEPARTMENT to be insufficient, the Agreement may be terminated in whole or in part.

The DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the SUBRECIPIENT, if allowed, or pending a decision by the DEPARTMENT to terminate the Agreement in whole or in part.

In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the SUBRECIPIENT: (1) was not in default or material breach, or (2) failure to perform was outside of the SUBRECIPIENT's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.38 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the DEPARTMENT terminates this Agreement, the SUBRECIPIENT shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the DEPARTMENT may require the SUBRECIPIENT to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the DEPARTMENT shall pay to the SUBRECIPIENT the agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the DEPARTMENT prior to the effective date of Agreement termination, and the amount agreed upon by the SUBRECIPIENT and the DEPARTMENT for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the DEPARTMENT, (iii) other work, services and/or equipment or supplies which are accepted by the DEPARTMENT, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. The DEPARTMENT shall have no other obligation to the SUBRECIPIENT for termination. The DEPARTMENT may withhold from any amounts due the SUBRECIPIENT such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability.

The rights and remedies of the DEPARTMENT provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT in writing, the SUBRECIPIENT shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the DEPARTMENT, in the manner, at the times, and to the extent directed by the DEPARTMENT, all of the rights, title, and interest of the SUBRECIPIENT under the orders and sub-contracts so terminated, in which case the DEPARTMENT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the DEPARTMENT to the extent the DEPARTMENT may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the DEPARTMENT and deliver in the manner, at the times, and to the extent directed by the DEPARTMENT any property which, if the Agreement had been completed, would have been required to be furnished to the DEPARTMENT;
- f. Complete performance of such part of the work as shall not have been terminated by the DEPARTMENT in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the DEPARTMENT may require, for the protection and preservation of the property related to this Agreement which is in the possession of the SUBRECIPIENT and in which the DEPARTMENT has or may acquire an interest.

A.39 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The SUBRECIPIENT shall comply with 2 CFR §200.321 and will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will take all necessary affirmative steps to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The following steps are required by the SUBRECIPIENT if any contracts with contractors or sub-contractors are entered into under the original contract award:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit

- maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The SUBRECIPIENT may also set utilization standards, based upon local conditions or may utilize the State of Washington MWBE goals, as identified in. WAC 326-30-041.

A.40 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by the laws of the State of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The SUBRECIPIENT, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

A.41 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

STATEMENT OF WORK AND/OR DESCRIPTION OF PROJECT

SUBRECIPIENT: Lake Whatcom Water and Sewer District
 PROJECT TITLE: SVWTP CHLORINE CONTACT BASIN REPLACEMENT – Phase 1

The purpose of this project is for Lake Whatcom Water and Sewer District to:

Replace and construct to current seismic standard a Chlorine Contact Basin (CCB) to protect critical municipal drinking water infrastructure in the event of a seismic event. The CCB to be replaced is located at the Sudden Valley Water Treatment Plant at 22 Morning Beach Dr, Bellingham, WA 98229. This is a city-owned site.

Phase 1 of this project involves the engineering and design of replacement basin by consulting engineering firm. The District will select a consulting engineering firm to establish the design plans for the basin replacement. District engineering staff will assist the consulting engineer in obtaining permits and will provide input during design. The design will be completed to the standard of American Water Works Association (AWWA) Standard D100-11 (Welded Steel Tanks for Water Storage) and AWWA Standard D102-21 (Coating Steel Water-Storage Tanks). The final step of Phase 1 is to conduct an environmental review. This will be completed by District staff, engineering firm, and FEMA EHP representatives. The deliverables resulting from design, permitting, and environmental review will inform further FEMA review supporting award of Phase 2 construction funding.

Phase 2, pending FEMA award, will include bidding and selection of a contractor to construct the basin replacement, install new piping and seismic valve, and integrate District SCADA with ShakeAlert. The forthcoming Phase 2 award will be covered under an amended contract with updated Statement of Work, Project Development Schedule, and Budget.

Lake Whatcom Water and Sewer District Agrees To:

1. Comply with the terms of this Agreement and all Attachments, including but not limited to, accomplish tasks and conditions outlined in the Statement of Work And/Or Description of Project (Attachment 3), comply with the Project Development Schedule-Attachment 4, and comply with the Project Budget (Attachment 5).
2. Submit quarterly reports that cover the previous three months no later than the 15th of the following month (or the next work day) in January, April, July and October until all requirements are fulfilled. Quarterly reports are required regardless of the level of work completed during the reporting period. Quarterly reports must include sufficient narrative to determine the degree to which the project has been implemented, the estimated time for completion, and significant developments such as delays or adverse conditions that might raise costs or delay completion, as well as favorable conditions allowing lower costs or earlier completion. Failure of the SUBRECIPIENT to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments until a complete quarterly report is received by the DEPARTMENT. SUBRECIPIENT is required to return all final closeout documentation to the DEPARTMENT within 45 days following the Period of Performance End Date determined by FEMA's Notice of Award. The DEPARTMENT reserves the right to withhold the final reimbursement request until final closeout documentation is submitted by the SUBRECIPIENT to the satisfaction of the DEPARTMENT. No final reimbursements shall be paid if submitted more than 60 days after the Period of Performance End Date.
3. Submit pen-and-ink signed, approved invoice vouchers (state form A-19) for eligible, reimbursable work completed, no more frequently than monthly and no less frequently than quarterly. Each billing must identify the task(s) completed and any other funding identification pertinent to the task(s), including match. Supporting documentation is required for all costs, to include tracking of staff time spent on the project through timesheets or other documentation approved by the DEPARTMENT; dated invoices from all contractors and subcontractors for work completed; dated invoices for goods and services purchased; and documentation tracking in-kind contributions of personnel, equipment and supplies, if used on the project. Project costs must be tracked and reported by approved budget cost categories as found in Project Budget, Attachment 5. Documentation of expenditures by approved budget cost categories should be made on a separate spreadsheet or table and included with each A-19, along with documentation to substantiate all project costs.

4. Return by DEPARTMENT staff of invoices to the SUBRECIPIENT if the SUBRECIPIENT is unable to provide sufficient documentation to staff within 15 calendar days of the staff's written request for additional documentation to support the reimbursement request.
5. Submit a signed final project report before final reimbursement is made by the DEPARTMENT.
6. PROGRAMMATIC, ENVIRONMENTAL AND HISTORIC PRESERVATION CONDITIONS

In completing this project, the SUBRECIPIENT must adhere to the following programmatic, environmental and historic preservation conditions:

- a. Scope of Work Change: Requests for changes to the Scope of Work after grant award are permissible as long as they do not change the nature or total project cost of the activity, properties identified in the application, the feasibility and effectiveness of the project, or reduce the Benefit Cost Ratio below 1.0. Requests must be supported by adequate justification, including a description of the proposed change; a written explanation of the reason or reasons for the change; an outline of remaining funds available to support the change; and a full description of the work necessary to complete the activity.

A proposed change to the approved Scope of Work (as presented in the FEMA approved project application) must be submitted to the DEPARTMENT and FEMA in advance of implementation for re-evaluation for compliance with National Environmental Policy Act (NEPA) and other Laws and Executive Orders. Prior approval for a change to the approved Scope of Work must be obtained from the DEPARTMENT and FEMA before the change is implemented. Failure to obtain prior approval for a revised Scope of Work could result in ineligibility of resulting costs.

- b. Comply with all applicable federal, state and local laws and regulations. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding provided by this Agreement.
- c. Ensure that all completed work is in compliance with applicable state and local buildings codes and flood damage prevention legislation.
- d. Monitor site work during ground-disturbing activities for evidence of potential archaeological resources that are uncovered. SUBRECIPIENT must halt the project in the event historically or archaeologically significant materials or sites (or evidence thereof) are discovered. By way of example, such evidence may include, but is not limited to, artifacts such as arrowheads, bone fragments, pottery shards, and features such as fire pits or structural elements. All reasonable measures must be taken to avoid or minimize harm to such resources until such time as the SUBRECIPIENT notifies the DEPARTMENT, and FEMA, in consultation with the State Historic Preservation Officer (SHPO) and appropriate Native American tribes, determines appropriate measures have been taken to ensure that the project is in compliance with the National Historic Preservation Act. In addition, upon discovery of human skeletal remains, the SUBRECIPIENT is required by state law to notify the county coroner and local law enforcement in the most expeditious manner possible and to immediately stop any activity which may cause further ground disturbance.
- e. Determine the presence of hazardous materials and/or toxic waste, and identifying, handling, managing, abating and disposing of such materials in accordance with the requirements and to the satisfaction of the governing local, state and federal agencies, including but not limited to the Washington Department of Ecology. Such materials may include, but are not limited to, asbestos, lead-based paint, propane cylinders, sand blasting residue, discarded paints and solvents, cleaning chemicals, containers of pesticides, lead-acid batteries, items containing chlorofluorocarbons (CFCs), motor oil and used oil filters, and unlabeled tanks or containers.
- f. Conduct work during the non-flood season as determined by the local floodplain administrator. However, should construction be required during the flood season, as determined by the local floodplain administrator, all construction equipment shall be staged in an area not susceptible to flood events or be readily transportable out of the floodplain to minimize flood damage.
- g. Dispose of all debris at an approved and permitted location. No debris shall be temporarily staged or disposed of in a floodplain and/or a wetland.
- h. Confirm with the State Department of Ecology whether this project will require a consistency determination under the Coastal Zone Management Act. If required, the SUBRECIPIENT shall obtain and comply with all requirements of the determination prior to starting the project.
- i. Select, implement, monitor, and maintain Best Management Practices (BMPs) to control soil erosion and sedimentation, reduce spills and pollution, and provide habitat protection. The acquisition site shall be

stabilized from erosion and silt laden runoff by implementing these BMPs and securing the site from transient vehicle access. Any excavation and/or grading shall be done within and/or adjacent to the existing building footprint area and not beyond undisturbed portions of the site.

- j. Resubmit the project to the DEPARTMENT and FEMA prior to implementation if any in-water work will occur or if any work will occur below the ordinary high water mark of any water resource in the area, so further coordination/consultation can take place with the National Marine Fisheries Service (NMFS) to determine whether appropriate measures have been taken to ensure the project is in compliance with the Endangered Species Act.
- k. Resubmit the project to the DEPARTMENT and FEMA for re-evaluation for compliance with national environmental policies if the "Project Limits" (including clearing, excavation, temporary staging, construction, and access areas) extend into: 1) an area not previously identified for environmental and historic preservation review, or 2) previously undisturbed ground. Additionally, all work on the project in these areas must stop until this re-evaluation is completed.
- l. National Historic Preservation Act Section 106 requirement: All proposed repair and construction activities on buildings listed in or eligible for the National Register of Historic Places (historic properties) should be done in-kind to match existing materials and form. In-kind means that the result of the proposed activities will match all physical and visual aspects of existing historic materials, including form, color and workmanship. In-kind mortar also will match the strength and joint tooling of existing historic mortar.

m. Additional requirements as noted by FEMA in grant award document:

a. Project approval is subject to compliance with the following sets of conditions attached to or enclosed with the award letter:

- (1) Environmental conditions pertinent to this project
- (2) Standard Hazard Mitigation Grant Program administrative provisions

n. Cost overruns in excess of the approval budget are fully the responsibility of the SUBRECIPIENT, including those costs resulting from a change in the Scope of Work. The project must remain cost effective (i.e., Benefit Cost Ratio of 1.0 or greater) in the event of cost overrun.

A request for additional funds to cover a cost overrun may be granted by the DEPARTMENT and FEMA only if funds are available within the HMGP ceiling for this disaster, (FEMA-FM-5395). A request for additional funds must be fully documented and justified.

7. SPECIAL FLOOD HAZARD AREA REQUIREMENTS

Pursuant to the Flood Disaster Protection Act of 1973, those structures that remain in the Special Flood Hazard Area (SFHA) after the implementation of the mitigation project, flood insurance must be maintained for the life of the structure. The SFHA is defined as the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year.

The following National Flood Insurance Program Eligibility Requirements contained in the 2023 Hazard Mitigation Assistance Program and Policy Guide apply to any project involving the alteration of existing structures, to include Mitigation Reconstruction projects that are sited within an SFHA.

- a. When the project is implemented, all structures that will not be demolished or relocated out of the SFHA must be covered by a National Flood Insurance Program (NFIP) flood insurance policy to an amount at least equal to the project cost or to the maximum limit of coverage made available with respect to the particular property, whichever is less.
- b. The SUBRECIPIENT (or property owner) must legally record with the county or appropriate jurisdiction's land records agency a notice that includes the name of the current property owner (including book/page reference to record of current title, if readily available), a legal description of the property, and the following notice of flood insurance requirements as identified on page 244 of the 2023 Hazard Mitigation Assistance Program and Policy Guide:

"This property has received Federal hazard mitigation assistance. Federal law requires that flood insurance coverage on this property must be maintained during the life of the property regardless of transfer of ownership of such property. Pursuant to 42 U.S.C. § 5154a, failure to maintain flood insurance on this property may prohibit the owner from receiving Federal disaster assistance with respect to this property in the event of a flood disaster. The Property Owner is also required to maintain this property in accordance with the floodplain management criteria of 44 CFR § 60.3 and City/County Ordinance."

- c. Copies of the recorded notices for each property will be provided to the DEPARTMENT at project closeout.

8. PROVISIONS APPLYING ONLY TO ACQUISITION OF PROPERTIES FOR OPEN SPACE

- a. The SUBRECIPIENT must ensure that prospective participants are informed in writing that property owner participation in this acquisition program is voluntary and that the SUBRECIPIENT will not use its eminent domain authority to acquire the property for the project purposes should negotiations fail.

Copies of the Statement of Voluntary Participation signed by each participating property owner will be provided to the DEPARTMENT by project close-out.

- b. The SUBRECIPIENT agrees that land acquired for open space purposes under this grant will be restricted in perpetuity to open space uses and will be unavailable for the construction of flood damage reduction levees, transportation facilities, and other incompatible purposes and agrees to comply with the requirements of 44 CFR Part 80 Property Acquisition and Relocation for Open Space.

- c. The SUBRECIPIENT agrees to prepare, execute and record Deed Restrictions for each affected property utilizing the current Model Deed Restriction provided on the FEMA website or available from the DEPARTMENT.

Copies of the recorded deed and attached deed restrictions for each property will be provided to the DEPARTMENT by project close-out.

- d. The SUBRECIPIENT accepts all of the requirements of the deed restriction governing the use of the land.
- e. The SUBRECIPIENT ensures that, prior to acquisition of the property, in consultation with the U.S. Army Corps of Engineers, it has addressed and considered the potential future use of these lands for the construction of flood damage reduction levees, has rejected consideration of such measures in the future in the project area, and instead has chosen to proceed with acquisition of permanent open space.

Documentation of this consultation and the SUBRECIPIENT's consideration of this issue will be provided to the DEPARTMENT by project close-out.

- f. The SUBRECIPIENT must, prior to acquisition of the property, consult with the Washington State Department of Transportation to ensure that no future planned improvements or enhancements are under consideration that will affect the proposed project area.

Documentation of this consultation will be provided to the DEPARTMENT by project close-out.

- g. The SUBRECIPIENT will remove existing buildings from acquired properties within 90 days of settlement. The SUBRECIPIENT will provide confirmation to the DEPARTMENT as to the date of demolition of each structure included in the project in its quarterly reports, as well as confirmation that the property has been returned to "natural" or park/open space condition.

The SUBRECIPIENT will provide digital latitude and longitude coordinates and digital photographs of each property site after project implementation to the DEPARTMENT by project close-out.

- h. The SUBRECIPIENT agrees to complete FEMA Form AW-501, NFIP Repetitive Loss Update Worksheet for each property identified on FEMA's Repetitive Loss list to document completion of mitigation on the property. The form is available on FEMA's Web site or available from the DEPARTMENT.

The SUBRECIPIENT will provide a copy of the completed form to the DEPARTMENT by project close-out.

- i. The SUBRECIPIENT agrees to comply with the requirements of 44 CFR § 80.19 Land Use and Oversight, which are incorporated into these conditions by reference. These requirements include, but are not limited to, the following (which are described further in the 2023 Hazard Mitigation Assistance Program and Policy Guide which are incorporated herein by reference):

1. Restriction on future disaster assistance for damages to the property.
2. Lists of allowable open space uses as well as uses generally not allowed on acquired open space land.
3. Provision for salvage of pre-existing structures and paved areas.
4. Requirements pertaining to future transfer of property interest.
5. Requirement for SUBRECIPIENT monitoring and inspection of the acquired property at least every 3 years. The SUBRECIPIENT will provide the DEPARTMENT with a report on the result of the inspection within 90 days of the inspection.
6. Provisions for enforcement of violation of open space requirements.

The Military Department Agrees To:

1. Provide staff coordination and input regarding grant administration for funding and technical assistance for project and reviews for mitigation construction projects, as necessary.
2. Except as otherwise provided in Article II, A.4, of this Agreement, reimburse Lake Whatcom Water and Sewer District within 45 days of receipt and approval of signed, dated invoice voucher(s) (state form A-19) with sufficient documentation of costs to include completion of tasks to date and dated invoices for goods and services purchased. Costs must be categorized according to the budget item and cost classification shown in the Project Budget, Attachment 5. The DEPARTMENT will return invoices to the SUBRECIPIENT if the SUBRECIPIENT is unable to provide sufficient documentation within 15 calendar days of the DEPARTMENT's request for additional documentation to support the reimbursement request. Any reimbursement requests that are returned to the SUBRECIPIENT and are not returned within the 15 calendar days will be required to submit a revised reimbursement request with a new signature and date.
3. Coordinate with the staff of Lake Whatcom Water and Sewer District to schedule any sub-recipient monitoring, site visits or final inspections by DEPARTMENT staff.

PROJECT DEVELOPMENT SCHEDULE

SUBRECIPIENT: Lake Whatcom Water and Sewer District
 PROJECT TITLE: SVWTP CHLORINE CONTACT BASIN REPLACEMENT – Phase 1

<i>DESCRIPTION OF ACTIVITY/TASK</i>	<i>SCHEDULED COMPLETION DATE (months)</i>
Phase 1a - Selection of and Contracting with Consulting Engineering Firm	(5 months)
Phase 1b - Predesign (Topographic Survey, DOH Project Report, 30% Plans)	(6 months)
Phase 1c - Permitting, Sudden Valley Community Association Coordination	(12 months)
Phase 1d - Bidding and Construction Contract	(2 months)
Phase 2 - Construction	(12 months)
Phase 2 - Closeout	(1 month)
Total Time Required to Complete This Project: 38 months	
Quarterly Reports Due on Project Progress, Final Project Report and all documentation, site visits and inspections.	April 15, 2024; July 15, 2024; October 15, 2024; January 15, 2025; April 15, 2025; July 15, 2025 (Final Report)

PROJECT BUDGET

SUBRECIPIENT: Lake Whatcom Water and Sewer District
 PROJECT TITLE: SVWTP CHLORINE CONTACT BASIN REPLACEMENT – Phase 1

<i>APPROVED BUDGET CATEGORY</i>	<i>ESTIMATED COST</i>
Project Management Costs (Phase I)	\$20,000.00
Architectural, Engineering, Geotechnical, Permitting, etc. (Phase I)	\$274,607.00
	<i>Project Total (Phase I)</i> \$294,607.00
SubMC – This category is restricted to eligible grant administration costs, including indirect costs, and is limited to 5% of eligible <i>project</i> expenditures. The amount shown here reflects the maximum amount available, based on the approved project budget.	\$14,730.35
TOTAL (Project Total + SubMC): \$309,337.35	
<p>Tracking and Reporting Project Costs: Project expenses for which reimbursement is sought must be tracked and reported by approved budget cost categories, above. Documentation of expenditures by approved budget cost categories should be made on a separate spreadsheet or table and included with each A-19. Supporting documentation of all costs shall include, but not be limited to: tracking of staff time spent on the project through timesheets or other similar documentation; dated invoices from contractors and subcontractors for work completed; dated invoices for goods and services purchased; and documentation of in-kind contributions of personnel, equipment and supplies.</p> <p>Final Payment: Final payment of any remaining, or withheld, funds will be made upon submission by the SUBRECIPIENT within 60 days of completion of the project of the final report and an A-19, Voucher Distribution, and completion of all final inspections by the DEPARTMENT. Final payment also may be conditioned upon a financial review, if determined necessary by the DEPARTMENT. Adjustments to the final payment may be made following any audits conducted by the DEPARTMENT, Washington State Auditor's Office, the United States Inspector General, or their authorized representatives.</p>	


Per 2023 Hazard Mitigation Assistance Program and Policy Guide, no cost overruns will be funded. If costs exceed the maximum amount of FEMA funding approved, the SUBRECIPIENT shall pay the costs in excess of the approved budget.

A request for additional funds to cover a cost overrun may be granted by the DEPARTMENT and FEMA only if funds are available within the HMGP ceiling for this disaster, (FEMA-FM-5395). A request for additional funds must be fully documented and justified.



AGENDA
BILL
Item 6.D

Sudden Valley Water Treatment Plant Chlorine Contact Basin Replacement Project Professional Services Agreement Approval

DATE SUBMITTED:	May 1, 2024	MEETING DATE:	May 8, 2024
TO: BOARD OF COMMISSIONERS	FROM: Greg Nicoll, District Engineer		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. Professional Services Agreement with Gray & Osborne Engineers		
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 District provides potable water to its South Shore water system, which includes the Sudden Valley and Geneva communities, wholly by water treated at its Sudden Valley Water Treatment Plant (SVWTP). The SVWTP is a rapid-rate, direct filtration plant with a rated capacity of 2.0 million gallons per day (mgd) that was constructed as part of the Sudden Valley development in the early 1970s. An essential component of the SVWTP system is the 225,000-gallon, 40-foot diameter, 24-foot high welded-steel chlorine contact basin (CCB) that was constructed in 1994. The CCB is outfitted with internal baffling that provides filtered water the necessary chlorine contact time, as regulated by the Washington State Department of Health (DOH), for adequate disinfection under current operating flow rates prior to conveyance to the public via the District's water distribution system.

In 2016, BHC Consultants performed a seismic vulnerability assessment of the District's steel reservoirs, including the CCB. The assessment identified two structural deficiencies with the CCB (inadequate uplift resistance of the foundation and lack of piping flexibility) that would prohibit the CCB from surviving a significant earthquake. Subsequent assessments of the CCB's treatment capacity were performed by Gray & Osborne Engineers in 2017 and 2020, which recommended construction of a new CCB that can provide sufficient chlorine contact time for full design flow (2.0 mgd). In addition, a 2020 assessment of the interior and exterior CCB coatings by Evergreen Coating Engineers revealed that the coatings are nearing the ends of their useful service lives.

As a result, the District identified the need to replace the existing CCB with a new CCB that meets current seismic standards and that is sized to accommodate full design flow of the SVWTP.

In 2022, the District submitted a FEMA Hazard Mitigation Grant application to replace the existing CCB with a new 307,000-gallon, 44-foot diameter, 27-foot high welded-steel tank CCB. The grant application was developed in conjunction with Washington State Emergency Management Division (WA-EMD) of the Washington State Military Department and the Federal Emergency Management Agency (FEMA) as a hazard mitigation project. The cost sharing is as follows: FEMA 75% (\$1,472,250), WA-EMD 12.5% (\$245,375), and Lake Whatcom Water and Sewer District 12.5% (\$245,375).

The project has been split into two phases: Phase 1 – Design/Permitting; and Phase 2 – Construction. The goal is to approve an initial Hazard Mitigation Grant agreement for Phase 1 and a professional services agreement with an engineering consultant to enable completion of design/permitting in 2025. Phase 2 targets construction during the summer of 2026. The District issued a request for qualifications (RFQ) for designing and permitting of the project. Two statements of qualifications were received, with Gray & Osborne Engineers selected as most qualified consultant.

The attached professional services agreement is for completion of preliminary design and alternative analysis to determine the basin construction material and configuration (\$39,525.00 in federal funding and \$6,587.50 in State funding, with a District match of \$6,587.50). A future contract amendment will be prepared to include design and permitting for the selected alternative.

FISCAL IMPACT

The Water Utility System Reinvestment Fund will finance the grant match of \$6,587.50. However, as the fate of the HMG application was unknown at the time of development of the 2023-24 budget, this expenditure is not defined in the approved biennial budget.

APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)

Product Quality
Infrastructure Strategy and Performance
Community Sustainability

RECOMMENDED BOARD ACTION

Staff recommends that the Board authorize the General Manager to execute the professional services agreement with Gray & Osborne Engineers.

PROPOSED MOTION

Recommended motion is:

“I move to authorize the general manager to execute the professional services agreement with Gray & Osborne Engineers for preliminary design and alternative analysis for the Sudden Valley Water Treatment Plant Chlorine Contact Basin Replacement Project as presented.”

**PROFESSIONAL SERVICES AGREEMENT
FOR
SUDDEN VALLEY WTP CHLORINE CONTACT BASIN REPLACEMENT**

THIS AGREEMENT, made and entered into by and between Lake Whatcom Water and Sewer District, Whatcom County, Washington, hereinafter referred to as "District", and Gray & Osborne, Inc. ("Consultant"), a corporation with a place of business at 1130 Rainier Avenue South, Suite #300, Seattle, WA 98144, 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 **Sudden Valley WTP Chlorine Contact Basin Replacement** ("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 Project per Exhibit A, Scope of Work, shall be completed on **December 31, 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 **Gray & Osborne, Inc.** 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, Project Budget. 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 Consultant 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 **FIFTY TWO THOUSAND SEVEN HUNDRED DOLLARS (\$52,700)** ("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.

<p>Gray & Osborne, Inc. Attn: Keith Stewart, P.E. 1130 Rainier Avenue South, Suite #300 Seattle, WA 98144 Phone: 206.284.0860</p>	<p>Lake Whatcom Water and Sewer District Attn: Justin Clary, General Manager 1220 Lakeway Drive Bellingham, WA 98229 Phone: 360.734.9224</p>
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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 **Sudden Valley WTP Chlorine Contact Basin Replacement**, as modified by the latest amendment;
- B. Exhibit A, Scope of Work, as modified by the latest amendment;
- C. Exhibit B, Project Budget;
- 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.

Gray & Osborne, Inc.

By: _____
Mike Johnson, President

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
Sudden Valley WTP Chlorine Contact Basin Replacement**

EXHIBIT A

SCOPE OF WORK

LAKE WHATCOM WATER AND SEWER DISTRICT SUDDEN VALLEY WATER TREATMENT PLANT CONTACT BASIN IMPROVEMENTS ENGINEERING SERVICES

PROJECT UNDERSTANDING

The Lake Whatcom Water and Sewer District (District) owns and maintains a public water and sewer system that serves residential and commercial customers in Whatcom County, Washington. The name of the system is Lake Whatcom Water Sewer District – South Shore Water System. The system is a Type A water system with a Green Operating Permit, serves approximately 11,000 customers (approximately 3,984 calculated connections), and their Washington State Department of Health (DOH) Water System ID is 95910.

As part of the South Shore Water System, the District owns and operates the Sudden Valley Water Treatment Plant (SVWTP), which treats water from Lake Whatcom via rapid rate mixed media filtration technology. The SVWTP is a concrete building built into the hillside adjacent to Morning Beach Park and is located at 25 Morning Beach Drive in Bellingham, Washington.

For treatment, the SVWTP collects raw water from Lake Whatcom, then provides coagulant addition, flocculation, mixed media filtration, chlorine addition, and chlorine contact time before pumping the finished water to the distribution system. As part of the treatment provided prior to the distribution system, the SVWTP provides chlorine contact time via an existing clearwell (located below the ground floor of the SVWTP), as well as an existing chlorine contact basin (CCB). The CCB is a circular, welded steel, above-grade storage tank with a diameter of 40 feet, a sidewall height of 24 feet, and a sidewater depth of 18 to 19 feet, which results in an operational volume of 169,180 – 178,580 gallons.

In 2017, Gray & Osborne performed a tracer study at the SVWTP to confirm the chlorine contact time parameters assumed by the District in their disinfection calculations required by DOH. Through this study, Gray & Osborne identified that some of the assumed parameters were no longer correct for the current hydraulic flow regime within the CCB. Furthermore, the District concluded that they lacked sufficient redundancy for the CCB should the tank ever need to be taken offline for maintenance.

To address this lack of redundancy, update the CCB's chlorine contact parameters, and to address the CCB's seismic deficiencies discovered through a separate analysis, the District investigated potential options and funding sources for replacement/modification

of the CCB. Out of this investigation, the District was recently awarded a Hazard Mitigation Grant through the Federal Emergency Management Agency (FEMA). This Grant provides funds for predesign, design, and construction services to construct a new, larger CCB adjacent to the existing tank. This new tank can then be used to provide additional chlorine contact time and redundancy for water treatment operations.

The District has elected to proceed with the design of a new, replacement CCB and has contracted with Gray & Osborne to provide predesign, design, and construction management services for the project. In general, the Scope of Services to be provided includes the following work items.

- A. Predesign Report to analyze tank alternatives and to identify the tank option which provides the best value for the District.
- B. Completion of a topographical survey to allow for design of the project.
- C. Completion of a geotechnical analysis to confirm seismic parameters for new structures.
- D. Design of the selected alternative identified in the Predesign Report.
- E. Bid services during the public bidding process.
- F. Construction management services.

For budgeting and scheduling purposes, the District has elected to divide the project into three separate phases: Predesign, Design, and Construction Management. While the general outline of Tasks previously listed includes all three phases, the following Scope of Work only includes work for the Predesign Phase of the project. A separate Scope of Work will be developed for design of the selected alternative at the completion of the Predesign phase, and a third and final Scope of Work will be developed for construction administration services at the completion of the Design phase.

Gray & Osborne is pleased to provide the following Scope of Work for the Predesign phase of this project.

SCOPE OF WORK

Task 1 – Project Management

Services shall include overall project management and oversight of the project by the Project Manager.

Work will include the following.

- A. Provide overall project management and oversight of the work.
- B. Procure sufficient staff resources to dedicate to the project.
- C. Manage and control project budget and schedule.
- D. Manage and provide monthly Progress Reports and invoices.
- E. Coordinate the project with the District.

Deliverables

- Monthly Progress Reports and invoices.

Task 2 – Field Survey

Conduct a topographical survey of the project location. Our survey effort will establish locations and elevations of existing structures, grades, local utilities, rights-of-way, easements, and site features required for completion of the Predesign Report, as well as the full project design to be completed later.

Work will include the following.

- A. Boundary Survey – Acquire and utilize readily available records of survey, plat maps, assessor maps, etc., from the County Courthouse (Auditor’s Office) for the project limits as required, for establishing the existing rights-of-way, property lines, and easements within the project limits. This work will include the following.
 - 1. Identify current rights-of-way within and around the project limits.
 - 2. Provide Title Report for vesting legal description and any easements of record.
 - 3. Overlay the boundary line and any easements on a Plan view of the project limits.
- B. Establish vertical and horizontal control on the District’s adopted datum for survey and mapping at a scale of not more than 1 inch = 20 feet (horizontal) and 1 inch = 5 feet (vertical). Vertical control will be suitable for establishing 1-foot contour intervals and to support the design and construction included in this Scope of Work.
- C. Coordinate the identification and location of existing utilities.

- D. Acquire supplemental topographical survey of the site (within and adjacent to the project corridor) to include establishing surface grades, pavement edges, visually obvious utilities (including utility poles, hydrants, valves, etc.), buildings, fences, major trees and significant landscaping, sidewalks, etc., in sufficient detail to support an adequate level of design.
- E. Process the survey data in order to produce a base map of the site to be used for project design.

Deliverables

- Field survey files and notes (upon request).
- Base map (.pdf and .dwg format).

Assumptions

1. Field survey can be completed in four, 10-hour days (two-man crew).
2. The District will provide any previously completed topographical survey data to Gray & Osborne prior to conducting the field survey.
 - CAD files (.dwg) preferred.
3. Utility locations will be coordinated by Gray & Osborne in conjunction with the District and will be completed by the Utility Location Service (One Call) and/or District staff.
 - An outside Contractor will not be used to locate onsite utilities.
4. Potholing or existing utility verification is not included in this Scope of Work.
 - The District will provide access to the site for the duration of the field survey work.

Task 3 – Project Predesign Report

Services shall include preparation of a Predesign Report that will guide the design of the project, and meet the requirements of WAC 246-290-110 for a Project Report. The Predesign Report will include, but not be limited to, the following components.

- A. Chapter 1 – Project Introduction and Purpose.
 - Describe the purpose and intent for the project.
 - Describe the contents of the Report.
- B. Chapter 2 – Background Information and Description of Existing Facilities.
 - Provide a description of the existing SVWTP, chlorine contact basin, and supporting facilities.
 - Provide background information on why this project is needed/desired.
- C. Chapter 3 – Tank Alternatives Analysis.
 - Provide analysis of up to five tank alternatives/permutations. At a minimum, the options to be explored shall include the following.
 - Circular welded steel basin.
 - Single, circular concrete basin.
 - Multiple, circular concrete basins.
 - Single, non-circular concrete basin.
 - Each alternative listed within the Report will include the following (at a minimum).
 - Brief schematic description.
 - Summary of hydraulic design parameters.
 - Preliminary sizing, location, and configuration.
 - Description of appurtenances to be included with the tank.

- Figures depicting a Site Plan, Tank Plan, and Tank Section.
- Summary of operational and/or maintenance modifications required to accommodate the proposed facility.
- Planning-level cost estimate to construct the proposed tank and integrate it into the operation of the SVWTP. Cost estimate will include both capital and life-cycle costs.
- Provide recommendations, if any, to enable existing transmission piping to count towards DOH disinfection requirements as a method to reduce size of proposed chlorine contact basin.
- Provide a summary table for all of the alternatives discussed.

D. Chapter 4 – Recommendations and Preliminary Design Criteria.

- Provide a recommended alternative based on the analysis in Chapter 3.
- Provide a planning-level cost estimate to include any additional project costs, as required.
- Summarize the appurtenances, access components, and security components to be included with the tank.
- Summary permitting and environmental regulations that should be considered during design.
- Provide an updated project schedule including design, project approval, and construction.

After completion of the Draft Predesign Report, Gray & Osborne will submit the document to the District for their review and comment. Any comments received by the District will be incorporated into a revised Predesign Report. Once the Predesign Report is revised, Gray & Osborne will submit the Report to the DOH for review and comment. Any comments received by the DOH will be addressed in separate correspondence, and the Report will be modified (if necessary) to complete the Final Predesign Report. It is important to note that an approved Predesign Report will be required prior to project construction.

Deliverables

- Draft Predesign Report (.pdf).
- Revised Predesign Report (.pdf).
 - Final Predesign Report (.pdf).

Assumptions

1. Gray & Osborne will utilize our typical CAD title block and formatting standards for all drawings.
2. District will provide Record Drawings or other documentation of the existing transmission line from the SVWTP.
3. SVWTP staff will provide information as needed on operations, chemical consumption, and other operational parameters as needed to complete the Report.
4. No site visits are included with this Task.

Task 4 – Quality Assurance/Quality Control

Oversee one, in-house, Quality Assurance/Quality Control Meeting at Gray & Osborne's office (Seattle) during the course of the project. The meeting will include senior project staff, selected design team members, and District staff (as required and/or desired).

- A. Quality Assurance/Quality Control Meetings will take place at the following levels.
 1. Draft Predesign Report.
 - Prior to District submittal.
- B. Ensure incorporation of relevant recommendations and suggestions into Bid/Construction Documents resulting from quality assurance/quality control reviews.

Deliverables

- None.

Assumptions

1. None.

PROJECT SCHEDULE

Gray & Osborne proposes to complete the previously listed work according to the following schedule.

Notice to Proceed (NTP).....	April 2024
Complete Field Survey	June 2024
Complete Draft Predesign Report.....	August 2024
District Review	August 2024
Complete Final Predesign Report.....	September 2024
Submit Predesign Report to the DOH.....	September 2024
DOH Review Period (16 Weeks).....	November 2024
Permit Agency Preapplication Meeting	November 2024

Adjustments to the aforementioned schedule may be required based on document review times and/or availability of District staff. The District will be notified immediately if any deviations from the schedule are required.

PROJECT BUDGET

Based on the previously described Scope of Work, the proposed fee for design services is \$52,700 as shown in the attached Exhibit B.

EXHIBIT B

PROJECT BUDGET

**Lake Whatcom Water and Sewer District
Sudden Valley WTP Chlorine Contact Basin Replacement**

EXHIBIT B

**ENGINEERING SERVICES
SCOPE AND ESTIMATED COST**

Lake Whatcom Water and Sewer District - Sudden Valley Water Treatment Plant Contact Basin Improvements - Predesign Phase

Tasks	Principal Hours	Project Manager Hours	Structural Engineer Hours	Electrical Engineer Hours	Engineer-In-Training Hours	AutoCAD Technician Hours	Professional Land Surveyor Hours	Field Survey (Two Person) Hours
1 Project Management		8						
2 Field Survey		1				8	24	40
3 Project Predesign Report	4	36	8	4	80	64		
4 Quality Assurance/Quality Control	4	4	2	2	4			
Hour Estimate:	8	49	10	6	84	72	24	40
Fully Burdened Billing Rate Range:*	\$150 to \$245	\$140 to \$245	\$120 to \$220	\$125 to \$225	\$100 to \$180	\$65 to \$175	\$125 to \$200	\$180 to \$310
Estimated Fully Burdened Billing Rate:*	\$225	\$190	\$185	\$220	\$130	\$145	\$195	\$275
Fully Burdened Labor Cost:	\$1,800	\$9,310	\$1,850	\$1,320	\$10,920	\$10,440	\$4,680	\$11,000

Total Fully Burdened Labor Cost: \$51,320

Direct Non-Salary Cost:

Mileage & Expenses (Mileage @ current IRS rate) \$ 530

Title Report \$ 850

TOTAL ESTIMATED COST: \$52,700

* Actual labor cost will be based on each employee's actual rate. Estimated rates are for determining total estimated cost only. Fully burdened billing rates include direct salary cost, overhead, and profit.

EXHIBIT C

INSURANCE

**Lake Whatcom Water and Sewer District
Sudden Valley WTP Chlorine Contact Basin Replacement**

[insert certificates of insurance per Section 14]

EXHIBIT D

**ALLOWABLE OTHER DIRECT COSTS
Lake Whatcom Water and Sewer District
Sudden Valley WTP Chlorine Contact Basin Replacement**

Gray & Osborne proposes no Other Direct Costs.

EXHIBIT E

KEY PERSONNEL LIST Lake Whatcom Water and Sewer District Sudden Valley WTP Chlorine Contact Basin Replacement

Key Personnel List

Keith Stewart – Principal In Charge

Russ Porter – Project Manager

Keenan Ferrar – Project Engineer (Water)

Myron Basden – Project Engineer (Structural)

Jason Newquist – Project Engineer (Electrical)

Rick Bond – Survey

Phil Marshall – CAD Technician


Mark Nagel – CAD Technician

Mike Johnson – Quality Assurance / Quality Control



**AGENDA
BILL
Item 8.A**

**General Manager's
Report**

DATE SUBMITTED:	May 2, 2024	MEETING DATE:	May 8, 2024
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, May 8, 2024 – 6:30 p.m.

Important Upcoming Dates

Lake Whatcom Water & Sewer District			
Regular Board Meeting	Wed May 29, 2024	8:00 a.m.	Board Room/Hybrid
Employee Staff Meeting	Thu May 9, 2024	8:00 a.m.	Board Room/Hybrid Commissioner Knakal to attend
Investment Comm. Meeting	Wed May 29, 2024	10:00 a.m.	Board Room/Hybrid
Safety Committee Meeting	Thur May 23, 2024	8:00 a.m.	Board Room
Lake Whatcom Management Program			
Policy Group Meeting	Wed June 5, 2024	3:00 p.m.	City of Bellingham Pacific St Ops Center, Rm 111/Hybrid
Joint Councils Meeting	March 2025	TBD	TBD
Other Meetings			
WASWD Section III Meeting	Tues May 14, 2024	6:00 p.m.	Bob’s Burgers 8822 Quil Ceda Pkwy, Tulalip, WA
Whatcom Water Districts Caucus Meeting	Wed May 15, 2024	2:00 p.m.	Remote Attendance
Whatcom County Council of Governments Board Meeting	Wed May 8, 2024	3:00 p.m.	Council of Governments Offices 314 E Champion Street/Hybrid

Committee Meeting Reports

Safety Committee:

- The committee met on April 25; discussion included the status of fall protection installation at the North Point sewer lift station and confined space entry retrieval equipment at the SVWTP, development of safety inspection procedures for the boom lift, and the status of review of the chemical hazard communication and motor vehicle safety programs.

Investment Committee:

- No committee meeting has been held since the last board meeting.

Upcoming Board Meeting Topics

- District financial model (Waterworth) presentation
- Eagleridge water booster station capital improvement plan presentation
- Commissioner insurance authorization approval
- 2023-24 Budget Amendment No. 2 approval
- Facility security assessment presentation
- Geneva reservoir/SVWTP booster station seismic retrofits project hazard mitigation grant and professional services agreements approval
- Euclid sewer lift station improvements project contract closeout

2024 Initiatives Status

Administration and Operations

Strategic Planning

- Conduct the AWWA Effective Utility Management (EUM) assessment process, which will inform the next revision to the six-year strategic business plan.
District management, staff, and board completed the EUM assessment process with the results discussed during the April 10 board meeting. District staff have initiated update to the six-year strategic business plan based upon the EUM assessment results.

Collective Bargaining Agreement

- Negotiate a successor agreement with AFSCME Local 114WD by December 31, 2024.
The District, with AFSCME input, has contracted NW Management Services to assist in the completion of a total compensation study, which will be completed in Spring 2024 to inform a critical component of agreement negotiations with AFSCME in Summer/Fall 2024.

Management Team Support

- With the 2022 and 2023 departures of the District's O&M Manager and Engineering Manager, respectively, devote time to coordinating and assisting Mr. Dahlstrom and Mr. Nicoll in their relatively new roles.
One-on-one check-in meetings are scheduled throughout 2024; both J Dahlstrom and G Nicoll are considering applicable leadership/management training opportunities (in addition to J Dahlstrom's participation in the yearlong APWA emerging leaders academy).

Water Right Adjudication

- Represent the District in the water right adjudication process to ensure that its certificated and permitted rights are protected.
The Department of Ecology plans to file for adjudication in Spring 2024; J Clary continues to monitor the status and attend associated webinars/meetings (next is scheduled for May 6).

Records Management System

- Implement new records management system.
The District executed a personal services agreement in December 2023 for purchase and implementation of the selected enterprise content management (ECM) system (Laserfiche); conversion to the new system is underway and anticipated to be complete Spring 2024.

Safety Program Update

- Continue systematic review and revision of District's safety programs by updating eight programs in 2024.
Staff has finalized updates to three (3) programs (meter reading, wildfire smoke, and employee orientation) and is reviewing the chemical hazard communication and motor vehicle operation 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, J Clary 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 exercises.

J Clary and R Munson met with Holly Woll-Salkeid (Whatcom County) on April 11 to coordinate 2024 exercises (the first is scheduled for July 10).

Business Continuity Plan

- Finalize 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.

Complete.

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 pages regularly; Nextdoor is also regularly monitored for District-related posts.
- Press Releases
A press release was issued on April 29 (Division 7 Reservoir project groundbreaking).

Intergovernmental Relations

- *J Clary attended a virtual meeting with Dave Anderson (Department of Commerce Growth Management Director) on April 29 at the request of the WASWD executive director.*
- *J Clary chaired the Whatcom County Water Utility Coordinating Committee meeting on May 1.*
- *J Clary hosted the Division 7 Reservoir groundbreaking event on May 2*
- *J Clary is scheduled to attend the WRIA 1 adjudication webinar on May 6.*
- *J Clary is scheduled to attend the WASWD general managers meeting on May 8.*
- *J Clary is scheduled to meet with Lynden city administrator, John Williams, on May 8.*

Lake Whatcom Water Quality

Lake Whatcom Management Program

- *J Clary participated in a video interview with WWU students on April 25 regarding Lake Whatcom water quality.*
- Participate in meetings of Lake Whatcom Management Program partners.
J Clary attended the policy group meeting on April 24 and is scheduled to meet with Christina McGinnis May 6 to address comments made specific to the District during the March 27 joint councils meeting.