

PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT is made by and between Pacific County, a municipal corporation hereinafter referred to as "the COUNTY", and The Watershed Company, 750 Sixth Street South, Kirkland, WA, 98033 "the CONTRACTOR".

WHEREAS, the COUNTY desires to have certain professional services performed and provided by the CONTRACTOR, as set forth hereafter, which services require specialized skills and abilities; and,

WHEREAS, the CONTRACTOR represents that it is qualified and possesses sufficient skills and abilities to perform the professional services set forth hereafter in the Agreement, now therefore,

IN CONSIDERATION of the terms, conditions, covenants, and performances described herein, the parties hereto AGREE AS FOLLOWS:

I. SERVICES TO BE PROVIDED BY CONTRACTOR

The CONTRACTOR will provide services set forth in *Exhibit A* in accordance with the terms and conditions of this agreement. The CONTRACTOR will be responsible for the professional quality, technical accuracy, timely completion, and coordination of reports, data, technical analysis, and other work products furnished by the CONTRACTOR under this Agreement. The CONTRACTOR will, without additional compensation, correct or revise errors and omissions in reports, data, technical analyses, drawings, specifications, and other work products.

II. RESPONSIBILITIES OF COUNTY

The COUNTY will provide services set forth in *Exhibit B* in accordance with the terms and conditions of this agreement.

III. DURATION OF AGREEMENT

This Agreement shall be retroactive to May 1, 2016, and will terminate on June 30, 2017. Termination as herein provided will be in addition to, and not in lieu of, a party's right to terminate for breach. Termination will operate to discharge all obligations that are executor by either party on or after the effective date of termination, but any right of a party based performance or breach of this Agreement prior to the effective date of termination will survive.

IV. CHANGES IN WORK

The COUNTY may at any time, by written order, make changes within the general scope of the Agreement in the services to be performed. If such changes cause an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, or otherwise affects any other terms and conditions of the Agreement, the COUNTY will make an equitable adjustment in the (1) maximum amount payable; (2) duration of the Agreement or project, or both; and (3) other affected terms. Upon mutual agreement of equitable adjustment, a written supplement to the Agreement will be prepared by the COUNTY for execution by both parties.

The CONTRACTOR must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the COUNTY decides that the facts justify it, the COUNTY may receive and act

upon a claim submitted before final payment is made under the Agreement. Failure to agree to any adjustment will be a dispute under Section XIX. However, nothing in this clause will excuse the CONTRACTOR from proceeding with the Agreement as changed.

Notwithstanding the terms and conditions above, the maximum amount payable for this Agreement, will not be increased or considered to be increased except by specific written supplement to this Agreement.

V. COMPENSATION AND METHOD OF PAYMENT

The COUNTY will reimburse the CONTRACTOR for satisfactory completion of the services specified under this Agreement on a time and materials basis in an amount not to exceed those costs shown in *Exhibit A*.

Payment for work accomplished to the satisfaction of the COUNTY will be made on the basis of the CONTRACTOR's actual hours expended by professional, technical, and non-technical personnel for the time they are productively engaged in work necessary to fulfill the terms of this Agreement.

Invoices will be provided to the COUNTY monthly. Payment will be made within thirty (30) days after receipt of invoices. In the event any items in the billing may be questioned or disputed by the COUNTY, such items will be deleted from the billing until their resolution and the remainder of the billing will be processed within the above-stated period. Invoices due and owing beyond the established thirty (30) day payment period, and not subject of dispute as described herein, will accrue interest at the rate of one and one half (1.5) percent per month on the unpaid balance.

If the CONTRACTOR fails to comply with any terms or conditions of this Agreement or to provide in any manner the services agreed to herein, the COUNTY may withhold any payment due the CONTRACTOR until the COUNTY is satisfied that corrective action, as specified by the COUNTY, has been completed to the satisfaction of the COUNTY. This right is in addition to and not in lieu of the COUNTY right to terminate this Agreement as provided below.

VI. INDEPENDENT CONTRACTOR

The CONTRACTOR agrees that it is acting as an independent contractor with the COUNTY, and not as an employee of the COUNTY. As such, the COUNTY will not provide any compensation or benefits beyond the compensation described immediately hereinabove.

VII. COMPLIANCE WITH LAWS

The CONTRACTOR, in performance of the Agreement, will comply with all applicable local, state, and federal laws and regulations.

VIII. PUBLIC RECORDS ACT

This Agreement and all public records associated with this Agreement shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the CONTRACTOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the CONTRACTOR agrees to make them promptly available to the

COUNTY. If the CONTRACTOR considers any portion of any record provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the CONTRACTOR shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the CONTRACTOR and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the CONTRACTOR (a) of the request and (b) of the date that such information will be released to the requester unless the CONTRACTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONTRACTOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the CONTRACTOR to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the CONTRACTOR for releasing records not clearly identified by the CONTRACTOR as confidential or proprietary. The COUNTY shall not be liable to the CONTRACTOR for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

IX. OWNERSHIP

Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the CONTRACTOR or the CONTRACTOR's subcontractors or consultants for delivery to the COUNTY under this Agreement shall be the sole and absolute property of the COUNTY. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the COUNTY at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the CONTRACTOR uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the COUNTY is owned by the CONTRACTOR and is not "work made for hire" within the terms of this Agreement.

X. INDEMNIFICATION/HOLD HARMLESS

Indemnification by Contractor. To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, reasonable attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) to the extent are caused by any omission, negligent act or error, of the CONTRACTOR, its employees, agents or volunteers or CONTRACTOR's subcontractors and their employees, agents or volunteers; or 2) arising out of, resulting from, or in connection with the negligent performance of this Agreement; or 3) are based upon the CONTRACTOR'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the CONTRACTOR shall not apply where the claim, damage, loss or expense is caused by the negligence of the COUNTY. This indemnification obligation of the CONTRACTOR shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability

benefit act or other employee benefit act, and the CONTRACTOR hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into the Agreement, are reflected in the CONTRACTOR's compensation, and have been mutually negotiated by the parties.

Participation County – No Waiver. The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of CONTRACTOR's indemnity obligations under the Agreement.

Survival of Contractor's Indemnity Obligations. The CONTRACTOR agrees all CONTRACTOR's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

XI. INSURANCE

Without limiting the CONTRACTOR'S indemnification of COUNTY, and prior to commencement of this Agreement, CONTRACTOR 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.** CONTRACTOR shall maintain commercial general liability insurance with at least as broad as Insurance Services Office form CG 00 0, 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.** CONTRACTOR 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 Agreement and CONTRACTOR 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.** CONTRACTOR shall, at its own expense, maintain Workers' Compensation Insurance (statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).
- 4. Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

The CONTRACTOR must name the COUNTY as an additional insured on the General Liability Insurance. The CONTRACTOR agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that CONTRACTOR's liability insurance policy shall so state.

XII. SUBCONTRACTING

The services to be furnished under the terms of this Agreement will be performed by the CONTRACTOR personally and will not be delegated or subcontracted in whole or in part without the express written consent of the COUNTY. Subcontractors required by the CONTRACTOR in connection with the services specified herein will be limited to those subcontractors approved in writing, by the COUNTY. Permission for subcontracting will not create any contract or agreement or any other relationship between the COUNTY and subcontractor. All subcontracts will contain all applicable provisions of this Agreement.

Subcontractors:

LeadtoResults
Kelly Rupp
PO Box 1130
Ocean Park, WA 98640
503-708-1623

XIII. MINORITY AND WOMEN'S BUSINESS PARTICIPATION

The CONTRACTOR agrees to utilize to the maximum extent possible, minority- and women-owned businesses as subcontractors in conducting the services of this Agreement. The goals established for minority- and women-owned business participation for this project are as follows:

Minority-owned business participation 10%
Women-owned business participation 6%

The CONTRACTOR will take the following steps in any solicitation or procurement of subcontractors under this Agreement:

1. Include qualified minority and women's businesses on solicitation lists.
2. Ensure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The CONTRACTOR agrees to incorporate similar requirements in any solicitations, requests for bids, or agreement documents prepared for the services required under this Agreement.

XIV. NON DISCRIMINATION IN SERVICES

The CONTRACTOR will not discriminate because of race, creed, color, national origin, 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 is recognized as and declared to be a civil right.

XV. TERMINATION

This Agreement may be terminated by the COUNTY without cause, in whole or in part, upon providing thirty (30) days written notice to the CONTRACTOR.

In the event this Agreement is terminated by the COUNTY other than for default on the part of the CONTRACTOR, a final payment will be made to the CONTRACTOR with consideration given to the actual costs incurred by the CONTRACTOR in performing the work to the date of termination.

No payment will be made for any work completed after ten (10) days following receipt by the CONTRACTOR of the Notice of Termination. If the accumulated payment made to the CONTRACTOR prior to Notice of Termination exceeds the total amount that would be due computed as set forth above, then no final payment will be due and the CONTRACTOR will immediately reimburse the COUNTY for any excess paid.

If the services of the CONTRACTOR are terminated by the COUNTY for default on the part of the CONTRACTOR, the above formula for payment will not apply. In such event, the amount paid will be determined by the COUNTY with consideration given to the actual costs incurred by the CONTRACTOR in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the COUNTY at the time of termination; the cost to the COUNTY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the COUNTY of the work performed at the time of termination.

If it is determined for any reason that the CONTRACTOR was not in default or that the CONTRACTOR's failure to perform was not based on its fault or negligence, or the fault or negligence of its officers, agents, or employees, the termination will be deemed to be a termination for the convenience of the COUNTY in accordance with this section of this Agreement.

Payment by the COUNTY for any part of the work performed by the CONTRACTOR will not constitute a waiver by the COUNTY of any remedies of any type it may have against the CONTRACTOR for any breach of this Agreement by the CONTRACTOR, or for failure of the CONTRACTOR to perform work required of it by the COUNTY.

XVI. WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement will not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

XVII. ATTORNEY'S FEES/COST OF SUIT AND VENUE

If either party files suit to enforce this Agreement, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit. The parties agree that any suit pertaining to this Agreement shall be filed in the Pacific County Superior Court.

1. Disputes. Differences between the CONTRACTOR and the COUNTY, arising under

and by virtue of this Agreement, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due CONTRACTOR shall be decided by the COUNTY'S Agreement representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S agreement representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue.**

2. **Choice of Law, Jurisdiction and Venue.** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that 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 Superior Court in Pacific County, Washington.

3. **Severability.** If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal, or 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.

If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which 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.

Should the COUNTY determine that the severed portions substantially alter this Agreement so that the original intent and purpose of the Agreement no longer exists, the COUNTY may, in its sole discretion, terminate this Agreement.

XVIII. CHANGES TO WORK

When required to do so by the COUNTY, the CONTRACTOR will make such changes and revisions in the work it submits under this Agreement as necessary to correct errors appearing therein and omissions, without additional compensation thereof. Should the COUNTY find it desirable for its own purpose to have previously satisfactorily completed work or parts thereof changed or revised, the CONTRACTOR will made such revisions as directed by the COUNTY. This work will be considered a Change in Work and will be paid for as herein provided under Section VI.

XIX. SOLICITATION OF AGREEMENT

The CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of making this Agreement. For breach or violation of this warranty, the COUNTY will have the right to annul this agreement without further liability.

XX. OTHER REQUIREMENTS

- A. The CONTRACTOR will maintain accounts and records, including personnel, property, financial, and other records as may be deemed necessary by the COUNTY to ensure proper accounting for project funds and compliance with this Agreement. The CONTRACTOR will keep records that document the direct and indirect costs that are expended and reflect the services provided in the performance of this Agreement. The CONTRACTOR will keep the above records for a period of six (6) years after termination hereof, unless a longer retention period is required by law.

- B. The CONTRACTOR will not disclose, nor permit disclosure of any information designated by the COUNTY as confidential, except to its employees and other subcontractors who need such information in order to properly execute the services of this Agreement.

XXI. ENTIRE AGREEMENT

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations of understandings not incorporated herein are excluded. Further, any modification of the Agreement will be in writing and signed by both parties.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed this _____ day of _____, 2016.

BOARD OF COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

The Watershed Company



Frank Wolfe, Chairman

SIGNATURE

Lisa Ayers, Commissioner

VICE PRESIDENT
Title

Steve Rogers, Commissioner

ATTEST:

Marie Guernsey
Clerk of the Board

Exhibit A

Task A: Facilitation

The CONTRACTOR will assist the COUNTY with the formation of the Working Group.

The CONTRACTOR shall provide a schedule of Working Group meetings at the beginning of the process and shall maintain the schedule, to the extent feasible.

The CONTRACTOR shall provide meeting materials, including an agenda, minutes from the previous meeting, background information, sections or drafts of the Work Plan, and a set of questions or issues to provide structure and focus to the Working Group discussion.

The CONTRACTOR shall follow the protocols in Chapter 42.30 RCW, Open Public Meetings Act.

For each meeting, the CONTRACTOR will document the discussion and intent for topics covered, including questions, issues, or tasks. The meeting notes will be shared with the COUNTY and Work Group within one week of each meeting.

The CONTRACTOR will participate in bi-weekly conference calls, as needed, with the COUNTY to discuss progress and any outstanding issues.

The CONTRACTOR shall facilitate the Visioning Workshops, Open Houses, and Working Group meetings and subcommittee meetings, and provide handouts, maps, and graphics.

Budget: \$93,000

Task B: Document Development

B.1 Watershed Assessment

The CONTRACTOR provide an inventory and analysis of where critical areas and agricultural lands intersect in the County and provide a map of those areas, after input from the Working Group. The map will be provided in an interactive Google Earth format for use during Working Group meetings.

In accordance with RCW 36.70A.720, the CONTRACTOR shall prepare a review and summary of applicable water quality, watershed management, farmland protection, and species recovery data and plans, as well as any existing programs or development regulations affecting agricultural activities in critical areas.

B.2 Work Plan Development

The CONTRACTOR shall develop a Work Plan that meets the requirements in RCW 36.70A.720 and is based upon input from Work Group, technical advisors, and public comments.

The CONTRACTOR shall provide questions and outstanding issues to the Working Group to ensure key topics are addressed and necessary information is being collected.

The CONTRACTOR shall provide drafts of the Work Plan at least two (2) weeks prior to the meeting date.

One (1) Visioning workshop and one (1) Open House will be held, to collect public input. Handouts, maps, and graphics will be provided to support the workshops.

The budget includes:

- One (1) Visioning Workshop
- One (1) Open House
- Working Group presentations (3)
- Three (3) drafts of the work plan

Deliverables:

- Final Work Plan by May 2017

Budget: \$100,000

Exhibit B

The COUNTY shall:

- Maintain and update the VSP webpage(s) on the County's website in a timely manner
- Provide advertising costs, including publication of the public notices, meeting announcements as prepared by the Contractor
- Participate in the process as a stakeholder in the Working Group
- Attend conference calls with the CONTRACTOR to discuss progress and any outstanding issues.
- Provide a location for meetings with internet access and video-conferencing equipment, as needed
- Provide copies of meeting materials, if requested
- Oversee the formation of the workgroup, including selection and appointment of workgroup members

