



# Lake Whatcom Water & Sewer District

## Board Meeting Access Information

### **Meeting Schedule**

6:30 pm - 2nd Wed of each month

8:00 am - Last Wed of each month

## 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*

New to GoToMeeting? Get the app now and be ready when the meeting starts:

<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](mailto: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

*January 14, 2026*


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. Election of Officers
  - B. Appointment of Investment Committee Representatives
  - C. Appointment of Whatcom County Council of Governments and Lake Whatcom Management Program Policy Group Representatives
  - D. Division 22-1 Reservoir Replacement Project Public Works Board Loan Agreement No. PC26-96410-014
7. OTHER BUSINESS
8. STAFF REPORTS
  - A. General Manager
9. PUBLIC COMMENT OPPORTUNITY
10. EXECUTIVE SESSION  
*Executive Session per RCW 42.30.110(1)(i): To discuss with legal counsel active litigation – 30 minutes*
11. ADJOURNMENT



**AGENDA  
BILL  
Item 5**

**Consent Agenda**

DATE SUBMITTED:	January 7, 2026	MEETING DATE:	January 14, 2026
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 01.14.2026\*\***

**BACKGROUND / EXPLANATION OF IMPACT**

- Minutes for the 12.10.2025 Regular Board Meeting
- Payroll for Pay Period #26 (12.06.2025 through 12.19.2025) totaling \$57,735.98
- Benefits for Pay Period #26 totaling \$57,707.29
- Accounts Payable Vouchers totaling \$157,222.37
- Accounts Payable Vouchers totaling \$4,337.53
- Payroll for Pay Period #01 (12.20.2025 through 01.02.2026) totaling \$55,863.82
- Benefits for Pay Period #01 totaling \$61,744.27
- 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 2025-2026 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.”



## REGULAR SESSION OF THE BOARD OF COMMISSIONERS

# Minutes

*December 10, 2025*

Board President Todd Citron called the Regular Session to order at 6:30 p.m.

<b>Attendees:</b>	Commissioner Todd Citron	General Manager Justin Clary
	Commissioner John Carter (v)	Finance Manager Jenny Signs
	Commissioner Bruce Ford (v)	Operations Manager Jason Dahlstrom
	Commissioner Jeff Knakal	Legal Counsel Bob Carmichael
	Commissioner David Holland	Recording Secretary Rachael Hope

One member of the public was in attendance (v) and participated only as an observer. Attendees marked with a (v) attended virtually.

### **Consent Agenda**

#### **Action Taken**

**Knakal moved, Holland seconded, approval of:**

- **Minutes for the 11.12.2025 Regular Board Meeting**
- **Payroll for Pay Period #24 (11.08.2025 through 11.21.2025) totaling \$56,390.34**
- **Benefits for Pay Period #24 totaling \$59,532.49**
- **Accounts Payable Vouchers totaling \$67,053.83**
- **Payroll for Pay Period #25 (11.22.2025 through 12.05.2025) totaling \$59,596.18**
- **Benefits for Pay Period #25 totaling \$61,318.68**
- **Accounts Payable Vouchers totaling \$248,936.63**

**Motion passed.**

### **Oath of Office – Commissioner Position No. 3**

During the November 2025 general election, Bruce Ford was elected to fill District Board of Commissioner Position No. 3 for the January 1, 2026 through December 31, 2031 six-year term. Commissioner Ford took the oath of office.

### **Wilson Engineering 2026 On-call Rates Approval**

Clary recalled that Wilson Engineering provides on-call engineering services to the District through a professional services agreement executed on September 2, 2021, and effective through July 31, 2026. Per Section 8.4 of the agreement, Wilson Engineering may annually request revision of the approved rates to accommodate inflation and market conditions. Staff presented a letter from Wilson Engineering dated November 24, 2025, requesting revision to its rates and fees for 2026.

#### **Action Taken**

**Knakal moved, Holland seconded, to approve rates and fees to be effective January 1, 2026, for professional services performed by Wilson Engineering under the existing on-call professional**

**services contract with the District, as requested in the November 24, 2025, letter from Wilson Engineering. Motion passed.**

#### **Non-union Employee 2026 Salary Cost-of-Living-Adjustment Approval**

Clary explained that traditionally, non-represented employees have received the same annual cost-of-living-adjustment (COLA) as represented (union) employees. Non-union employees include the District Engineer/Engineering Manager, Finance Manager/Treasurer, Operations & Maintenance Manager, and Administrative Assistant. For 2025, all employee wages were set based upon the recommendations of the total compensation study performed in 2024 increased by 5% (with exception to the general manager, whose salary was revised by separate board action).

Per the 2025-2028 union collective bargaining agreement, represented staff will receive a COLA of 2.8%, which is set by the August 2024-August 2025 Consumer Price Index for All Urban Consumers (CPI-U) in the Seattle area and not less than 2% nor greater than 4%. Clary recommended that the same COLA contractually required for represented employees be provided to non-represented employees.

#### **Action Taken**

**Knakal moved, Holland seconded, to approve a salary adjustment for all non-represented District staff, excluding the general manager, that is equal to an increase of 2.8% and effective January 1, 2026. Motion passed.**

#### **Water Utility Capital Projects Schedule Revisions**

Clary gave a brief background of several upcoming capital projects, recounting that between 2016 and 2022, the District completed a series of evaluations of the District's drinking water reservoirs, including seismic evaluations, dive inspections and coating evaluations. These evaluations collectively determined that recoating, seismic improvements and/or replacement of the Division 22-1 and Geneva Reservoirs and the Sudden Valley WTP Chlorine Contact Basin (CCB) were needed in the very near future to address seismic deficiencies and deferred maintenance. Subsequent evaluations also determined that the Sudden Valley WTP Pump House does not meet current seismic design standards.

Considering these findings, the District created four separate capital improvement projects to address these deficiencies. Clary presented the Board with a table of original budget years planned for these four projects and explained that several factors have led District staff to consider revisions to the project schedules that would require changing the respective budget years. The proposed rescheduling of these capital projects will allow additional time for the District to pursue additional funding, and combining some of the projects into a single construction contract is anticipated to provide additional efficiencies that may result in lower construction costs. Discussion followed.

#### **General Manager's Report**

Clary updated the Board on several topics, including ongoing meetings with 40<sup>th</sup> and 42<sup>nd</sup> District State Legislators to brief them on the District's 2026 Legislative Agenda, and no findings of Per- and Polyfluoroalkyl Substances (PFAS) in required tests during 3<sup>rd</sup> quarter.

Dahlstrom apprised the board of recent testing done by District staff at the Scenic Intertie with positive results. He also gave an update on the District's response to the current weather event, with major flooding expected across Western Washington.

Discussion followed, during which staff recommended cancellation of the December 31, 2025 regular board meeting, and the board agreed.

#### **Executive Session Per RCW 42.30.110(1)(g)**

Citron recessed the Regular Session to Executive Session at 7:15 p.m. It was estimated that the Executive Session would take 60 minutes and end at 8:15 p.m. The purpose of the Executive Session was to review the

performance of a public employee (General Manager performance evaluation). Citron recessed the Executive Session and reconvened the Regular Meeting at 8:07 p.m.

**Action Taken**  
**Knakal moved, Holland seconded, to increase Justin Clary's 2025 salary by 2.8%, resulting in an annual salary of \$197,867.38, effective January 1, 2026. Motion passed.**

With no further business, Citron adjourned the regular session at 8:10 p.m.

_____	Attest: _____
Board President, Todd Citron	Recording Secretary, Rachael Hope

Minutes approved by motion at ☐ Regular ☐ Special Board Meeting on \_\_\_\_\_

# CHECK REGISTER

# PAYROLL

Lake Whatcom W-S District

Time: 11:32:52 Date: 12/22/2025

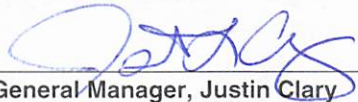
12/24/2025 To: 12/24/2025

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
3702	12/24/2025	Payroll	5	EFT		146.50	12/06/2025 - 12/19/2025 PR 26
3703	12/24/2025	Payroll	5	EFT		439.47	12/06/2025 - 12/19/2025 PR 26
3704	12/24/2025	Payroll	5	EFT		4,765.16	12/06/2025 - 12/19/2025 PR 26
3705	12/24/2025	Payroll	5	EFT		3,302.67	12/06/2025 - 12/19/2025 PR 26
3706	12/24/2025	Payroll	5	EFT		4,043.87	12/06/2025 - 12/19/2025 PR 26
3708	12/24/2025	Payroll	5	EFT		3,442.95	12/06/2025 - 12/19/2025 PR 26
3710	12/24/2025	Payroll	5	EFT		2,161.45	12/06/2025 - 12/19/2025 PR 26
3711	12/24/2025	Payroll	5	EFT		3,474.49	12/06/2025 - 12/19/2025 PR 26
3712	12/24/2025	Payroll	5	EFT		294.85	12/06/2025 - 12/19/2025 PR 26
3713	12/24/2025	Payroll	5	EFT		2,715.13	12/06/2025 - 12/19/2025 PR 26
3714	12/24/2025	Payroll	5	EFT		2,528.76	12/06/2025 - 12/19/2025 PR 26
3715	12/24/2025	Payroll	5	EFT		292.98	12/06/2025 - 12/19/2025 PR 26
3716	12/24/2025	Payroll	5	EFT		3,044.25	12/06/2025 - 12/19/2025 PR 26
3717	12/24/2025	Payroll	5	EFT		736.93	12/06/2025 - 12/19/2025 PR 26
3718	12/24/2025	Payroll	5	EFT		2,919.03	12/06/2025 - 12/19/2025 PR 26
3719	12/24/2025	Payroll	5	EFT		3,309.79	12/06/2025 - 12/19/2025 PR 26
3720	12/24/2025	Payroll	5	EFT		2,353.25	12/06/2025 - 12/19/2025 PR 26
3721	12/24/2025	Payroll	5	EFT		3,178.84	12/06/2025 - 12/19/2025 PR 26
3722	12/24/2025	Payroll	5	EFT		1,804.11	12/06/2025 - 12/19/2025 PR 26
3723	12/24/2025	Payroll	5	EFT		5,008.06	12/06/2025 - 12/19/2025 PR 26
3724	12/24/2025	Payroll	5	EFT		2,492.05	12/06/2025 - 12/19/2025 PR 26
3725	12/24/2025	Payroll	5	EFT		3,113.03	12/06/2025 - 12/19/2025 PR 26
3707	12/24/2025	Payroll	5	17064		292.98	11/5/2025 & 11/12/2025
3709	12/24/2025	Payroll	5	17065		1,875.38	12/06/2025 - 12/19/2025 PR 26
401 Water Fund						16,769.51	
402 Sewer Fund						40,966.47	

57,735.98 Payroll: 57,735.98

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 12/29/2025  
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 1/14/2026  
Date Approved



# CHECK REGISTER

# BENEFITS

Lake Whatcom W-S District


Time: 11:49:45 Date: 12/22/2025

12/24/2025 To: 12/24/2025

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
3726	12/24/2025	Payroll	5	EFT	DEPARTMENT OF RETIREMENT SYSTEMS	7,415.50	Pay Cycle(s) 12/24/2025 To 12/24/2025 - DCP; Pay Cycle(s) 12/24/2025 To 12/24/2025 - ROTH DCP
3727	12/24/2025	Payroll	5	EFT	UNITED STATES TREASURY	19,468.98	941 Deposit for Pay Cycle(s) 12/24/2025 - 12/24/2025
3728	12/24/2025	Payroll	5	EFT	WA ST PUBLIC EMP RET PLAN 2	6,807.87	Pay Cycle(s) 12/24/2025 To 12/24/2025 - PERS 2
3729	12/24/2025	Payroll	5	EFT	WA ST PUBLIC EMP RET PLAN 3	3,242.29	Pay Cycle(s) 12/24/2025 To 12/24/2025 - PERS 3
3730	12/24/2025	Payroll	5	EFT	WA ST SUPPORT ENFORCEMENT REGISTRY	888.77	Pay Cycle(s) 12/24/2025 To 12/24/2025 - SUP ENF
3731	12/24/2025	Payroll	5	17066	AFLAC	300.31	Pay Cycle(s) 12/24/2025 To 12/24/2025 - AFLAC PRE-TAX; Pay Cycle(s) 12/24/2025 To 12/24/2025 - AFLAC POST-TAX
3732	12/24/2025	Payroll	5	17067	AFSCME LOCAL	382.80	Pay Cycle(s) 12/24/2025 To 12/24/2025 - UNION DUES; Pay Cycle(s) 12/24/2025 To 12/24/2025 - UNION FUND
3733	12/24/2025	Payroll	5	17068	HRA VEBA TRUST (PAYEE)	590.00	Pay Cycle(s) 12/24/2025 To 12/24/2025 - VEBA
3734	12/24/2025	Payroll	5	17069	WA ST HEALTH CARE AUTHORITY	20,610.77	Pay Cycle(s) 12/24/2025 To 12/24/2025 - PEBB MEDICAL; Pay Cycle(s) 12/24/2025 To 12/24/2025 - PEBB ADD LTD; Pay Cycle(s) 12/24/2025 To 12/24/2025 - PEBB SMK Surcharge
401 Water Fund						44,245.14	
402 Sewer Fund						15,462.15	
						59,707.29	Payroll: 59,707.29

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 12/29/2025  
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 1/14/2026  
Date Approved



# CHECK REGISTER

Lake Whatcom W-S District

Time: 12:56:54 Date: 12/31/2025

12/31/2025 To: 12/31/2025

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
3775	12/31/2025	Claims	5	EFT	US BANK - CC	5,119.49	
3776	12/31/2025	Claims	5	17070	AMAZON CAPITAL SERVICE	215.10	
3777	12/31/2025	Claims	5	17071	APPLIED DIGITAL IMAGING	90.81	
3778	12/31/2025	Claims	5	17072	CARMICHAEL CLARK, P.S.	6,513.50	
3779	12/31/2025	Claims	5	17073	CENTURYLINK	109.46	
3780	12/31/2025	Claims	5	17074	CHRISTENSEN INC	2,972.79	
3781	12/31/2025	Claims	5	17075	CITY OF BELLINGHAM - SEWER	57,548.64	
3782	12/31/2025	Claims	5	17076	CLEAR WATER SYSTEMS, INC	19.11	
3783	12/31/2025	Claims	5	17077	COWDEN BROTHERS TRUCKING, LLC	360.04	
3784	12/31/2025	Claims	5	17078	ENVIRONMENTAL PEST CONTROL	53.31	
3785	12/31/2025	Claims	5	17079	EUROFINS ENVIRONMENT TESTING NW, LLC	1,495.00	
3786	12/31/2025	Claims	5	17080	FEDEX	6.45	
3787	12/31/2025	Claims	5	17081	GATEWAY CONTROLS, INC	366.24	
3788	12/31/2025	Claims	5	17082	HARDWARE SALES INC	96.03	
3789	12/31/2025	Claims	5	17083	JCI JONES CHEMICAL, INC.	1,755.78	
3790	12/31/2025	Claims	5	17084	NP INFORMATION SYSTEMS	4,531.68	PO 1046
3791	12/31/2025	Claims	5	17085	PACIFIC POWER BATTERIES	317.17	
3792	12/31/2025	Claims	5	17086	PUGET SOUND ENERGY	97.18	
3793	12/31/2025	Claims	5	17087	PUMP TECH LLC	1,419.73	
3794	12/31/2025	Claims	5	17088	REDPOINT CONTRACTING	60,817.27	
3795	12/31/2025	Claims	5	17089	VANDER YACHT PROPANE	785.18	
3796	12/31/2025	Claims	5	17090	VERIZON WIRELESS	2,993.89	
3797	12/31/2025	Claims	5	17091	VESTIS	57.50	
3798	12/31/2025	Claims	5	17092	WHATCOM COUNTY ASSESSOR	6,145.22	
3799	12/31/2025	Claims	5	17093	WHITNEY EQUIPMENT CO, INC	2,801.70	PO 1044; PO 1044
3800	12/31/2025	Claims	5	17094	KENNETH C ZANGARI	534.10	
401 Water Fund						21,923.44	
402 Sewer Fund						135,298.93	
						<u>157,222.37</u>	
							Claims: 157,222.37

**ACCOUNTS  
PAYABLE**

# CHECK REGISTER

Lake Whatcom W-S District


Time: 12:56:54 Date: 12/31/2025

12/31/2025 To: 12/31/2025

Page: 2

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
-------	------	------	--------	-------	----------	--------	------

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 12/31/2025  
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 1/14/2026  
Date Approved

# CHECK REGISTER

Lake Whatcom W-S District


Time: 09:39:08 Date: 12/17/2025

12/17/2025 To: 12/17/2025

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
3677	12/17/2025	Claims	5	17059	COMCAST - MORNING BEACH	345.32	
3678	12/17/2025	Claims	5	17060	QUALITY CONTROLS CORPORATION	2,470.00	<b>ACCOUNTS PAYABLE</b>
3679	12/17/2025	Claims	5	17061	WEX BANK SINCLAIR	761.52	
3676	12/17/2025	Claims	5	17062	COMCAST - LAKEWAY	380.37	
3675	12/17/2025	Claims	5	17063	COMCAST - LAKEVIEW	380.32	
						401 Water Fund	2,168.77
						402 Sewer Fund	2,168.76
							<hr/>
							Claims: 4,337.53
							4,337.53

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 12/17/2025  
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 1/14/2026  
Date Approved

# CHECK REGISTER

# PAYROLL

Lake Whatcom W-S District

Time: 14:13:21 Date: 01/06/2026


01/08/2026 To: 01/08/2026

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
18	01/08/2026	Payroll	5	EFT		4,031.67	12/20/2025 - 01/02/2026 PR01
19	01/08/2026	Payroll	5	EFT		3,326.33	12/20/2025 - 01/02/2026 PR01
20	01/08/2026	Payroll	5	EFT		4,099.54	12/20/2025 - 01/02/2026 PR01
21	01/08/2026	Payroll	5	EFT		2,492.46	12/20/2025 - 01/02/2026 PR01
23	01/08/2026	Payroll	5	EFT		2,157.37	12/20/2025 - 01/02/2026 PR01
24	01/08/2026	Payroll	5	EFT		3,518.48	12/20/2025 - 01/02/2026 PR01
25	01/08/2026	Payroll	5	EFT		2,719.52	12/20/2025 - 01/02/2026 PR01
26	01/08/2026	Payroll	5	EFT		2,648.86	12/20/2025 - 01/02/2026 PR01
27	01/08/2026	Payroll	5	EFT		3,067.28	12/20/2025 - 01/02/2026 PR01
28	01/08/2026	Payroll	5	EFT		381.33	12/20/2025 - 01/02/2026 PR01
29	01/08/2026	Payroll	5	EFT		2,945.60	12/20/2025 - 01/02/2026 PR01
30	01/08/2026	Payroll	5	EFT		3,004.13	12/20/2025 - 01/02/2026 PR01
31	01/08/2026	Payroll	5	EFT		2,133.68	12/20/2025 - 01/02/2026 PR01
32	01/08/2026	Payroll	5	EFT		1,483.17	12/20/2025 - 01/02/2026 PR01
33	01/08/2026	Payroll	5	EFT		1,728.11	12/20/2025 - 01/02/2026 PR01
34	01/08/2026	Payroll	5	EFT		5,025.69	12/20/2025 - 01/02/2026 PR01
35	01/08/2026	Payroll	5	EFT		3,646.31	12/20/2025 - 01/02/2026 PR01
36	01/08/2026	Payroll	5	EFT		5,594.65	12/20/2025 - 01/02/2026 PR01
22	01/08/2026	Payroll	5	17095		1,859.64	12/20/2025 - 01/02/2026 PR01
401 Water Fund						15,117.89	
402 Sewer Fund						40,745.93	

55,863.82 Payroll: 55,863.82

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 01.06.2026  
General Manager, Justin Clary

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

Board President, Todd Citron

Attest : \_\_\_\_\_  
Recording Secretary, Rachael Hope

Approved by motion at \_\_\_\_\_ Regular \_\_\_\_\_ Special Board Meeting on \_\_\_\_\_  
Date Approved

# CHECK REGISTER

# BENEFITS

Lake Whatcom W-S District


Time: 14:09:35 Date: 01/06/2026

01/01/2026 To: 01/31/2026

Page: 1

Trans	Date	Type	Acct #	Chk #	Claimant	Amount	Memo
37	01/08/2026	Payroll	5	EFT	DEPARTMENT OF RETIREMENT SYSTEMS	7,911.50	Pay Cycle(s) 01/08/2026 To 01/08/2026 - DCP; Pay Cycle(s) 01/08/2026 To 01/08/2026 - ROTH DCP
38	01/08/2026	Payroll	5	EFT	UNITED STATES TREASURY	20,873.84	941 Deposit for Pay Cycle(s) 01/08/2026 - 01/08/2026
39	01/08/2026	Payroll	5	EFT	WA ST PUBLIC EMP RET PLAN 2	6,955.28	Pay Cycle(s) 01/08/2026 To 01/08/2026 - PERS 2
40	01/08/2026	Payroll	5	EFT	WA ST PUBLIC EMP RET PLAN 3	3,230.22	Pay Cycle(s) 01/08/2026 To 01/08/2026 - PERS 3
41	01/08/2026	Payroll	5	EFT	WA ST SUPPORT ENFORCEMENT REGISTRY	888.77	Pay Cycle(s) 01/08/2026 To 01/08/2026 - SUP ENF
42	01/08/2026	Payroll	5	17096	AFLAC	296.36	Pay Cycle(s) 01/08/2026 To 01/08/2026 - AFLAC PRE-TAX; Pay Cycle(s) 01/08/2026 To 01/08/2026 - AFLAC POST-TAX
43	01/08/2026	Payroll	5	17097	AFSCME LOCAL	396.55	Pay Cycle(s) 01/08/2026 To 01/08/2026 - UNION DUES; Pay Cycle(s) 01/08/2026 To 01/08/2026 - UNION FUND
44	01/08/2026	Payroll	5	17098	HRA VEBA TRUST (PAYEE)	590.00	Pay Cycle(s) 01/08/2026 To 01/08/2026 - VEBA
45	01/08/2026	Payroll	5	17099	WA ST HEALTH CARE AUTHORITY	20,601.75	Pay Cycle(s) 01/08/2026 To 01/08/2026 - PEBB MEDICAL; Pay Cycle(s) 01/08/2026 To 01/08/2026 - PEBB ADD LTD; Pay Cycle(s) 01/08/2026 To 01/08/2026 - PEBB SMK Surcharge
401 Water Fund						45,952.71	
402 Sewer Fund						15,791.56	
						61,744.27	Payroll: 61,744.27

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 01.06.2026  
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**

**Election of Board Officers**

DATE SUBMITTED:	December 10, 2025	MEETING DATE:	January 14, 2026
TO: BOARD OF COMMISSIONERS	FROM: Justin Clary, General Manager		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. None		
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 operates under the authority of [Revised Code of Washington \(RCW\) Title 57](#), Water-Sewer Districts. Under [RCW 57.12.010](#), Commissioners-President and Secretary-Compensation, “the board shall annually elect one of its members as president and another as secretary.” The District has historically fulfilled this statutory obligation during its first meeting of the calendar year.

**FISCAL IMPACT**

No fiscal impact is anticipated.

**APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)**

Election of board officers supports all ten EUM attributes at various levels.

**RECOMMENDED BOARD ACTION**

Staff recommends that the Board appoint a president and a secretary from amongst its membership.

**PROPOSED MOTION**

Recommended motions are:


“I move to appoint Commissioner \_\_\_\_\_ to serve as District Board president for the 2026 calendar year.”

“I move to appoint Commissioner \_\_\_\_\_ to serve as District Board secretary for the 2026 calendar year.”





**AGENDA**      **Appointment of Board**  
**BILL**      **Representatives to the District's**  
**Item 6.B**      **Investment Committee**

DATE SUBMITTED:	December 10, 2025	MEETING DATE:	January 14, 2026
TO: BOARD OF COMMISSIONERS	FROM: Justin Clary, General Manager		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. None		
TYPE OF ACTION REQUESTED	RESOLUTION <input type="checkbox"/>	FORMAL ACTION/ MOTION <input checked="" type="checkbox"/>	INFORMATIONAL/ OTHER <input type="checkbox"/>

**BACKGROUND / EXPLANATION OF IMPACT**

[Chapter 2.14 of the District's administrative code](#) establishes an Investment Committee, which is comprised of the finance manager/treasurer, general manager, and two commissioners. Duties of the committee include, at a minimum, quarterly review of the District's investment portfolio and rate structure (Chapter 2.4) and annual review of the District's investment policy (Chapter 2.14). The District has historically completed investment committee appointments during its first meeting of the calendar year.

**FISCAL IMPACT**

No fiscal impact is anticipated.

**APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)**

Financial Viability

**RECOMMENDED BOARD ACTION**

Staff recommends that the Board appoint two representatives from amongst its membership to serve on the District's Investment Committee.

**PROPOSED MOTION**


A recommended motion is:

"I move to appoint Commissioner \_\_\_\_\_ and Commissioner \_\_\_\_\_ to serve as the Board's representatives on the District's Investment Committee for the 2026 calendar year."



**AGENDA  
BILL  
Item 6.C**

**Appointment of Board  
Representatives to the  
Whatcom County Council of  
Governments & Lake Whatcom  
Management Program Policy Group**

DATE SUBMITTED:	December 10, 2025	MEETING DATE:	January 14, 2026
TO: BOARD OF COMMISSIONERS	FROM: Justin Clary, General Manager		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. None		
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 annually appoints a representative to serve on the Whatcom County Council of Governments and a representative to serve on the Lake Whatcom Management Program Policy Group. The District has historically completed these appointments during its first meeting of the calendar year.

**FISCAL IMPACT**

No fiscal impact is anticipated.

**APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)**

Community Sustainability  
Water Resource Sustainability  
Stakeholder Understanding and Support

**RECOMMENDED BOARD ACTION**

Staff recommends that the Board appoint representatives from amongst its membership to serve on the Whatcom County Council of Governments and the Lake Whatcom Management Program Policy Group.

**PROPOSED MOTION**

Recommended motions are:


"I move to appoint Commissioner \_\_\_\_\_ to serve as the District's representative on the Whatcom County Council of Governments for the 2026 calendar year."

“I move to appoint Commissioner \_\_\_\_\_ to serve as the District’s representative on the Lake Whatcom Management Program Policy Group for the 2026 calendar year.”



**AGENDA  
BILL  
Item 6.D**

**Public Works Board Loan  
Agreement Supporting the  
Division 22-1 Reservoir  
Replacement Project**

DATE SUBMITTED:	January 7, 2026	MEETING DATE:	January 14, 2026
TO: BOARD OF COMMISSIONERS	FROM: Justin Clary, General Manager		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. Loan Agreement No. PC26-96410-014 with the Washington State Public Works Board		
TYPE OF ACTION REQUESTED	RESOLUTION <input type="checkbox"/>	FORMAL ACTION/ MOTION <input checked="" type="checkbox"/>	INFORMATIONAL /OTHER <input type="checkbox"/>

**BACKGROUND / EXPLANATION OF IMPACT**

A structural analysis of the Lake Whatcom Water and Sewer District Division 22-1 Water Reservoir found significant deficiencies in its ability to meet existing earthquake code requirements (BHC report, December 2016). A 2022 Reservoir Coating Condition Assessment evaluated the interior and exterior coatings of the reservoir and determined that the reservoir coatings have failed and significant corrosion of the interior has compromised the structural integrity of the reservoir. In light of these findings, District staff determined that replacement of the reservoir with a new welded steel reservoir is the most cost-effective approach to addressing the seismic deficiencies and structural deterioration.

In 2024, the District submitted a FEMA Hazard Mitigation Grant application to replace the Division 22-1 Reservoir with a new reservoir constructed to meet seismic standards, and to implement ShakeAlert (earthquake early warning system) on the new reservoir. 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%, WA-EMD 12.5%, and District 12.5%.

Because this project was not previously planned, the 2025-2026 District biennial budget does not include funds to meet the District match requirements for this project. To fund the match requirements, the District applied for and has been awarded a \$365,000 low interest construction loan through the Washington State Public Works Board (2.12% interest rate over a 20-year payment period).

	<b>Design</b>	<b>Construction</b>	<b>Total</b>
Estimated Cost	\$ 466,614.87	\$ 2,527,980.00	\$ 2,994,594.87
Funding			
FEMA	\$ 351,014.87	\$ 1,926,080.00	\$ 2,227,094.87
WA-EMD	\$ 57,800.00	\$ 300,950.00	\$ 358,750.00
PWB Loan	\$57,800.00	\$ 300,950.00	\$ 358,750.00
District Funds	\$0.00	\$0.00	\$0.00
Balance	\$ 0.00	\$ 0.00	\$ 0.00

As the table above demonstrates, receipt of the PWB loan will fully fund the project.

### **FISCAL IMPACT**

No District cash outlay is required during the 2025-2026 biennial budget to fully fund this project. Repayment of the PWB loan will begin in fiscal year 2027 with annual loan payments for 20 years.

### **APPLICABLE EFFECTIVE UTILITY MANAGEMENT ATTRIBUTE(S)**

Infrastructure Strategy and Performance  
Community Sustainability

### **RECOMMENDED BOARD ACTION**

Staff recommends that the Board authorize the General Manager to execute the loan agreement with the Public Works Board.

### **PROPOSED MOTION**

Recommended motion is:

“I move to authorize the general manager to execute Loan Agreement No. PC26-96410-014 with the Washington State Public Works Board to enable receipt of \$365,000 for design and construction of the Division 22-1 Reservoir Replacement Project as presented.”

# AGREEMENT FACE SHEET

Agreement Number: PC26-96410-014

## PUBLIC WORKS BOARD CONSTRUCTION FUNDING AGREEMENT

<b>1. Contractor</b> Lake Whatcom Water and Sewer District 1220 Lakeway Dr Bellingham, WA 98229		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> Greg Nicoll, greg.nicoll@lwwsd.org		<b>4. Public Works Board Representative</b> Max Wedding, max.wedding@commerce.wa.gov	
<b>5. Agreement Amount</b> \$365,000	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Agreement Start Date</b> Agreement Execution Date	<b>8. Agreement End Date</b> June 1, 2046
<b>9. Federal Funds (as applicable)</b> N/A		<b>Federal Agency</b> N/A	<b>CFDA Number</b> N/A
<b>10. Tax ID #</b> N/A	<b>11. SWV #</b> 0049130-01	<b>12. UBI #</b> 600-151-207	<b>13. UEI #</b> N/A
<b>14. Agreement Purpose</b> Fund a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets, roads, bridges, drinking water systems, stormwater systems, sanitary sewage systems, or solid waste/recycling/organics facilities.			
<b>15. Acceptance of Agreement Terms and Conditions</b> The BOARD, defined as the Washington State Public Works Board, and the Contractor acknowledge and accept the terms of this Agreement and attachments and have executed this Agreement on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents that are incorporated by reference: Agreement Terms and Conditions including Declarations Page; and Attachment I: Attorney's Certification; and the Public Works Board's Traditional Program Policy Handbook, found on the PWB website.			
<b>FOR THE CONTRACTOR</b>  PER PWB: THIS COPY NOT FOR SIGNATURE Signature  Print Name  Title  Date		<b>FOR PUBLIC WORKS BOARD</b>  _____ Vincent McGowan, PE, Public Works Board Chair  _____ Date  <b>APPROVED AS TO FORM ONLY</b>  _____ Signature on File Dawn C. Cortez Assistant Attorney General	



This page intentionally left blank



## DECLARATIONS

### CLIENT INFORMATION

Legal Name: Lake Whatcom Water and Sewer District  
Agreement Number: PC26-96410-014

### PROJECT INFORMATION

Project Title: Division 22-1 Replacement  
Project City: Bellingham  
Project State: Washington  
Project Zip Code: 98229

### FUNDING INFORMATION

#### LOAN FUNDING:

Loan Amount: \$365,000  
Loan Term: 20 years  
Interest Rate: 2.12%  
Payment Month: June 1<sup>st</sup>

#### GRANT FUNDING:

Grant Amount: \$0  
% of Funding as Grant: 0%

#### PROJECT TOTALS:

Total PWB Funding: \$365,000  
Total Estimated Cost: \$2,870,000  
Anticipated Construction Start Date: 03/2027  
Earliest Date for Cost Reimbursement: 10/3/2025  
Time of Performance: 60 months from Execution Date of this Agreement to Project Completion

### ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

N/A

### LOAN SECURITY CONDITION GOVERNING THIS AGREEMENT

This loan is a revenue obligation of the CONTRACTOR payable solely from the net revenue of the domestic water system. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The BOARD grants the CONTRACTOR the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan agreement.

### SCOPE OF WORK

The project will replace the existing welded steel Division 22-1 Reservoir with a new approximately 626,000-gallon welded steel reservoir.

The project must meet all applicable Local, State, and/or Federal standards.

This page intentionally left blank



# TABLE OF CONTENTS

## Table of Contents

AGREEMENT FACE SHEET .....	1
AGREEMENT TERMS AND CONDITIONS.....	1
SECTION 1: SPECIAL TERMS AND CONDITIONS.....	1
1.1 Definitions .....	1
1.2 Authority.....	1
1.3 Purpose.....	1
1.4 Order of Precedence .....	1
1.5 Total Award, Rate and Term of Loan.....	2
1.6 Repayment and Loan Security .....	2
1.7 Default in Repayment .....	2
1.8 Recapture .....	3
1.9 Agreement Suspension .....	3
1.10 Time of Performance .....	3
1.11 Eligible Project Costs.....	3
1.12 Reimbursement Procedures and Payment .....	3
1.13 Historical and Cultural Resources .....	4
1.14 Project Signs .....	5
1.15 Competitive Bidding Requirements .....	5
1.16 Sub-Contractor Data Collection.....	5
1.17 Reports .....	5
1.18 Investment Grade Efficiency Audit .....	6
1.19 5-year Deferral for Start-up Systems.....	6
1.20 Certified Project Completion Report and Project Completion Amendment.....	6
1.21 Performance Incentives.....	6
1.22 Termination for Cause .....	7
1.23 Termination for Convenience.....	7
SECTION 2: GENERAL TERMS AND CONDITIONS.....	8
2.1 DEFINITIONS .....	8
2.2 ALLOWABLE COSTS.....	8
2.3 ALL WRITINGS CONTAINED HEREIN .....	8
2.4 AMENDMENTS .....	8
2.5 APPROVAL.....	8
2.6 ASSIGNMENT .....	8
2.7 ATTORNEYS' FEES .....	8
2.8 AUDIT .....	9
2.9 CODE REQUIREMENTS .....	9
2.10 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION .....	9

2.11	CONFORMANCE .....	10
2.12	COPYRIGHT PROVISIONS .....	10
2.13	DISALLOWED COSTS .....	10
2.14	DISPUTES .....	10
2.15	DUPLICATE PAYMENT .....	11
2.16	ETHICS/CONFLICTS OF INTEREST .....	11
2.17	GOVERNING LAW AND VENUE .....	11
2.18	INDEMNIFICATION .....	11
2.19	INDEPENDENT CAPACITY OF THE CONTRACTOR .....	11
2.20	INDUSTRIAL INSURANCE COVERAGE .....	12
2.21	LAWS .....	12
2.22	LICENSING, ACCREDITATION AND REGISTRATION .....	12
2.23	LIMITATION OF AUTHORITY .....	12
2.24	LOCAL PUBLIC TRANSPORTATION COORDINATION .....	12
2.25	NONCOMPLIANCE WITH DISCRIMINATION LAWS .....	12
2.26	PAY EQUITY .....	12
2.27	POLITICAL ACTIVITIES .....	13
2.28	PREVAILING WAGE LAW .....	13
2.29	PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION .....	13
2.30	PUBLICITY .....	13
2.31	RECAPTURE .....	13
2.32	RECORDS MANAGEMENT .....	13
2.33	REGISTRATION WITH DEPARTMENT OF REVENUE .....	14
2.34	RIGHT OF INSPECTION .....	14
2.35	LOSS OF FUNDING .....	14
2.36	SEVERABILITY .....	14
2.37	SUBCONTRACTING .....	14
2.38	SURVIVAL .....	14
2.39	TAXES .....	15
2.40	TERMINATION FOR CAUSE/SUSPENSION .....	15
2.41	TERMINATION FOR CONVENIENCE .....	15
2.42	TERMINATION PROCEDURES .....	15
2.43	TREATMENT OF ASSETS .....	16
2.44	WAIVER .....	16
ATTACHMENT I: ATTORNEY'S CERTIFICATION .....		17

# AGREEMENT TERMS AND CONDITIONS

---

## PUBLIC WORKS BOARD CONSTRUCTION FUNDING PROGRAM

---

### SECTION 1: SPECIAL TERMS AND CONDITIONS

#### 1.1 Definitions

As used throughout this Construction Funding Agreement the following terms shall have the meaning set forth below:

- A. "The BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Agreement
- B. "Agreement" shall mean this Construction Funding Agreement.
- C. "Contractor" shall mean the local government identified on the Agreement Face Sheet receiving funding to complete the project described in the **SCOPE OF WORK** described in this Agreement and who is a Party to the Agreement, and shall include all employees and agents of the Contractor.
- D. "Declarations " and "Declared" shall refer to the project information, loan terms and conditions as stated on the Declarations Page of this Funding Agreement, displayed within the Agreement in **THIS STYLE** for easier identification.
- E. The Traditional Program Policy Handbook shall mean the handbook found at the PWB Traditional Financing Webpage and available upon request as PDF.

#### 1.2 Authority

Acting under the authority of RCW 43.155, the BOARD has awarded the Contractor Public Works Board construction funding for an approved public works project.

#### 1.3 Purpose

The BOARD and the Contractor have entered into this Agreement to provide funds to enable the Contractor to undertake a local public works project that furthers the goals and objectives of the Washington State Public Works Program. The project will be undertaken by the Contractor and will include the activities described in the **SCOPE OF WORK** shown on the Declarations page. The project must be undertaken in accordance with the Agreement terms and conditions, and all applicable federal, state and local laws and ordinances, which are incorporated by reference.

#### 1.4 Order of Precedence

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal, state of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.



## 1.5 Total Award, Rate and Term of Loan

The BOARD shall fund the Contractor a sum not to exceed the **AGREEMENT AMOUNT** shown on the Agreement Face Sheet, which shall be the sum of the **LOAN AMOUNT** and the **GRANT AMOUNT** shown on the Agreement Declarations Page, to complete the **SCOPE OF WORK**.

If the Contractor is awarded a loan, the interest rate shall be the declared **INTEREST RATE** per annum on the outstanding principal balance. The length of the loan shall not exceed the declared **LOAN TERM** in years, with the final payment due by the **AGREEMENT END DATE** as shown on the Agreement Face Sheet.

If the Contractor is awarded a grant, any grant funding shall be spent from the award proportionally to the **% OF FUNDING AS GRANT**. The percent of grant funding shall not be changed at project completion regardless of the actual cost of the project and the Affordability Index or other measure of financial hardship.

## 1.6 Repayment and Loan Security

If the Agreement includes loan funding, loan repayment installments are due on the day and month identified under the term: **PAYMENT MONTH** on the Declarations Page. Payments are due each year during the term of the loan beginning one year from the date of Agreement execution. Interest only will be charged for this payment if a warrant is issued prior to this date. All subsequent payments shall consist of principal and accrued interest due on the specified **PAYMENT MONTH** date of each year during the remaining term of the loan.

Loan Security payments shall be made as stated on the attached Declarations page and identified as **LOAN SECURITY**.

Repayment of a loan under this Agreement shall include the declared **INTEREST RATE** per annum based on a three hundred and sixty (360) day year of twelve (12) thirty (30) day months. Interest will begin to accrue from the date each warrant is issued to the Contractor. The final payment shall be on or before the **AGREEMENT END DATE** shown on the Agreement Face Sheet, of an amount sufficient to bring the loan balance to zero.

In the event that the BOARD approves the Contractor's request for a deferral as outlined in Section 1.19, then the first loan repayment is due sixty (60) months after Agreement execution. Interest accrues for the sixty (60) months after Agreement execution. The accrued interest only will be charged for this payment if a warrant is issued prior to this date. Interest and principal payments are due on the declared **PAYMENT MONTH** date of each year during the remaining term of the loan. The Contractor has the right to repay the unpaid balance of the loan in full at any time or make accelerated payments without penalty.

The Contractor will repay the loan in accordance with the preceding conditions through the use of electronic funds transfer, a check, money order, or equivalent means made payable to the Washington State Department of Commerce, or its successor.

## 1.7 Default in Repayment

If the funding under this Agreement constitutes a loan, repayments shall be made on the loan in accordance with Section 1.6 of this Agreement. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1st) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be one percent (1%) per month or twelve percent (12%) per annum. The same penalty terms shall apply at project completion if the repayment of loan funds in excess of eligible costs are not repaid at the time of the Project Completion Amendment is executed, as provided for in Section 1.20.

The Contractor acknowledges and agrees to the BOARD's right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the Contractor of such delinquency.

The Contractor shall be responsible for all legal fees incurred by the BOARD in any action undertaken to enforce its rights under this section.

## 1.8 Recapture

In addition to the recapture provisions in Section 2.31, the right to recapture shall exist for a period not to exceed six (6) years following Agreement termination. In the event that the Board is required to institute legal proceedings to enforce the recapture provision, the BOARD shall be entitled to its costs, including attorney's fees.

## 1.9 Agreement Suspension

In the event that the Washington State Legislature fails to pass and the Governor does not authorize a Capital Budget by June 30 of each biennium, the Washington State Constitution Article 8 and RCW 43.88.130 and RCW 43.88.290 prohibit expenditures or commitments of state funds in the absence of appropriation.

In such event, all work under this Agreement will be suspended effective July 1. The Contractor shall immediately suspend work under this Agreement and take all reasonable steps necessary to minimize the cost of performance directly attributable to such suspension until the suspension is cancelled.

The BOARD shall notify the Contractor immediately upon lifting of the Agreement suspension.

## 1.10 Time of Performance

No later than sixty (60) months after the date of Agreement execution the Contractor must reach project completion of the **SCOPE OF WORK**.

Failure to meet Time of Performance shall constitute default of this Agreement. In the event of extenuating circumstances, the Contractor may request, in writing, that the BOARD extend the deadline for project completion. The BOARD may extend the deadline.

The term of this Agreement shall be for the entire term of any loan provided under this Agreement, regardless of actual project completion, unless terminated sooner as provided herein.

## 1.11 Eligible Project Costs

The Eligible project costs must consist of expenditures eligible under Washington Administrative Code (WAC) 399-30-030, be related only to project activities described in the declared **SCOPE OF WORK** and documented according to the requirements set forth in the Traditional Program Policy Handbook. Eligible costs for reimbursement shall be construed to mean expenditures incurred and paid, or incurred and payable within thirty (30) days of the reimbursement request. Only costs that have been incurred on or after **EARLIEST DATE FOR COST REIMBURSEMENT** shown in the Declarations are eligible for reimbursement under this Agreement.

The Contractor assures compliance with WAC 399-30-030, which identifies eligible costs for projects assisted with BOARD funding.

These terms supersede the terms in Section 2.2 Allowable Costs.

## 1.12 Reimbursement Procedures and Payment

If funding or appropriation is not available at the time the invoice is submitted, or when this Agreement is executed, the issuance of warrants will be delayed or suspended until such time as funds or appropriation become available. Therefore, subject to the availability of funds, warrants shall be issued to the Contractor for reimbursement of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared **SCOPE OF WORK**.

The Contractor shall submit all Invoice Vouchers ("A-19s" or "A19s") and all required documentation per guidance in the BOARD Traditional Program Policy Handbook, which is incorporated by reference.

The BOARD shall reimburse the Contractor for eligible project expenditures up to the maximum funding amount under this Agreement, as identified in Section 1.11. When requesting reimbursement for costs incurred, the Contractor shall submit all Invoice Vouchers and any required documentation electronically through the Department of Commerce's

(COMMERCE) Contracts Management System (CMS), which is available through the Secure Access Washington (SAW) portal, or its successor. If the Contractor has constraints preventing access to COMMERCE's online A-19 portal.

Requests for reimbursements for costs related to **construction** activities will not be accepted until the Contractor provides:

- Proof of compliance with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act, as described in Section 1.13, and
- Signed Public Works Board Notice of Contract Award and Notice to Proceed, which follows the formal award of a construction contract.

If the Contractor receives funding in the form of both a grant and a loan, the Contractor shall bill to the loan and grant proportionally until and if funds are exhausted.

The BOARD will pay the Contractor upon acceptance of the work performed and receipt of properly completed invoices. Invoices shall be submitted to the BOARD at least quarterly, as appropriate.

Payment shall be considered timely if made by the BOARD within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent by means of an electronic funds transfer or to the address designated by the Contractor.

The BOARD may, at its sole discretion, terminate the Agreement or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by the BOARD.

BOARD shall not release the final five (5) percent of the total funding amount until acceptance by BOARD of project completion report.

Duplication of Billed Costs. If the Contractor is entitled to payment or has been or will be paid by another source for an eligible project cost, then the Contractor shall not be reimbursed by the BOARD for that cost.

Disallowed Costs. The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

In no event shall the total Public Works funding exceed 100% of the eligible actual project costs. At the time of project completion, the Contractor shall submit to the BOARD a Project Completion Amendment certifying the total actual project costs, other funding, and local share. The final BOARD funding disbursement shall bring the total funding to the lesser of 100% of the eligible project costs or the total declared funding under this Agreement. The Project Completion Amendment shall serve as an amendment to this Agreement determining the final loan and grant amounts, loan term, and interest rate.

In the event that the final costs identified in the Certified Project Completion Report indicate that the Contractor has received BOARD monies in excess of 100.00% of eligible costs, all funds in excess of 100.00% shall be repaid to the BOARD by payment to the Department of Commerce, or its successor, prior to the execution of the Project Completion Amendment.

### **1.13 Historical and Cultural Resources**

Prior to approval and disbursement of any funds awarded under this Agreement related to any land acquisition, demolition, construction, or other ground-disturbing activities, the Contractor shall cooperate with the BOARD to complete the requirements of Governor's Executive Order 21-02 or the Contractor shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless the BOARD and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Agreement.

In addition to the requirements set forth in this Agreement, the Contractor shall, in accordance with Governor's Executive Order 21-02 as applicable, coordinate with the BOARD and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommendation consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by the Project. Contractor agrees

to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Agreement.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memoranda of agreement, if historical or cultural artifacts found during the construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the BOARD Representative identified on the Face Sheet. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Agreement shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in the Agreement, the Contractor agrees to comply with the following laws and regulations:

- RCW 27.44 regarding Indian Graves and Records
- RCW 27.53 regarding Archaeological Sites and Resources
- RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves
- WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02. The Contractor shall not proceed with any land acquisition, demolition, construction, or other ground-disturbing activities until the BOARD certifies completion of Governor's Executive Order 21-02 or adopts the completion of the requirements of Section 106 of the National Historic Preservation Act.

In the event that the Contractor finds it necessary to amend the **SCOPE OF WORK** of the Agreement, the Contractor may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act.

#### **1.14 Project Signs**

If the Contractor displays, during the period covered by this Agreement, signs or markers identifying those agencies participating financially in the approved project, the sign or marker must identify the Washington State Public Works Board as a participant in the project. Public Works Board logo files are available upon request.

#### **1.15 Competitive Bidding Requirements**

The Contractor shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Public Works Program.

#### **1.16 Sub-Contractor Data Collection**

Contractor will submit reports, in a form and format to be provided by the BOARD and at intervals as agreed by the parties, regarding work under this Agreement performed by sub-contractors and the portion of the Agreement funds expended for work performed by sub-contractors, including but not necessarily limited to minority-owned, women-owned, and veteran-owned business sub-contractors. "Sub-Contractors" shall mean sub-contractors of any tier.

#### **1.17 Reports**

The Contractor shall furnish the BOARD with:

- A. Project progress reports per guidance in the BOARD's Traditional Program Policy Handbook;
- B. Quarterly Reports;
- C. Certified Project Completion Report at project completion as described in Section 1.20;



- D. Pictures and short videos of various stages of the project, and
- E. Other reports as the BOARD may require.

### **1.18 Investment Grade Efficiency Audit**

For projects involving repair, replacement, or improvement of a wastewater treatment plant, or other public works facility for which an investment grade audit is obtainable, the Contractor must undertake an investment grade efficiency audit. Costs incurred as part of the investment grade audit are eligible project costs.

### **1.19 5-year Deferral for Start-up Systems**

If the project financed by this Agreement is to develop a system to deliver previously unavailable services, and revenue from those services is to repay the loan, the new system is eligible for a deferral of loan payments for sixty (60) months after the Agreement execution date. The Contractor may provide a written request to the BOARD requesting a 5-year deferral for an eligible system. The BOARD may approve the deferral request.

Interest accrues for the aforementioned sixty (60) months. The accrued interest only payment is due June 1 of the 6th year of the loan term. Interest and principal payments are due on June 1 of the 7th year of the loan term.

### **1.20 Certified Project Completion Report and Project Completion Amendment**

The Contractor shall complete a Certified Project Completion Report when all activities identified in the **SCOPE OF WORK** are complete as defined by the BOARD's Project Completion and Holdback Policy. The BOARD will supply the Contractor with the Certified Project Completion Report form, which shall include:

- A. A certified statement that the project, as described in the declared **SCOPE OF WORK**, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in the **SCOPE OF WORK**.
- C. Certification that all costs associated with the project have been incurred and have been accounted for. Costs are incurred when goods and services are received and/or Agreement work is performed.
- D. Pictures of Completed Project.

The Contractor will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the total funding amount. The final Invoice Voucher payment shall not occur prior to the completion of all project activities identified in the **SCOPE OF WORK** and the BOARD's receipt and acceptance of the Certified Project Completion Report.

The Project Completion Amendment shall serve as an amendment to this Agreement determining the final loan amount, grant amount (if applicable), loan term, and interest rate.

### **1.21 Performance Incentives**

#### **Timely Draws Incentive**

The Contractor may receive up to a 0.10% reduction in their interest rate if:

- The Contractor's first draw from the funds is within six (6) months of the date of Agreement execution,
- AND
- The Contractor draws funds approximately monthly after the first draw until the Contractor reaches 5% of the total funding amount remaining or the Contractor's final payment to their general construction contractor of retainage, whichever comes first.

#### **Construction Completion Incentives**

The Contractor shall complete the project no later than sixty (60) months after the date of Agreement execution.

Should the Contractor submit the Certified Project Completion Report within forty-eight (48) months of the date of Agreement execution, the Contractor may choose one of the two following incentives upon project completion:

- **Option A:** The repayment period will be increased by twenty-four (24) months, not to exceed the life of the asset, OR:
- **Option B:** The interest rate will be decreased by one-quarter of one percent (0.25%).

Should the Contractor submit the Certified Project Completion Report within thirty-six (36) months of the date of Agreement execution, the Contractor may choose one of the following two incentives upon project completion:

- **Option C:** The repayment period will be increased by sixty (60) months, not to exceed the life of the asset, OR:
- **Option D:** The interest rate will be decreased by up to one-half of one percent (0.50%).

Pursuant to the BOARD's Performance Incentives policy, the Contractor shall only be eligible for performance incentives C or D if the Project's Notice to Proceed date is no more than three (3) months after the **ANTICIPATED CONSTRUCTION START DATE** identified on the Declarations page of this Agreement.

Once an eligible option is selected, the Agreement shall be modified to note the appropriate change and no further adjustment to the Agreement for Performance Incentives shall be authorized. Irrespective of the performance incentive(s) applied, at no point in time shall the loan interest rate be less than 0.25%.

The calculation of any interest rate and term adjustments will apply to the remaining payments beginning from the date the Project Completion Amendment is executed.

## **1.22 Termination for Cause**

If the Contractor fails to comply with the terms of this Agreement, or fails to use the funds only for those activities identified in the **SCOPE OF WORK**, the BOARD may terminate the Agreement in whole or in part at any time. The BOARD shall notify the Contractor in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of a loan.

These terms supersede the terms in Section 2.40 Termination for Cause/Suspension.

## **1.23 Termination for Convenience**

Notwithstanding anything in Section 2.41 Termination for Convenience, the BOARD may suspend or terminate this Agreement in the event that funds are no longer available to the BOARD, or are not appropriated for the purpose of meeting the BOARD's obligations under this Agreement. Termination will be effective when the BOARD sends written notice of termination to the Contractor. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of the loan.



## **SECTION 2: GENERAL TERMS AND CONDITIONS**

### **2.1 DEFINITIONS**

As used throughout this Agreement, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Agreement, and shall include all employees and agents of the Contractor.
- C. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Agreement
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Agreement under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### **2.2 ALLOWABLE COSTS**

Costs allowable under this Agreement are actual expenditures according to an approved budget up to the maximum amount stated on the Agreement Award or Amendment Face Sheet.

### **2.3 ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. 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 hereto.

### **2.4 AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **2.5 APPROVAL**

This Agreement shall be subject to the written approval of the BOARD's Authorized Representative and shall not be binding until so approved. The Agreement may be altered, amended, or waived only by a written amendment executed by both parties.

### **2.6 ASSIGNMENT**

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Contractor without prior written consent of the BOARD.

### **2.7 ATTORNEYS' FEES**

Unless expressly permitted under another provision of the Agreement, in the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney's fees and costs.

## **2.8 AUDIT**

### **A. General Requirements**

- If requested by the Board at any time during the Agreement period and six (6) years following termination of the Agreement, Contractor will obtain an audit, at its own expense.
- Contractors are to procure audit services based on the following guidelines.
- The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.
- The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.
- The BOARD reserves the right to recover from the Contractor all disallowed costs resulting from the audit.
- Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to the BOARD's request for information or corrective action concerning audit issues within thirty (30) days of the date of request.

### **B. State Funds Requirements**

- In the event an audit is required, if the Contractor is a local government entity, the Office of the State Auditor shall conduct the audit.
- Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.
- The Contractor shall include the above audit requirements in any subcontracts.
- In any case, the Contractor's financial records must be available for review by the BOARD.

## **2.9 CODE REQUIREMENTS**

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

## **2.10 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

### **A. "Confidential Information" as used in this section includes:**

- All material provided to the Contractor by the BOARD that is designated as "confidential" by the BOARD;
- All material produced by the Contractor that is designated as "confidential" by the BOARD; and
- All personal information in the possession of the Contractor that may not be disclosed under state or federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Public Record Act, RCW 42.56.

### **B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Agreement and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the BOARD or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the BOARD with its policies and procedures on confidentiality. The BOARD may require changes to such policies and procedures as they apply to this Agreement whenever the BOARD reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the BOARD. Upon request, the Contractor shall**

immediately return to the BOARD any Confidential Information that the BOARD reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

- C. Unauthorized Use or Disclosure. The Contractor shall notify the BOARD within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

## **2.11 CONFORMANCE**

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## **2.12 COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the BOARD. The BOARD shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the BOARD effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, the Contractor hereby grants to the BOARD a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the BOARD.

The Contractor shall exert all reasonable effort to advise the BOARD, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The Contractor shall provide the BOARD with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Agreement. The BOARD shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

## **2.13 DISALLOWED COSTS**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

## **2.14 DISPUTES**

Except as otherwise provided in this Agreement, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Chair of the BOARD, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- provide a copy of all relevant documents or other evidence to be considered;
- state the Contractor's name, address, and Agreement number; and

- be mailed to the BOARD Chair and the other party's (respondent's) Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement, and provide a copy of all relevant documents or other evidence to be considered, to both the Chair or the Chair's designee and the requestor within five (5) working days.

The Chair or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Chair or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Agreement shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

## **2.15 DUPLICATE PAYMENT**

The Contractor certifies that work to be performed under this Agreement does not duplicate any work to be charged against any other agreement, contract, subcontract, or other source.

## **2.16 ETHICS/CONFLICTS OF INTEREST**

In performing under this Agreement, the Contractor shall assure compliance with the Ethics in Public Service Act, RCW 42.52 and any other applicable local, state or federal law related to ethics or conflicts of interests.

## **2.17 GOVERNING LAW AND VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## **2.18 INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, BOARD, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the Agreement. "Claim," as used in this Agreement, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

The Contractor's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Contractor, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors, agents, or employees.

The Contractor waives its immunity under RCW 51 to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

## **2.19 INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Agreement. The Contractor and its employees or agents performing under this Agreement are not employees or agents of the state of Washington or the BOARD. The Contractor will not hold itself out as or claim to be an officer or employee of the BOARD or of the state of

Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

## **2.20 INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with all applicable provisions of RCW 51, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the BOARD may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The BOARD may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the BOARD under this Agreement, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

## **2.21 LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended.

## **2.22 LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Agreement.

## **2.23 LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement.

## **2.24 LOCAL PUBLIC TRANSPORTATION COORDINATION**

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

## **2.25 NONCOMPLIANCE WITH DISCRIMINATION LAWS**

During the performance of this Agreement, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with Section 2.14 Disputes.

## **2.26 PAY EQUITY**

The Contractor agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:



- a. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
- b. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
- c. A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Agreement may be terminated by the BOARD if the BOARD, the Department of Commerce, or the Department of Enterprise Services determines that the Contractor is not in compliance with this provision.

## **2.27 POLITICAL ACTIVITIES**

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of RCW 42.17A.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

## **2.28 PREVAILING WAGE LAW**

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, RCW 39.12, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with RCW 39.12, and shall make such records available for the BOARDs review upon request.

## **2.29 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds 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 funds 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.

## **2.30 PUBLICITY**

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the BOARD's name is mentioned, or language used from which the connection with the state of Washington's or the BOARD's name may reasonably be inferred or implied, without the prior written consent of the BOARD.

## **2.31 RECAPTURE**

In the event that the Contractor fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of this Agreement, the BOARD reserves the right to recapture funds, in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the BOARD. In the alternative, the BOARD may recapture such funds from payments due under this contract.

## **2.32 RECORDS MANAGEMENT**

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which

sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

### **2.33 REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

### **2.34 RIGHT OF INSPECTION**

At no additional cost all records relating to the Contractor's performance under this Agreement shall be subject at all reasonable times to inspection, review, and audit by the BOARD, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Agreement. The Contractor shall provide access to its facilities for this purpose.

### **2.35 LOSS 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, the BOARD may terminate the Agreement under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Agreement may be amended to reflect the new funding limitations and conditions.

### **2.36 SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Agreement and to this end the provisions of this Agreement are declared to be severable.

### **2.37 SUBCONTRACTING**

The Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the BOARD in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Agreement; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Agreement. The Contractor is responsible to the BOARD if the Subcontractor fails to comply with any applicable term or condition of this Agreement. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Agreement. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the BOARD for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the BOARD and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

### **2.38 SURVIVAL**

The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

## **2.39 TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor, other than sales taxes owed for goods or services provided for this Agreement, or its staff shall be the sole responsibility of the Contractor.

## **2.40 TERMINATION FOR CAUSE/SUSPENSION**

In the event the BOARD determines the Contractor has failed to comply with the conditions of this Agreement in a timely manner, the BOARD has the right to suspend or terminate this Agreement. Before suspending or terminating the Agreement, the BOARD shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Agreement may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law.

The BOARD reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the BOARD to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

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

## **2.41 TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Agreement the BOARD may, with ten (10) business days written notice, beginning on the second day after the notice is sent, terminate this Agreement, in whole or in part. If this Agreement is so terminated, the BOARD shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

## **2.42 TERMINATION PROCEDURES**

Upon termination of this contract, the BOARD, in addition to any other rights provided in this Agreement.

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

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

- A. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;
- C. Assign to the BOARD, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the BOARD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to the BOARD and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the Agreement had been completed, would have been required to be furnished to the BOARD;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and



- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the BOARD has or may acquire an interest.

#### **2.43 TREATMENT OF ASSETS**

Title to all property furnished by the BOARD shall remain with the BOARD. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Contractor.

#### **2.44 WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by Authorized Representative of the Board.

## ATTACHMENT I: ATTORNEY'S CERTIFICATION

---

### PUBLIC WORKS BOARD

**CONTRACTOR:** Lake Whatcom Water and Sewer District

**Agreement Number:** PC26-96410-014

I, \_\_\_\_\_, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of Lake Whatcom Water and Sewer District (the CONTRACTOR); and

By my initials below, I acknowledge that one of the following is true:

\_\_\_\_\_ I have also examined any and all documents and records which are pertinent to the Agreement, including the application requesting this financial assistance.

\_\_\_\_\_ As to questions of fact material to the opinions expressed herein, I have relied upon the certifications and representations of the Contractor without undertaking to verify the same by independent investigation.

Based on the foregoing, it is my opinion that:

1. The CONTRACTOR is a public body, properly constituted and operating under the laws of the state of Washington, empowered to receive and expend federal, state and local funds, to enter into an Agreement with the state of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.
2. The CONTRACTOR is empowered to accept the BOARD's financial assistance and to provide for repayment of the loan as set forth in the Agreement.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the CONTRACTOR from repaying any loan extended by the BOARD with respect to such project. The CONTRACTOR is not a party to litigation which will materially affect its ability to repay such loan on the terms contained in the Agreement.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the CONTRACTOR.

\_\_\_\_\_  
Signature of Attorney


\_\_\_\_\_  
Date

\_\_\_\_\_  
Name



**AGENDA  
BILL  
Item 8.A**

**General Manager's  
Report**

DATE SUBMITTED:	January 7, 2026	MEETING DATE:	January 14, 2026
TO: BOARD OF COMMISSIONERS	FROM: Justin Clary, General Manager		
GENERAL MANAGER APPROVAL			
ATTACHED DOCUMENTS	1. General Manager's Report 2. Customer Service Analysis Memo		
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, January 14, 2026 – 6:30 p.m.

#### Important Upcoming Dates

Lake Whatcom Water & Sewer District			
Regular Board Meeting	Wed Jan 28, 2026	8:00 a.m.	Board Room/Hybrid
Employee Staff Meeting	Thu Jan 15, 2026	8:00 a.m.	Board Room/Hybrid Commissioner Knakal to attend
Investment Comm. Meeting	Wed Jan 28, 2026	10:00 a.m.	Board Room/Hybrid
Safety Committee Meeting	Thu Jan 22, 2026	8:00 a.m.	Board Room
Lake Whatcom Management Program			
Policy Group Meeting	Wed Feb 4, 2026	3:00 p.m.	City of Bellingham Pacific St Ops Center, 2221 Pacific Street
Joint Councils Meeting	Wed Apr 1, 2026	6:30 p.m.	Bellingham City Hall 210 Lottie Street
Other Meetings			
WASWD Section III Meeting	Tue Jan 13, 2026	6:00 p.m.	Bob's Burgers 8822 Quil Ceda Pkwy, Tulalip, WA
Whatcom County Council of Governments Board Meeting	Wed Jan 21, 2026	3:00 p.m.	Council of Governments Offices 314 E Champion Street/Hybrid

#### Committee Meeting Reports

##### Safety Committee:

- The committee met on December 18; discussion included the status of review of safety programs, consideration of the District's pursuit of START program certification through the Department of Labor & Industries, and status of installation of spill mitigation measures on the sodium hypochlorite tank at the Agate Heights water treatment plant.

##### Investment Committee:

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

#### Upcoming Board Meeting Topics

- City of Bellingham Scenic Avenue water intertie temporary use interlocal agreement
- Energy savings performance contracts presentation
- Design and construction standards update
- City of Bellingham wastewater treatment plant capital projects presentation

## 2025 Initiatives Status

### Administration and Operations

#### Water Right Adjudication

- Represent the District in the water right adjudication process to ensure that its certificated and permitted rights are protected.

*The District received the adjudication documents from Ecology via certified mail on March 19, 2025. District staff and counsel are now finalizing claim forms specific to each water right for submittal to Whatcom County Superior Court, as well as evaluating the potential impact to the District of motions filed by other parties in December 2025.*

#### Safety Program Update

- Continue systematic review and revision of District's safety programs by updating nine programs in 2025.

*Staff finalized updates to eleven (11) programs (asbestos-cement pipe handling, trenching/shoring, confined space, lock-out/tag-out, lifting/rigging, ladder safety, respiratory protection, fall protection, safety responsibilities, slips/trips/falls, and safety audits) in 2025 and are reviewing the hearing conservation program.*

#### APWA Accreditation

- Initiate work towards multi-year effort to gain American Public Works Association accreditation.

*The accreditation team is reviewing/completing the 273 accreditation practices applicable to the District (98 practices were completed in 2025).*

#### Financial Management

- Improve financial sustainability and forecasting over 6- and 20-year planning horizons through the Waterworth financial modeling platform.

*Financial benchmarks were adopted by the board during the August 13, 2025 meeting. Benchmark attainment will be assessed annually, beginning in the first quarter of 2026.*

#### Management Team Development

- Continue professional development of the management team.

*The general manager approved management team member attendance of several trainings and conferences in 2025 pertinent to each's role with the District. The general manager also periodically meets with each manager to assess progress of their annual performance map.*

### 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.

*District and Whatcom County Emergency Management Division staff completed a District-specific emergency response exercise on November 19. Additional organizations participating in the exercise included Washington State Department of Health, Whatcom County Health and Community Services, South Whatcom Fire Authority, Sudden Valley Community Association, and Cybersecurity and Infrastructure Security Agency.*

## 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  
*Press releases were issued on March 6 (Division 22-1 reservoir project FEMA hazard mitigation grant award), May 22 (clean 2024 audit), June 30 (Division 7 reservoirs commissioning), and July 8 (Camp Firwood lift station release), and October 1 (DOH TOP 20-year award).*

### Intergovernmental Relations

- *J Clary met with City of Bellingham public works department management regarding various topics on December 15.*
- *J Clary is scheduled to attend the Sudden Valley Community Association board meeting on January 8.*
- *J Clary is scheduled to attend the WASWD membership committee and Section III meetings on January 13.*

## Lake Whatcom Water Quality

### Lake Whatcom Management Program

- Participate in meetings of Lake Whatcom Management Program partners.  
*J Clary attended a WWU Institute for Watershed Studies open house on December 11, the interjurisdictional coordinating team meeting on December 18, and the data group meeting on January 8.*



## LAKE WHATCOM WATER & SEWER DISTRICT

1220 Lakeway Drive  
Bellingham, WA, 98229

(360) 734-9224  
Fax 738-8250

# MEMORANDUM

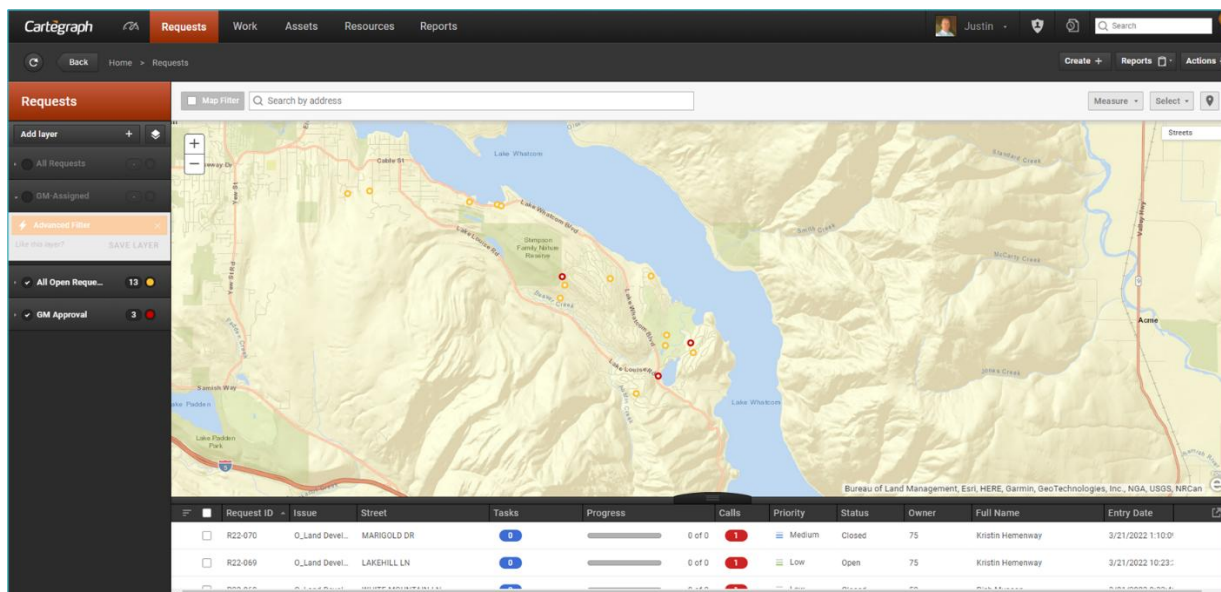
To: Board of Commissioners

From: Justin Clary, General Manager

Date: January 8, 2026

RE: Customer Responsiveness Analysis

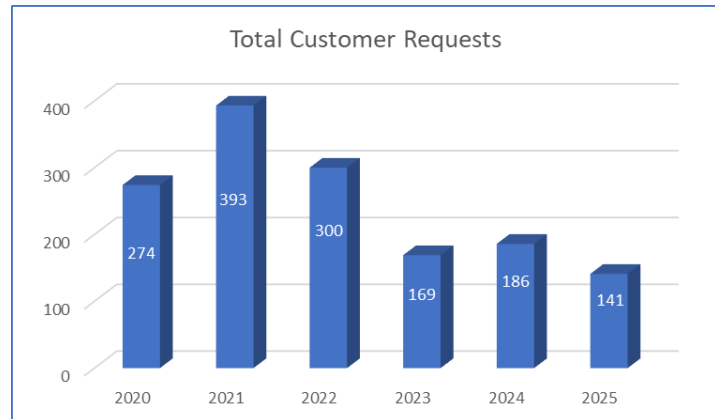
Though the District has used the Cartegraph asset management software for over two decades, only over the past several years has the *request management* feature of the software been fully used. The request management feature (see figure below) allows for tracking of external requests (e.g., customer complaints, development inquiries, etc.) specific to a location/property through resolution. With this feature, when a request is received, an identification number (e.g., R25-001) and issue category (e.g., W[ater]\_Pressure, S[ewer]\_Leak/overflow, etc.) are created and the task is assigned to an appropriate District employee. A description of the issue and customer contact information are also entered into the request, as well as summaries of District response efforts to the issue. With six years of complete data (2020-2025), request volume and category trends have been analyzed annually, as well as District responsiveness (a key component of customer service) from request receipt through closure. The purpose of this memorandum is to provide a summary and analysis of requests the District has processed since 2020 and identify any notable trends.



## Analysis of Requests

The total number of customer requests processed annually during the six-year analysis period peaked at 393 in 2021 and has since declined to 141 in 2025. Following are a few considerations regarding the drop between 2020-2022 and 2023-2025:

- **Development Inquiries.** Development inquiries make up a sizable percentage of the overall request volume (as is discussed further below). The District did not begin tracking development inquiries in Cartegraph until the middle of 2020, which impacted that year's total. Similarly, inflation that negatively affected the home construction industry

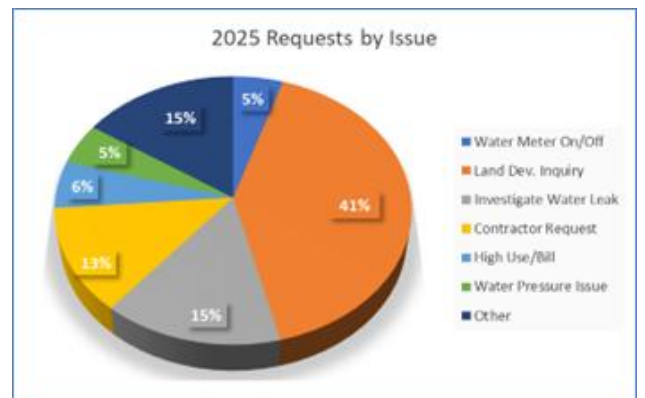
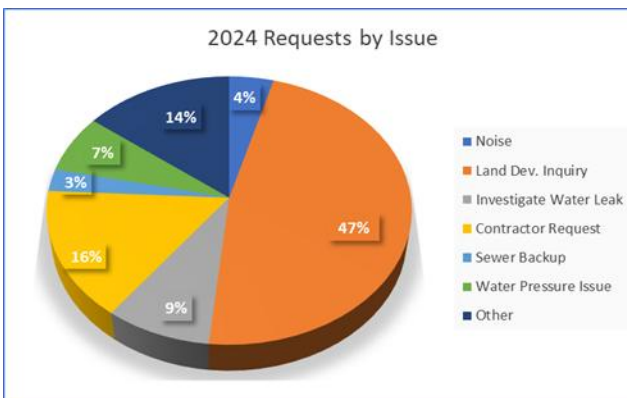
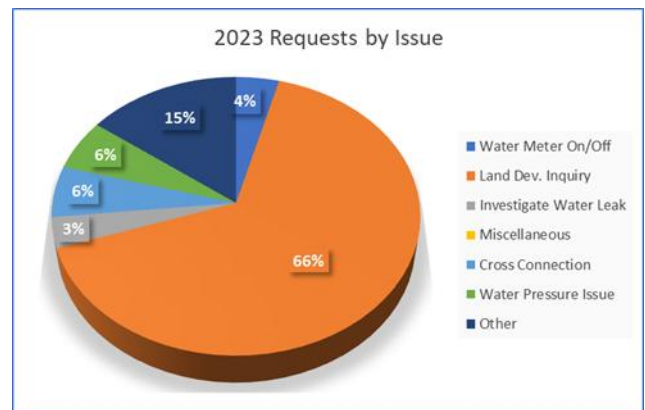
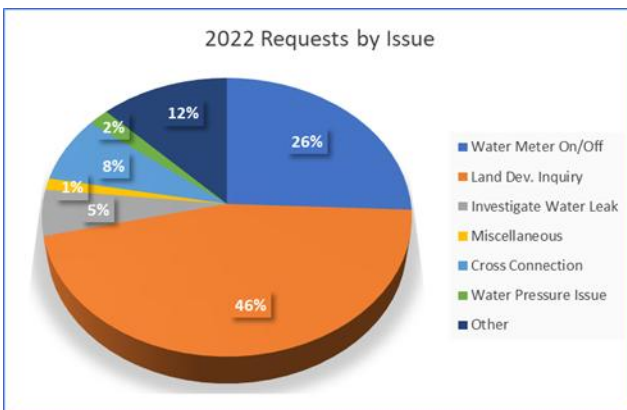
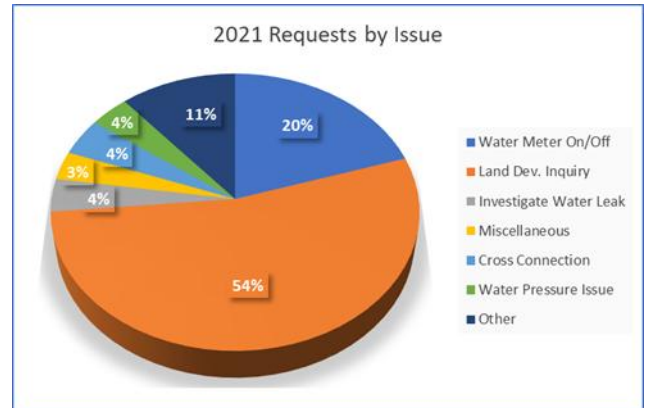
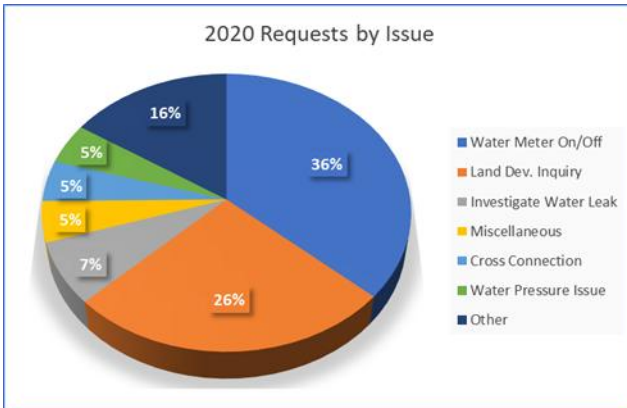


- nationally over the past few years likely also impacted the number of development inquiries (210, 137, 111, 88, and 58 development-related inquiries processed in 2021, 2022, 2023, 2024, and 2025, respectively) in the District.
- **Voluntary Billing Suspension Policy Change.** Historically, the District managed voluntary billing suspension requests through Cartegraph, with two requests created for each billing suspension (one to dispatch staff to turn off the water meter and a second to turn it back on). Prior to April 2021, accounts were allowed to be suspended indefinitely. However, with adoption of Resolution No. 874 (April 28, 2021) accounts were limited to four months per year under suspension. Then, with the adoption of Resolution No. 888 (February 22, 2023), the voluntary billing suspension policy was eliminated. This policy shift has significantly reduced the number of water meter on/off requests from 100 in 2020 to none in 2024 (2025 witnessed a slight uptick [7] associated with suspension of service to homes destroyed by the windstorm that struck Sudden Valley).

## Issues Generating Requests

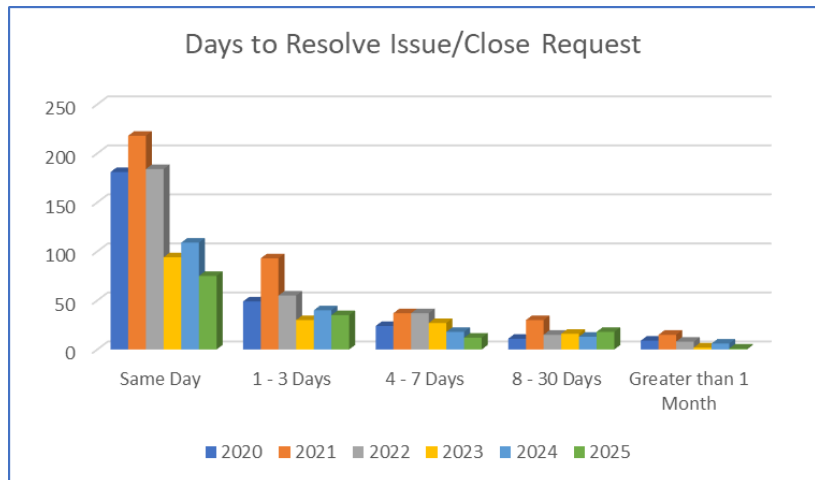
To better track customer request trends, each request is entered as one of 26 issue categories (e.g., W[ater]\_Pressure, S[ewer]\_Leak/overflow, etc.) The following pie charts present the annual percentage of the top six issues submitted by District customers. 2024 and 2025 witnessed a slight shift from prior years in some issues that previously ranked in the top five. For example, Water Meter On/Off requests dropped to 0 in 2024 based upon board policy action, and Contractor Requests jumped from four total over the prior four years combined to 47 in 2024-2025 (possibly a shift in how staff code requests when received). Also, Development Inquiries continued to decline both in quantity and percentage of all requests received in 2025.





### Request Resolution Trends

District responsiveness to addressing customer requests is a key criterion in assessing customer service. Over the six-year analysis period, the majority (nearly 90%) of all requests received were resolved within a week of the customer's expectations (with over 50% resolved the day on which they were received). As with all data, there are a few considerations that may affect the findings:



- Responsiveness is tracked in calendar days, which may skew responsiveness longer than actual (e.g., a request received on a Friday and resolved on a Monday would be reflected as three days to resolution even though only one business passed until resolution).
- The type of request can impact overall responsiveness data (for example, a higher-than-normal number of cross connection control inquiries, which tend to take multiple days to resolve, would affect the overall responsiveness trend).
- There are typically a handful of requests whose closure is dependent upon other entities. For example, in 2025 the lone request whose closure was delayed significantly (103 days to resolution) was associated with a customer complaint pertaining to dust generated on a gravel road on The Firs property that was also being used by the Division 7 reservoirs construction contractor.

### Conclusions

Through analysis of customer request volumes and trends over a six-year period included significant external changes (e.g., pandemic, escalating inflation) and internal policy shifts (e.g., elimination of voluntary billing suspension policy), the data does allow for the start of a longer-term analysis of trends. Through use of this and future data, the District will identify potential trends and revise workloads and/or District resources to serve our customers more efficiently and effectively.