

**PROFESSIONAL SERVICES AGREEMENT FOR
SHORELINE MASTER PROGRAM CONSULTING SERVICES**

THIS AGREEMENT is entered into between Pacific County, hereinafter referred to as "the County", and The Watershed Company, hereinafter referred to as "the Consultant", in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. Project Designation. The Consultant is retained by the County to assist in the completion of a Sea Level Rise Risk Assessment and Community Outreach Project.
2. Scope of Services. Consultant agrees to perform the services identified on Exhibits "A & B" attached hereto, including the provision of all labor. All work performed under this agreement shall be done diligently, completely and in accord with accepted professional standards of conduct.
3. Time for Performance. Work under this contract shall commence upon the date the County gives written notice to the Consultant to proceed and shall continue through to completion on or before June 30, 2023.
4. Payment. The Consultant shall be paid by the County for completed work and for services rendered under this agreement as follows:
 - a. Payment for the work provided by Consultant shall be made as invoiced by the Consultant upon completion of each task, provided that the total amount of payment to Consultant for all work completed and services rendered shall not exceed \$83,000.
 - b. The Consultant may submit invoices to the County once per month during the progress of the work for partial payment for work completed to date. Each of the Consultant's invoices shall include a detailed description of services performed, the number of hours spent performing such services and any reimbursable costs and expenses incurred. The County will review each invoice and, upon approval, will issue payment to the Consultant in the amount approved.
 - c. The County will issue final payment of any balance due of the amount listed in paragraph 4.a. above upon the County's verification that the work or services has been completed and is acceptable to the County, subject to the limitations in the termination provision herein.
 - d. Payment as provided in this section shall be full compensation for work performed, services rendered or expenses listed in Exhibits A and B that are necessary to complete the work and a pro-rated amount for use of Consultant's materials or equipment necessary to complete the work.

- e. The Consultant's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the County and the State for a period of three (3) years after final payment. Copies shall be made available upon request.
5. Ownership and Use of Documents. All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this agreement shall be the property of the County whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Consultant's endeavors. If the County provides any confidential information to the Consultant for purposes of the Sea Level Rise Risk Assessment and Community Outreach project or the Consultant's work, the Consultant agrees to safeguard the information, keep the information confidential, and not disclose or distribute the information to any individual or entity without express written consent by the County.
6. Compliance with Laws. Consultant shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations applicable to the services to be rendered under this agreement.
7. Indemnification. Consultant shall indemnify and hold harmless the County, its officers, agents, employees, and volunteers from and against all claims, losses, damages, judgments, or liabilities of whatever nature, including any portion thereof, arising from or related to the Consultant's acts, omissions, or performance under this agreement, including any and all claims, losses or liability, or any portion thereof, including reasonable attorney's fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to Consultant's own employees or agents, or damage to property occasioned by a negligent act, omission or failure of the Consultant. This indemnification obligation shall not be limited in any way by the Washington State Industrial Insurance Act, Chapter 51 RCW, or by application of any other workers' compensation act, disability benefit act or other employee benefit act, and the Consultant waives any immunity afforded by such acts.
8. Insurance. Without limiting the Consultant's indemnification of the County, and prior to commencement of this agreement, Consultant shall obtain, provide and maintain during the term of this agreement, policies or insurance of the type and amounts described below and in a form satisfactory to the County.
1. **General Liability Insurance.** Consultant shall maintain commercial general liability insurance with at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
2. **Professional Liability (Errors & Omissions) Insurance.** Consultant shall maintain professional liability insurance that covers the services to be performed in connection

with this agreement in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

3. **Workers' Compensation Insurance.** Consultant shall, at its own expense, maintain Workers' Compensation Insurance (statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) if needed.
4. **Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the County, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against the County, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

The Consultant must name the County as an additional insured. The Consultant agrees that its liability insurance shall be primary and non-contributory to the County's and that Consultant's liability insurance policy shall so state.

9. Independent Contractor. The parties agree that the Consultant is an independent contractor with respect to the services provided pursuant to this agreement. Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Consultant nor any employee of Consultant shall be entitled to any benefits accorded County employees by virtue of the services provided under this agreement. The County shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, or otherwise assuming the duties of an employer with respect to Consultant or any employee of Consultant.
10. Covenant Against Contingent Fees. The Consultant warrants that he has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
11. Discrimination Prohibited. The Consultant, with regard to the work performed by it under this agreement, will abide by federal, state and local laws prohibiting discrimination, including Chapter 49.60 RCW, which prohibits discrimination based on "race, creed, color, national origin, citizenship or immigration status, sex, honorably

discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability” in the selection and retention of employees or procurement of materials or supplies.

12. Non-Waiver. Waiver by the County of any provision of this agreement or any time limitation provided for in this agreement shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.
13. Assignment. This Agreement cannot be assigned, transferred, or any portion subcontracted hereunder without the County’s prior written permission. If the County consents to the assignment or delegation of all or any part of Consultant’s obligations under this agreement, Consultant will remain liable for performance by the permitted assignees or delegates according to the terms and conditions of this agreement.
14. Governing Laws. This agreement shall be governed by the laws of the State of Washington, both as to its interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific County, Washington.
15. Dispute Resolution. The parties agree to attempt to informally resolve any disputes regarding the terms of, or compliance with, this agreement. If, despite good-faith efforts to resolve a dispute, the dispute remains unresolved, either party may bring a court action to resolve the dispute.
16. Attorney’s Fees. In the event either party files a court action in any trial or appellate court seeking enforcement of this agreement, the prevailing party shall be entitled to all court costs and reasonable attorney’s fees.
17. Application of the Public Records Act. Consultant acknowledges the County is subject to Washington’s Public Records Act (RCW 42.56), and this agreement and any other records related to this agreement or the Consultant’s work may be subject to public inspection and copying. To the extent that public records then in the custody of the Consultant are needed for the County to respond to a request for public records, as determined by the County, the Consultant agrees to make them promptly available to the County. If the Consultant considers any portion of any record it provides to the County under this agreement, in whatever form, to be protected from disclosure under law, the Consultant shall clearly identify any specific information that it claims to be confidential or proprietary. If the County determines that records provided by the Consultant or are otherwise in the County’s possession must be released pursuant to the public records act or the release of which is otherwise appropriate, the County’s sole obligation shall be to notify the Consultant: (a) of the County’s receipt of a request for public records, and (b) of the date that such information will be released to the requester unless the Consultant obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Consultant fails to timely obtain a court order enjoining disclosure, the County may

release the requested information on the date specified.

18. Severability. If a court of competent jurisdiction holds any part, term or provision of this agreement to be invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible. If any provision of this agreement is in direct conflict with any statutory provision of the State of Washington, that provision of the agreement that may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.
19. Beneficiaries. This agreement is not intended to and shall not be construed to give any third party any interest or rights with respect to or in connection with this agreement.
20. Termination. The County reserves the right to terminate this agreement at any time, with or without cause, by giving ten (10) days written notice to the Consultant. The effective date of termination will be ten days from the day the termination notice was mailed to the Consultant. If, however, the County elects to terminate the agreement because the Consultant is unavailable or unable to perform the work agreed upon, the County may terminate immediately without any continuing obligation of payment to Consultant. The Consultant reserves the right to terminate this agreement and may do so by giving 60 days written notice to the County, unless the reason for termination is non-payment of monies owed under this agreement, in which case, the Consult may give 30 days written notice.

In the event of termination of this agreement:

- a) all materials, finished or unfinished, drafted by the Consultant under this agreement shall be turned over to the County;
 - b) the County will issue a final payment to the Consultant for unpaid services rendered until the date of termination minus the amount of damages resulting from Consultant's breach of this agreement. Said payment will not act as a waiver of the County's right to seek any additional remedies it may have under the law for a breach of this agreement.
21. Notices. Notices to Pacific County shall be sent to the following address:
Pacific County Department of Community Development
PO Box 68
South Bend, WA 98586

Notices to Consultant shall be sent to the following address:
The Watershed Company
750 Sixth Street South
Kirkland, WA 98033
 22. Integrated Agreement. This agreement, together with attachments A & B, represents the

entire and integrated agreement between the County and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only in writing signed by both parties.

23. Counterparts. This agreement may be executed in counterparts, each of which will be deemed to be an original copy of this agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this agreement and of signature pages by facsimile transmission or other electronic means shall constitute effective execution and delivery of this agreement as to the parties and may be used in lieu of the original agreement for all purposes. Signatures of the parties transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed

This _____ day of _____ 2022.

Board of County Commissioners

The Watershed Company

Lisa Olsen, Chair

Dan Nickel

Frank Wolfe, Commissioner

Michael Runyon, Commissioner

Approved as to form:

Prosecutor WSBA#

ATTEST:

Marie Guernsey, Clerk of the Board