1. Revised Preliminary Agenda For February 19, 2020
   Documents:
   
   219.PDF

2. Preliminary Agenda For February 19, 2020
   Documents:
   
   0 PRELIMINARY AGENDA.PDF

3. Agenda Packet For February 19, 2020
   Documents:
   
   02192020_AGENDAPACKET.PDF
BOARD OF COMMISSIONERS
REGULAR MEETING
February 19, 2020 • 5:30 PM
PRELIMINARY AGENDA

Call Meeting to Order
Roll Call
Approval of Agenda
Visitors and Comments from the Audience
Minutes
1. Approve the Minutes of the Regular Meeting of February 5, 2020

Consent Agenda
2. The following items have either been previously discussed or are routine in nature. Any item may be removed at the request of a Commissioner for further discussion. The Board may approve all of these items with a single motion.
   2.1 Approve Vouchers in the amount of $
   2.2 January Investment Report
   2.3 Final Payroll for terminated employee

Business Items
3. WASWD Shared Legal Expenses for Stormwater Permit Appeal
4. Job Description Update
5. Other Business

Additional Reports
6. Management
   6.1 General Manager’s Report
   6.2 Discharge Monitoring Report
   6.3 VERBAL REPORTS: Department Head Updates
      ▪ Legal
      ▪ Engineering
      ▪ Commissioners

Executive Session
Lift Station 9 Project Award Update
Pursuant to RCW 42.30.110(1)(i) to discuss potential litigation with District legal counsel.

Conclude

SCHEDULE OF UPCOMING MEETINGS
Regular Meetings are held the 1st and 3rd Wednesdays of each month at 5:30 p.m. at the District Office
March 4, 2020
March 18, 2020
April 13, 2020 (Monday)
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February 19, 2020 • 5:30 PM
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SCHEDULE OF UPCOMING MEETINGS
Regular Meetings are held the 1st and 3rd Wednesdays of each month at 5:30 p.m. at the District Office
March 4, 2020        March 18, 2020        April 13, 2020 (Monday)
Minutes of February 5, 2020

The Regular Meeting of the Board of Commissioners of February 5, 2020 was called to order at the District office by Commissioner McGrath at 5:30 p.m.

ROLL CALL/IN ATTENDANCE

Commissioners:
Tom McGrath, Mike Johnson, Jeff Clarke

Legal
Bill Linton, Inslee Best

Staff:
Jim Voetberg, General Manager; Rick Matthews, Operations/Engineering Manager; Sue Parks, Finance Manager; Gil Bridges, Treatment Plant Manager; Kendra Chapman, Executive Assistant/HR

APPROVAL OF AGENDA

Motion by Commissioner Johnson, second by Commissioner Clarke to approve the agenda as presented. The motion passed unanimously.

VISITORS AND COMMENTS FROM THE AUDIENCE

None.

MINUTES

Motion by Commissioner Clarke, second by Commissioner Johnson, to approve the minutes of the regular meeting of the Board of Commissioners on January 15, 2020. The motion passed unanimously.

CONSENT AGENDA

Motion by Commissioner Johnson, second by Commissioner Clarke, to approve the Consent Agenda as presented. The motion passed unanimously.

Vouchers

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<th>Vouchers</th>
<th>Fund</th>
<th>SubFund No</th>
<th>Voucher No</th>
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<td>846</td>
<td>9296-9299</td>
<td>$92,353.59</td>
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</table>

Approved Vouchers in the amount of $371,064.39.

Payroll

Approved Payroll in the amount of $181,967.65.

Investments

Approved 4th Quarter Investments Report.
BUSINESS ITEMS

Award Possession View Place Water Main Replacement Project #28-19

General Manager Voetberg presented the item noting there were 13 bids ranging from $309,587.85 to $428,519.00, with Kar-Vel construction as the low bidder for the project. Voetberg noted Gray & Osborne reviewed the bid documents and submitted a letter recommending award to Kar-Vel Construction.

Resolution No. 517-20

Motion by Commissioner Johnson, second by Commissioner Clarke to adopt resolution no. 517-20, awarding the Possession View Place Water Main Replacement Project #28-19 to Kar-Vel Construction in the amount of $309,587.85 including applicable Washington state sales tax. The motion passed unanimously.

Authorization of Sole Source for UV System Switch Project #56-20

General Manager Voetberg presented the item giving a brief overview of the WWTF UV disinfection process and explained an electrical switch is needed at the system’s Process Logic Controller (PLC) to ensure the system continues to operate in the event the PLC fails. Voetberg noted the by-pass switch is a component of the overall UV disinfection unit manufactured by Wedeco, resulting in Wedeco being the sole supplier of the switch. Voetberg added a resolution has been prepared to document and justify the sole source procurement of a Wedeco electrical by-pass switch.

WWTF Bridges stated the PLC electrical by-pass switch will provide an additional layer of safety to the UV disinfection system.

General discussion occurred.

Motion by Commissioner Johnson, second by Commissioner Clarke to approve resolution no. 518-19, authorizing the sole source procurement of an electrical by-pass switch for the Wedeco UV light disinfection system. The motion passed unanimously.

Other Business

None.

ADDITIONAL REPORTS

Management

General Manager’s Report

General Manager Voetberg reported the Lift Station No. 9 Upgrade project will enlarge the footprint of the existing lift station resulting in the loss of two City of Mukilteo parking spots. Voetberg added Staff has been in discussions with the City regarding the loss of these parking spots and the City indicated they will include a stipulation in their permit of no net loss of...
parking. Voetberg noted the District owns a small parcel of property near the project which will allow for the creation of two parking spaces. Voetberg informed the Board of Staff’s intention to transfer this property to the City to replace the two parking spots lost due to the Lift Station No. 9 project. Voetberg reminded the Board this parcel is one of the parcels on the District’s surplus property list and has gone through the bidding process with no interest.

Voetberg reported preliminary design of the Lift Station 5 upgrade project has begun, noting the District only has underground rights to this area. Voetberg noted he and Rick Matthews are exploring obtaining above ground rights from the adjacent property owner Mr. Vandeyacht, however recent discussions with Mr. Vandeyacht do not look promising, adding it may be necessary to construct all improvements underground. Voetberg noted staff is keeping an open mind and exploring all available options. General discussion occurred on types of underground vaults.

Voetberg gave an update on the T-Mobile cell tower lease agreement at Reservoir No. 2 noting T-Mobile has decided to forgo their initial request for additional ground lease area to install a generator but still desired a lease extension, a reduction of the annual escalator from 5% to 4% with an upfront payment of $45,000. Voetberg added the current agreement runs through 2028 and T-Mobile’s latest proposal results in a break-even year of 2032/2033, assuming the District is successful in retaining the annual escalator past 2028. Voetberg added that given rapid changes in technology and nearby property where a cell tower could be located, T-Mobile’s proposal is reasonable.

General discussion occurred with consensus from the Board to proceed with T-Mobile’s latest proposal of an extension through 2058, a reduction in the annual escalator from 5% to 4% and an upfront payment of $45,000.

Voetberg reported the WASWD legislative report for January was included in the packet. Voetberg also reported WASWD is preparing to take legal action in regards to stormwater well injection and they are asking for interest and possible financial support from member Districts. Voetberg stated he would have more information at the next meeting.

Voetberg reported he, Gil Bridges and Jeff Clarke attended the recent Nutrient Removal forum. Voetberg noted this will be a critical issue for the District and believes it is important to be represented at these meetings.

Commissioner Clarke gave a brief overview of the meeting and general discussion occurred.

Voetberg reported long time employee Matt Wright’s last day with the District is February 6th, as he has decided to pursue other options in his career.

**Verbal Reports**
Finance Manager Parks had no report.

Treatment Plant Manager Bridges reported flows were up due to the large amounts of rain the last few days. Bridges also reported the WWTF road system is working well and the City is doing some improvements in the vicinity.

Operations/Engineering Manager Matthews reported the pre-bid meeting for the Lift Station 9 project was well attended and staff will open bids on February 12th at 1:00 pm. Matthews reported the pile portion of the new WWTF building has been completed and the contractor will begin with the concrete portion of the elevator pit. Matthews also reported Paine Field exceed the TSS level in the first two tests for the month, however, the third test was under the required level.

**Legal**

Attorney for the District, Bill Linton thanked the Board and Staff for using his services with the recent retirement of John Milne. Mr. Linton stated he would like to update the Board on the King County Right-of-Way issue in executive session due to potential litigation pursuant to RCW 42.30.110(1)(i).

**Commissioners**

Commissioner McGrath reported he and Commissioner Clarke attended the WASWD Commissioner Workshop and gave a brief overview of the topics discussed.

Commissioner McGrath also reported the WASWD Retrospective Board has evaluated proposals for new administrators to the program.

**EXECUTIVE SESSION**

Motion by Commissioner McGrath, second by Commissioner Johnson to convene to an executive session at 6:20 pm for the purpose of considering potential litigation, under RCW 42.30.110 section 1(i) stating the session would last 15 minutes. The Commissioners, General Manager Voetberg, Operations/Engineering Manager Matthews and Attorney Bill Linton attended the executive session. At 6:35 pm the executive session concluded and the open public meeting convened.

**CONCLUDE**

There being no further business, the President of the Board concluded the meeting at 6:35 p.m.

Commissioner McGrath

Commissioner Clarke

Commissioner Johnson
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<th>Sub-Fund ID #</th>
<th>Fund Description</th>
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<th>Maturity Date</th>
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<th>1/31/2019 Amount</th>
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(State Pool rate is net of fees)
BUSINESS OF THE MUKILTEO WATER AND WASTEWATER DISTRICT
BOARD OF COMMISSIONERS

SUBJECT: WASWD Sharing Legal Expenses for the Stormwater Permit Appeal

MEETING DATE: February 19, 2020

FROM: Jim Voetberg, General Manager

CURRENT YEAR | MULTI-YR. PROJ.
---|---
Amount Budgeted | N/A | N/A
Amount Committed | | |
Amount Available | | |
Spent to Date | | |
Expenditure Requested | N/A | N/A

EXHIBITS ATTACHED:
- WASWD Memorandum dated February 2, 2020 regarding the sharing of legal expenses for the stormwater permit appeal.

SUMMARY STATEMENT/ISSUES:

Attached for Board review is a memorandum from WASWD Executive Director Judi Gladstone regarding the sharing of legal expenses for WASWD’s stormwater permit appeal. The memorandum is self-explanatory as to the issue at hand and WASWD’s request.

As the Board is aware, the District’s water supply comes from Spada Lake and the protection of groundwater sources is not a direct issue for us. That being said, as a member of the water industry, the District does support the protection of groundwater sources from Underground Injection Control (UIC) wells.

To be clear, WASWD’s request for participation is Statewide with no expectations that member Districts are required to participate. Judi did indicate at the recent Section III meeting that a few Districts who are directly impacted plan to chip in $3,000 to $4,000 each. If the Board has interest in participating, it is suggested the amount be in the $1,000 to $1,500 range. Staff will be looking to the Board for direction, if any.

RECOMMENDATION/SUGGESTED MOTION:
None
To: WASWD Water Districts  
From: Judi Gladstone, Executive Director  
Date: February 5, 2020  

RE: Sharing Legal Expenses for the Stormwater Permit Appeal  

At the WASWD Board meeting on January 27, the Board unanimously agreed to move forward with continued legal action on the Stormwater Permit Appeal to pursue protection of groundwater sources from UIC wells. Legal costs for some limited actions are estimated at $30,000. The Board committed $10,000 of the WASWD budget for this effort. I am writing to you today to request voluntary contributions for the remaining $20,000 of expected costs. The amount per district will depend on the number of districts that step forward to contribute.

Attached is a description of the issue and an update of efforts to advance water quality protections. Because of the potentially significant impact of UIC wells on ground water sources, we hope you will join us in demonstrating our commitment to water quality. Please inform us if your district would be willing to contribute to legal costs by February 19, 2020. I will follow up after that with the districts that choose to contribute.

Thank you for your consideration.
Stormwater Permit Appeal: Protecting Drinking Water Groundwater Sources

UIC Well Issue
Some water districts have experienced issues with their groundwater sources as a result of Underground Injection Control (UIC) wells being located in the vicinity of their drinking water source aquifer. As UIC wells are used more, they may present an issue for more districts reliant on groundwater sources in the vicinity of where UIC wells are used for stormwater purposes. While Ecology presumes stormwater is safe enough to be discharged into aquifers, there is a significant risk that contaminants could enter drinking water sources in the future. PFAS is a poster-child for how a “forever” chemical can potentially impact a groundwater source. Advocating for groundwater protection from UIC wells represents an issue in which districts are proactively protecting water quality before there is a more widespread problem.

Regulatory Protection
Efforts to build in better protection for drinking water groundwater sources from UIC wells in the regulatory arena has been focused on the Western Washington Stormwater Permit. After a few years in development, with WASWD providing comment in the process, the final stormwater guidance manual and permit insufficiently protected groundwater from untreated stormwater. Consequently, WASWD filed an appeal of the permit in August 2019. Attempts to initiate settlement discussions with Ecology have been rebuffed. Ecology does not demonstrate an interest to negotiate.

Legislative Action
On the legislative front, Sammamish Plateau Water District’s efforts with their local Senator to introduce a bill in the 2020 legislative session resulted in a proposed bill that has no real benefits for water quality protection. Since this is a short session, the only realistic legislative action for this session can be educating legislators and working on a bill for the 2021 session.

Legal Action
With no legislative solution this session, the WASWD Board decided to move ahead on legal steps related to the appeal. The next phase of legal action includes a minimal level of legal activity including:

1. development of the legal argument
2. one or two depositions
3. expert witness disclosure

These efforts will keep the issue alive with the Department of Ecology, continue to build a record on the issue for the policy discussion, and build a foundation of facts in the event we pursue a legal remedy to its conclusion. The cost for this next phase of the appeal is about $30,000 in legal fees. Expert witness disclosure will occur by March and depositions will occur before the end of April. The work will be done by James Tupper of Tupper/Mack/Wells. James is a well-known Seattle environmental attorney that comes highly recommended on this issue.

WASWD will dedicate $10,000 to this effort. We are appealing to districts to voluntarily contribute the other $20,000 that is needed for this next phase of the appeal. One district has already stepped forward. The more districts that participate, the lower the contribution needed to cover these costs.
MEMORANDUM

To: Board of Commissioners
From: Jim Voetberg, General Manager
Date: February 14, 2020
Subject: Manager’s report for the meeting of February 19, 2020

District Property/Liability Insurance: The District has utilized Enduris for its property and liability insurance provider since the merger in 2007. The District did solicit proposals for property and liability insurance in 2011 but decided to remain with Enduris.

For the past several years, Cary Ecker from the Water & Sewer Risk Management Pool has expressed an interest in providing a quote to the District for property and liability insurance. Should there be any desire by the Board to obtain proposals for property and liability insurance, it needs to occur within the next few months to allow for a logical transition in the event a change is made. Staff is looking for direction as to whether there is interest in soliciting proposals for property and liability insurance.

WASWD Legislative Report: Attached for Board review is the February 2020 WASWD legislative update.
2020 LEGISLATIVE SESSION

Week 4- Bills must be out of the policy committee of the house of origin by the end of this week or they will be dead.

Thank you to all who wrote your legislators about HB 2588- the Special Purpose District “Reform” bill. WASWD is working to get amendments to the bill as it moves through the House. Your messages to legislators will be helpful in that effort. If you haven’t sent a message to your legislator, yet, it isn’t too late. See the information in the member alert below. The Senate bill (SB 6324) addressing financial reporting passed out of committee last week. It is a better bill for districts as it doesn’t contain provisions for posting meeting and financial information.

Both the House (HB 2449) and Senate (SB 6046) bills changing the commissioner per diem adjustment date are out of policy committee. Neither had any opposition.

The disposable wipes labeling bill (SHB 2565) was passed out of the House Committee on Environment and Energy last week thanks to a collaborative effort with industry representatives to find agreeable language on some key provisions.

CHANGES AT DEPARTMENT OF ECOLOGY

Along with Laura Watson recently becoming Ecology’s new Director, on Monday, February 3, Heather Bartlett will start as Ecology’s new Deputy Director. Heather had served as the Water Quality Program Manager for six years, joining Ecology after working at Dept. of Health and Dept. of Fish and Wildlife. In the interim, David Giglio, the program deputy, will be Acting Program Manager. They will be seeking applicants for the permanent manager soon.

DRINKING WATER WEEK AWARDS

Are you proud of a water system? Do you know an outstanding waterworks operator? Nominate them for a Drinking Water Week Award! Anyone can nominate someone in the water industry for an award. Fill out the Drinking Water Week nomination form online. Categories include: Above and Beyond, Commitment to Excellence, Grace Under Pressure/Perseverance Under Adversity, Lifetime Achievement, Most Improved, Operator of
the Year, and Most Innovative. For more information visit the State Department of Health Drinking Water Week webpage. Nominations are due Friday, February 14, 2020.

**ASBESTOS REMOVAL & ENCAPSULATION RULE**

Labor and Industries Division of Occupational Safety and Health (DOSH) adopted an update to chapter 296-65 WAC, Asbestos Removal and Encapsulation (CR-103). The rulemaking clarifies requirements for asbestos supervisors and trainers, updates certification and testing and training requirements, and clarifies when temporary certificates can be issued. It also reduces advance notification requirements. The rule is effective March 2, 2020.

**FUNDING OPPORTUNITIES**

**Grants for Electric Vehicle Fleets**
Available for Washington state local governments, grant funding is available from the state Department of Commerce to promote the transformation of the electric transportation systems in Washington state. The program places a particular emphasis on addressing the needs of underserved communities and those disproportionately impacted by climate change and pollution from transportation systems. Program materials, including instructions, requirements and criteria for the program, are on the ETS webpage.

**Grants to Support Community Cleanups and Redevelopment**
Requests for Area-wide Groundwater Investigation Grants, Safe Drinking Water Action Grants, and Oversight Remedial Action Grants and Loans will open Tuesday, February 18, 2020, for funding to be provided during the 2021–23 Biennium. This opportunity closes at 5PM Tuesday, March 17, 2020.

**Community Development Block Grant (CDBG) General Purpose Grants**
Available annually, these grants support community and economic development projects that principally benefit low- and moderate-income persons. Special purpose districts are not eligible to apply directly to the state CDBG Program for funding, but may be a partner in projects and sub-recipient of funding through cities and towns with less than 50,000 in population or counties with less than 200,000 population. Material for the next application cycle will be available in March 2020 with applications due June 3, 2020. Grant application workshops are scheduled in Tumwater on Monday, March 2 and in Moses Lake on Thursday, March 19. More information available on the CDBG website.

**UPCOMING TRAININGS, CONFERENCES AND EVENTS**

**WASWD Member Webinar. No Cost.**

**Wednesday, February 12, 2020, 10:00 a.m.- 11:30 a.m.**
WA State Auditor’s Office Audit features, Leases Accounting, New Reporting Features
**Emergency Preparedness Workshop.** Cost: $75 or $100, depending if you are a member. Sponsored by PNW AWWA.

**Friday, February 14, 2020, 7:45 a.m. to 3:45 p.m.**
Brightwater Environmental Education Center
22505 State Route 9 SE, Woodinville, WA

Training includes basic understanding of emergency preparedness and response of water utilities in the event of an emergency or disaster. Approved for .7 CEUs. Learn more and register at this [link](#).

---

**MEMBER ACTION ALERT**

It's not too late to voice your concerns about requirements the House proposed "special purpose district reform" bill contains. One significant issue remains: imposing restrictive requirements on special purpose districts not required of other governments in Title 42. Please take a few minutes today to take this important action!

1. **IDENTIFY YOUR LEGISLATOR:**
   Use the Legislature's website to find your legislator.
   [https://app.leg.wa.gov/districtfinder](https://app.leg.wa.gov/districtfinder)

   Get the most updated email contact information for your legislators. At this time we only need you to contact your state representative.
   - House Members: [https://app.leg.wa.gov/Rosters/Members/House](https://app.leg.wa.gov/Rosters/Members/House)

   Call the legislative hotline at 1-800-562-6000. They will automatically route your message to the right offices.

2. **CALL OR EMAIL YOUR LEGISLATOR AND TELL THEM:**
   - Districts support efforts to ensure special purpose district accountability and transparency.
   - SB 2588 goes too far in its transparency requirements.
   - Districts are subject to Title 42 requirements for good governance like all other municipal governments.
   - Creating different requirements for special purpose districts hampers district business.
   - We urge you to seek more measured requirements that enable districts to continue good government practices that make them efficient in taking care of business.

   Additionally, let them know you are serving their constituents by telling them:
   - The name of your district.
   - The number of people you serve.
3. MAKE SURE YOUR MESSAGE GOT THROUGH

- Copy the legislator’s assistant on email (names and emails at the link above).
- Copy WASWD on your legislative email at staff@waswd.org.
Attestation Agreed to at Signing:

I certify I personally signed and submitted to the Department of Ecology an Electronic Signature Agreement. I understand that use of my electronic signature account/password to submit this information is equal to my written signature. I have read and followed all the rules of use in my Electronic Signature Agreement. I believe no one but me has had access to my password and other account information.

I further certify: I had the opportunity to review the content or meaning of the submittal before signing it; and to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I intend to submit this information as part of the implementation, oversight, and enforcement of a federal environmental program. I am aware there are significant penalties for submitting false information, including possible fines and imprisonment.
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**Daily Minimum**

- Flow: 1.30 Million Gallons/Day
- TDS: 2164 mg/L
- TSS: 241 mg/L
- BOD: 2556 mg/L
- Solids (Residues): 4.7 mg/L
- Solids (Residues): 52 mg/L
- Solids (Residues): 5.1 mg/L

**Average**

- DL: 2.61
- Report Only: 55

**Weekly Average**

- DL: 6.6
- Weekly: 6.0

**Maximum**

- 1.69 Million Gallons/Day
- TDS: 356 mg/L
- TSS: 3830 mg/L
- BOD: 482 mg/L
- Solids (Residues): 4663 mg/L

**Report Only**

- Mukilteo Water and Wastewater District
- Agenda Packet

**Monitoring Period:** 01/01/2020 - 01/31/2020

**Receiving Waterbody:** 001 - PUGET SOUND (CENTRAL)

**Version:** 1
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**Daily Minimum**

- 6.4
- **<= 6.0 (RO)**

**Average**

- 13.5
- **Report Only**

**Weekly Average**

**Maximum**

**Daily Maximum**

- 7.2
- **<= 9.0 (RO)**

**Monthly geometric mean**

- 8
- **<= 200**

**Weekly Geometric Mean**
I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Thomas Bridges
Signature

2/7/2020 8:51:14 AM
Date
SUBJECT: Lift Station No. 9 Upgrade Project, Award Update

MEETING DATE: February 19, 2020

FROM: Jim Voetberg, General Manager

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EXHIBITS ATTACHED
- Lift Station No. 9 Project Bid Tabulation
- Protest letter from Interwest Construction Inc. dated February 12, 2020
- Project General Condition section 2.01.8, Disqualification of Bidders
- Project Supplemental Conditions

SUMMARY STATEMENT/ISSUES:
Lift Station No. 9 was constructed by the City of Mukilteo in the 1980's and is at the end of its useful life. Included in the 2020 Capital Budget is funding in the amount of $2,900,000 for upgrades to Lift Station No. 9 to improve the station’s reliability, redundancy, capacity and accessibility. At the January 15, 2020 Board meeting, Construction Management services for this project was authorized in the amount of $306,680 leaving $2,594,000 for construction. The project was formally bid and opened on February 12, 2020. Attached for Board review is the bid tabulation sheets.

As seen in the attached protest letter from the second low bidder, Interwest Construction Inc. (ICI), ICI is protesting the bid by Pacific Crest Construction (PCC) for failure to acknowledge Addendum #3 in their bid submittal. The District's rights for rejecting a bidder who fails to acknowledge all addendums is provided for in section 2.01.8 of the project’s General Conditions (see attached).

In addition to the above issue, while checking the qualifications of PCC, Gray and Osborne documented recent instances where PCC failed to complete projects on time. Based on PCC’s failure to acknowledge Addendum #3 and their pattern of failure to complete projects on time, Staff, in consultation with the District’s legal counsel, has initiated the process to declare PCC as a not responsive bidder.

The Contract Documents provide the process and appeal procedures when declaring a bidder as not responsive. The District’s legal counsel Bill Linton will be attending the meeting of February 19, 2020 to update the Board on this issue. Since this may lead to potential litigation, the discussion will be held in executive session.

SUGGESTED/RECOMMENDATION:
The Board will convene an executive session pursuant to RCW 42.30.110(1) (i) to discuss potential litigation with District legal counsel regarding the Lift Station No. 9 Upgrade project bid. We expect to be in Executive Session until ________ (state time).
## Lift Station 9 Upgrade Project #31-19

**Wednesday, February 12, 2020 @ 1:00 pm**

**Engineer's Estimate:** **$2.35 Million (including sales tax)**

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Signed Bid</th>
<th>Bid Bond</th>
<th>Addenda #1</th>
<th>Addenda #2</th>
<th>Addenda #3</th>
<th>Proposed Bid Amount (including tax)</th>
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<tbody>
<tr>
<td>1. ICI Construction</td>
<td></td>
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<td></td>
<td></td>
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<td>2,463,708 $</td>
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<td>2. MSI</td>
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<td>2,886,057 $</td>
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<td>4. Award Construction</td>
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<td>2,738,742 $</td>
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<td>5. Gary Harper</td>
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<td>2,544,870 $</td>
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</table>
Sealed bids were opened at the Mukilteo Water & Wastewater District, 7824 Mukilteo Speedway, Mukilteo, Washington 98275 on Wednesday, February 12, 2020, at 1:00 p.m. (local time).

I hereby certify that, to the best of my knowledge, the above tabulations are true and correct transcriptions of the unit prices and total amounts bid.

BARRY R. RUB右手 P.E.
February 12, 2020

Mukilteo Water and Wastewater District
7824 Mukilteo Speedway
Mukilteo, WA 98275

RE: Lift Station #9
Bid Protest

Engineer:

Interwest Construction (Interwest) formally protests the apparent low bidder on the referenced project opened on February 12, 2020. Pacific Crest Construction failed to properly acknowledge Addendum #3, making their bid unresponsive. Interwest Construction is the lowest responsive bidder on the referenced project.

Please feel free to contact me with any comments, concerns or questions you may have regarding this bid protest.

Respectfully submitted,

INTERWEST CONSTRUCTION, INC.

Dana Orbe, P.E.
Vice President
d. Any additional pertinent information establishing the experience or qualifications of the proposed Subcontractor.

(6) After opening and reading Proposals, the Owner will check them for correctness of extensions of the prices per unit and the total price. If a discrepancy exists between the price per unit and the extended amount of any bid item, the price per unit, converted to the actual extension, will control. The total extensions, corrected where necessary, will be used by the Owner for comparison and award purposes and to establish the amount of the Contractor’s Performance and Public Works Payment Bonds.

2.01.7 WITHDRAWING OR REVISING PROPOSAL

After submitting a physical Proposal to the Owner, the Bidder may withdraw, or revise it if:

1. The Bidder submits a written request signed by an authorized person and physically delivers it to the place designated for receipt of Proposals; and
2. The Owner receives the request before the time set for receipt of Proposals; and
3. The revised or supplemented Proposal (if any) is received by the Owner before the time set for receipt of Proposals.

If the Bidder’s request to withdraw or revise its Proposal is received before the time set for receipt of Proposals, the Owner will return the unopened Proposal package to the Bidder. The Bidder must then submit the revised package in its entirety. If the Bidder does not submit a revised package, then its bid shall be considered withdrawn.

Late revised Proposals or late withdrawal requests will be date recorded by the Owner and returned unopened. Mailed, emailed, or faxed requests to withdraw or revise a Bid Proposal are not acceptable.

2.01.8 DISQUALIFICATION OF BIDDERS

1. A proposal will be considered irregular and will be rejected if:
   a. The Bidder is not prequalified when so required;
   b. The authorized proposal form furnished by the Owner is not used or is altered;
   c. The completed proposal form contains any unauthorized additions, deletions, alternate Bids, or conditions;
   d. The Bidder adds provisions reserving the right to reject or accept the award, or enter into the Contract;
   e. A price per unit cannot be determined from the Bid Proposal;
   f. The Proposal form is not properly executed;
   g. The Bidder fails to submit or properly complete a Subcontractor list, if applicable;
h. The Bidder fails to submit or properly complete a Disadvantaged, Minority or Women's Business Enterprise Certification, if applicable;

i. The Bid Proposal does not constitute a definite and unqualified offer to meet the material terms of the Bid invitation; or

j. More than one proposal is submitted for the same project from a Bidder under the same or different names.

2. A Proposal may be considered irregular and may be rejected if:

   a. The Proposal does not include a unit price for every Bid item;

   b. Any of the unit prices are excessively unbalanced (either above or below the amount of a reasonable Bid) to the potential detriment of the Contracting Agency;

   c. Receipt of Addenda is not acknowledged;

   d. A member of a joint venture or partnership and the joint venture or partnership submit Proposals for the same project (in such an instance, both Bids may be rejected); or

   e. If Proposal form entries are not made in ink.

A Bidder will be deemed not responsible if:

1. The Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1); or

2. Evidence of collusion exists with any other Bidder or potential Bidder. Participants in collusion will be restricted from submitting further bids; or

3. The Bidder, in the opinion of the Owner, does not have the means or the qualifications to complete the Work; or

4. An unsatisfactory performance record exists based on past or current Owner work or for work done for others, as judged from the standpoint of conduct of the work; workmanship; or progress; affirmative action; equal employment opportunity practices; termination for cause; or Disadvantaged Business Enterprise, Minority Business Enterprise, or Women's Business Enterprise utilization; or

5. There is uncompleted work (Owner or otherwise), which in the opinion of the Owner might hinder or prevent the prompt completion of the work bid upon; or

6. The Bidder failed to settle bills for labor or materials on past or current contracts, unless there are extenuating circumstances acceptable to the Owner; or

7. The Bidder has failed to complete a written public contract or has been convicted of a crime arising from a previous public contract, unless there are extenuating circumstances acceptable to the Owner; or

8. The Bidder is unable, financially or otherwise, to perform the work, in the opinion of the Owner; or

9. There are any other reasons deemed proper by the Owner.

The basis for evaluation of Bidder compliance with these mandatory and supplemental criteria shall be any documents or facts obtained by Owner (whether from the Bidder or third parties) which any reasonable owner would rely on for determining such compliance, including but not limited to: (1) financial, historical, or operational data from the Bidder; (2) information obtained...
SUPPLEMENTARY GENERAL CONDITIONS

Add Section 2-01.8.3.:

3. A Bidder will be deemed not responsible if the Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1), as amended; or does not meet Supplemental Criteria 1 through 8 in this Section:

The Owner will verify that the Bidder meets the mandatory bidder responsibility criteria in RCW 39.04.350(1), and Supplemental Criteria 1. Evidence that the Bidder meets Supplemental Criteria 2 through 8 shall be provided by the Bidder as stated later in this Section.

a. **Criteria 1 – Federal Debarment**

   1. **Criterion:** The Bidder shall not currently be debarred or suspended by the Federal government.

   2. **Documentation:** The Bidder shall not be listed as having an “active exclusion” on the U.S. government’s “System for Award Management” database (www.sam.gov).

b. **Criteria 2 – Delinquent State Taxes**

   1. **Criterion:** The Bidder shall not owe delinquent taxes to the Washington State Department of Revenue without a payment plan approved by the Department of Revenue.

   2. **Documentation:** The Bidder shall, if and when required as detailed below, sign a statement (on a form to be provided by the Owner) that the Bidder does not owe delinquent taxes to the Department of Revenue. If the Bidder owes delinquent taxes, they must submit a written payment plan approved by the Department of Revenue, to the Owner by the deadline listed below.

c. **Criteria 3 – Claims Against Retainage and Bonds**

   1. **Criterion:** The Bidder shall not have a record of excessive claims filed against the retainage or payment bonds for public works projects in the 3 years prior to the bid submittal date, that demonstrate a lack of effective management by the Bidder of making timely and appropriate payments to its subcontractors, suppliers, and
workers, unless there are extenuating circumstances and such circumstances are deemed acceptable to the Owner.

2. **Documentation:** The Bidder shall, if and when required as detailed below, sign a statement (on a form to be provided by the Owner) that the Bidder has not had claims against claims against retainage and bonds in the 3 years prior to the bid submittal date. If the Bidder has had claims against retainage and bonds in the three years prior to the bid submittal date, they shall submit a list of the public works projects completed in the 3 years prior to the bid submittal date that have had claims against retainage and bonds and include for each project the following information:

- Name of project
- The owner and contact information for the owner;
- A list of claims filed against the retainage and/or payment bond for any of the projects listed;
- A written explanation of the circumstances surrounding each claim and the ultimate resolution of the claim.

d. **Criteria 4 – Public Bidding Crime**

1. **Criterion:** The Bidder and/or its owners shall not have been convicted of a crime involving bidding on a public works contract in the 5 years prior to the bid submittal date.

2. **Documentation:** The Bidder, if and when required as detailed below, shall sign a statement (on a form to be provided by the Owner) that the Bidder and/or its owners have not been convicted of a crime involving bidding on a public works contract.

e. **Criteria 5 – Termination for Cause / Termination for Default**

1. **Criterion:** The Bidder shall not have had any public works contract terminated for cause or terminated for default by a government agency in the 5 years prior to the bid submittal date, unless there are extenuating circumstances and such circumstances are deemed acceptable to the Owner.

2. **Documentation:** The Bidder, if and when required as detailed below, shall sign a statement (on a form to be provided by the Owner) that the Bidder has not had any
public works contract terminated for cause or terminated for default by a government agency in the 5 years prior to the bid submittal date; or if Bidder was terminated, describe the circumstances.

f. **Criteria 6 – Lawsuits**

1. **Criterion:** The Bidder shall not have lawsuits with judgments entered against the Bidder in the 5 years prior to the bid submittal date that demonstrate a pattern of failing to meet the terms of contracts, unless there are extenuating circumstances and such circumstances are deemed acceptable to the Owner.

2. **Documentation:** The Bidder, if and when required as detailed below, shall sign a statement (on a form to be provided by the Owner) that the Bidder has not had any lawsuits with judgments entered against the Bidder in the 5 years prior to the bid submittal date that demonstrate a pattern of failing to meet the terms of contracts, or shall submit a list of all lawsuits with judgments entered against the Bidder in the 5 years prior to the bid submittal date, along with a written explanation of the circumstances surrounding each such lawsuit. The Owner shall evaluate these explanations to determine whether the lawsuits demonstrate a pattern of failing to meet of terms of construction related contracts.

g. **Criteria 7 – Contract Time (Liquidated Damages)**

1. **Criterion:** The Bidder shall not have had liquidated damages assessed on any projects it has completed 5 years prior to the bid submittal date that demonstrate a pattern of failing to meet contract time.

2. **Documentation:** The Bidder, if and when required as detailed below, shall sign a statement (on a form to be provided by the Owner) that the Bidder has not had liquidated damages assessed on any projects it has completed within the 5 years prior to the bid submittal date, or shall submit a list of Projects with assessed liquidated damages along with Owner contact information, and number of days assessed liquidated damages.