Agreement for Professional Services

This Agreement, dated as of _____, is entered into by and between Pacific County ("COUNTY") and The Watershed Company, ("CONSULTANT").

Section 1. The Services

1.1 CONSULTANT shall perform the services described in the attached Scope of Work (Exhibit A), which is incorporated herein by this reference.

1.2 Except as otherwise specifically provided in this Agreement, CONSULTANT shall furnish the following, all as the same may be required to perform the services described in paragraph 1.1 in accordance with this Agreement; personnel, labor and supervision; technical, professional and other services. All such services, property and other items furnished or required to be furnished, together with all other obligations performed or required to be performed, by the CONSULTANT under this Agreement are sometime collectively referred to in this Agreement as "Services".

1.3 All provisions of this Agreement are intended to be complementary, and any services required by one and not mentioned in another shall be performed, to the same extent as though required by all. Details of the Services are not necessary to carry out the intent of this Agreement, but that are not expressly required, shall be performed or furnished by CONSULTANT as part of the Services, without any increase in the compensation otherwise payable under this Agreement.

Section 2. Schedule

2.1 CONSULTANT shall commence, prosecute and complete such Services on a schedule as directed by COUNTY.

Section 3. Compensation

3.1 As full compensation for satisfactory performance of the Services, COUNTY shall pay CONSULTANT $20,000.00. This compensation is described in the Scope of Work (Exhibit A).

3.2 CONSULTANT shall submit each calendar month; invoice for the compensation payable under this Agreement for Professional Services performed during the preceding period. Each of CONSULTANT's invoices shall set forth a detailed description of Services performed during the applicable month, the number of hours spent performing such Services and any reimbursable costs and expenses incurred in connection with such Services.

3.3 COUNTY shall pay each of CONSULTANT's invoices within thirty (30) days.

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Section 4. Performance by CONSULTANT

4.1 CONSULTANT shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any Services to any other person or entity without the prior written consent of COUNTY. Any such delegation or subcontracting without COUNTY's prior written consent shall be voidable at COUNTY's option.

4.2 No delegation of subcontracting of performance of any of the Services, with or without COUNTY's prior written consent, shall relieve CONSULTANT of its responsibility to perform the Services in accordance with this Agreement. CONSULTANT shall be fully responsible for the performance, acts and other omissions of CONSULTANT's employees, CONSULTANT's sub-consultants and any other person who furnishes any services (collectively, the "Support").

4.3 CONSULTANT shall at all times b e an independent CONSULTANT and not an agent or representative of COUNTY with regard to performance of Services. CONSULTANT shall not represent that it is, or hold itself out as, an agent or representative of COUNTY. In no event shall CONSULTANT be authorized to enter into any agreement or undertaking for or on behalf of COUNTY.

4.4 CONSULTANT shall perform the Services in a timely manner and in accordance with the standards of the profession. At the time of performance, CONSULTANT shall be properly licensed, equipped, organized, and financed to perform the Services in accordance with this Agreement. Subject to compliance with the requirements of this Agreement, CONSULTANT shall perform the Services in accordance with its own methods.

4.5 CONSULTANT shall take all reasonable precautions to protect against any bodily injury (including death) or property damage that may occur in connection with the Services.

Section 5. Compliance with Laws

5.1 CONSULTANT shall comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements, now in effect, of any governmental authority (including, but not limited to, such requirements as may be imposed upon COUNTY and applicable to the Services). CONSULTANT shall furnish such documents as may be required to effect or evidence such compliance. All laws, rules, orders, required to be incorporated in agreement of this character are incorporated in this Agreement by this reference.

Section 6. Inspection: Examination of Records

6.1 The services shall, at all times, be subject to inspection by and with the approval of COUNTY, but the making of (or failure or delay in making) such inspection or approval shall not relieve CONSULTANT of responsibility for performance of the Services in accordance with this Agreement, notwithstanding COUNTY's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. CONSULTANT shall provide COUNTY sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

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6.2 CONSULTANT shall promptly furnish COUNTY with such information related to Service as may be requested by the COUNTY.

Section 7. Proprietary and Confidential Information

7.1 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 CONSULTANT or the CONSULTANT's subCONSULTANTs 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 CONSULTANT 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 CONSULTANT and is not "work made for hire" within the terms of this Agreement.

7.2 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 CONSULTANT are needed for the COUNTY to respond to a request under the Act, 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 provided to the COUNTY under this Agreement, whether in electronic or hard copy 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 receives a request under the Act to inspect or copy the information so identified by the CONSULTANT 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 CONSULTANT (a) of the request 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 will release the requested information on the date specified.

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

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Section 8. Indemnities and Hold Harmless

8.1 In accepting this Agreement, the CONSULTANT, including its successors and assigns, does hereby covenant and agree to indemnify and protect and save harmless the COUNTY and its officers and employees from all claims, actions, or damages of every kind and description which may accrue to or be suffered by any person, partnership, corporation, or other entity of any kind that arise from intentional tort(s), or negligent act(s) or omission(s), or strict liability of the CONSULTANT or its employees, agents, successors, or assigns. If the above sentence applies and any suit or action is brought against the COUNTY, its officers, its employees, or any combination thereof, the CONSULTANT, including its successors or assigns, shall to the extent of their negligence/fault, defend the suit or action at his or her or their sole cost and expense and shall fully satisfy any judgment that is rendered against the COUNTY, its officers, its employees, or any combination thereof.

Section 9. Workers' Compensation and Insurance

9.1 With respect to all persons performing the Services, CONSULTANT shall secure and maintain in effect at all times during performance of Services coverage or insurance in accordance with applicable laws relating to workers' compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act and laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law.

CONSULTANT shall furnish to COUNTY such assurance and evidence of such coverage or insurance (such copies of insurance policies and Certificates of Compliance issued by the Washington State department of Labor and Industries) as COUNTY may request.

9.2 The CONSULTANT shall maintain, and upon request of the COUNTY, provide proof of occurrence based general business professional liability insurance in the amount of $1,000,000 (min of $1,000,000) or greater per occurrence and $2,000,000 aggregate for the term of this CONTRACT. 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. The CONSULTANT shall be responsible at its own expense to provide any and all employment insurance coverage, including but not limited to, unemployment insurance, worker's compensation insurance, etc. for any and all of its employees as might apply.

Section 10. Changes

10.1 COUNTY may, at any time by written notice thereof to CONSULTANT, make changes in the Services within the general scope of this Agreement (including, but not limited to, additions to or deletions from any Services, suspension of performance and change in Schedule A and location of performance).

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10.2 If any changes under paragraph 10.1 causes an increase or decrease in cost or the time required for performance of the Services an equitable adjustment in the compensation and schedules under this Agreement shall be made to reflect such increase or decrease, and this Agreement shall be modified in writing accordingly. Such equitable adjustment shall constitute full compensation to CONSULTANT for such change. If any change under paragraph 10.1 results in a decrease in the Services to be performed, CONSULTANT shall not be entitled to anticipated profit on Services not performed and the loss anticipated profit shall not reduce the decrease in compensation under this Agreement resulting from such exchange. Further, CONSULTANT shall not be entitled to any reallocation of cost, profit, or overhead.

10.3 Norwithstanding any dispute or delay in arriving at a mutually acceptable equitable adjustment under paragraph 10.2, CONSULTANT shall immediately proceed with performance of the Services as changed pursuant to paragraph 10.1. If CONSULTANT intends to assert a claim for equitable adjustment under paragraph 10.2, CONSULTANT must, within sixty (60) days after CONSULTANT's receipt of any notice under paragraph 10.1 that does not set forth an acceptable adjustment, submit to COUNTY a written statement of the basis and nature of the adjustment claimed. CONSULTANT shall not be entitled to any adjustment unless such written statement is submitted by CONSULTANT to COUNTY within the applicable period.

Section 11. Termination

11.1 COUNTY may, by written notice thereof to CONSULTANT, terminate this Agreement as to all or any portion of the Services not performed, whether or not CONSULTANT is in breach or default. Upon receipt of any such notice of termination, CONSULTANT shall, except as otherwise directed by COUNTY, immediately stop performance of the Services to the extent specified in such notice. CONSULTANT shall have the same termination rights as COUNTY in Section11. Termination.

11.2 In the event of termination pursuant to paragraph 11.1, an equitable adjustment shall be made in the compensation payable to CONSULTANT under this Agreement, provided that such compensation as so adjusted shall in no event exceed a percentage of the total compensation otherwise payable under this Agreement equal to the percentage of the Services satisfactorily completed at the time of termination. Further, CONSULTANT shall not be entitled to any reallocation of cost, profit or overhead. CONSULTANT shall not in any event be entitled to anticipated profit on Services not performed on account of such termination. CONSULTANT shall use its best efforts to minimize the compensation payable under this Agreement in event of such termination.

11.3 If COUNTY purports to terminate or cancel all or any part of this Agreement for CONSULTANT's breach or default when CONSULTANT is not in breach or default which would permit such termination or cancellation, such termination or cancellation shall be deemed to have been terminated by COUNTY pursuant to paragraph 11.1 and the rights of the parties shall be determined accordingly.

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Section 12. Miscellaneous

12.1 Any notice, request, designation, direction, statement or other communication under this Agreement shall be in writing and shall be delivered in person or mailed, properly addressed and stamped with the required postage, to the attention of:

The Watershed Company
750 6th Street South
Kirkland, WA 98033
(425) 822-5242
(425) 827-8136

12.2 CONSULTANT shall not (by contract, operation of law or otherwise) assign this Agreement or any right or interest in this Agreement without the prior written consent of COUNTY. For the purposes of the foregoing, any transfer of a controlling interest in CONSULTANT (e.g., by a transfer of Securities or otherwise) shall be deemed an assignment of this Agreement. Subject to the foregoing restriction on assignment by CONSULTANT, this Agreement shall be fully binding upon, and be enforceable by the successors, assigns, and legal representatives of the respective parties to this Agreement.

12.3 The obligation of CONSULTANT under Section 6, 7, 8, 9, 11, and 12, and all provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination, or cancellation of this Agreement, shall survive the completion, termination, or cancellation of this Agreement.

12.4 The rights and remedies of the COUNTY or the CONSULTANT set forth in any provision of this Agreement are in addition to and do not in any way limit any other rights or remedies afforded to the COUNTY or the CONSULTANT by any other provision of this Agreement or by law.

12.5 This Agreement sets forth the entire agreement of the parties, and supersedes any and all prior agreements, with respect to the Services. No amendment or modification of any provisions of this Agreement (other than changes pursuant to Section 10) shall be valid unless set forth in a written amendment to this Agreement signed by both parties.

12.6 The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted. The headings of sections of this Agreement are of any weight in the interpretation or construction of the provisions of such sections.

12.7 CONSULTANT shall not commence or prosecute any suit, proceeding, or claim to enforce the provisions of this Agreement, to recover damages for breach of or default in this Agreement, or otherwise arising under or by reason of this Agreement, other than in the courts of the State of Washington. CONSULTANT hereby irrevocably consents to the jurisdiction of the courts of the State of Washington with venue laid in Pacific County.

12.8 This Agreement shall be interpreted, construed, and enforced in all respects in accordance with laws of the State of Washington.

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Pacific County:

Printed Name: _____

Title: _____

Signature: _____

Dated: _____

The Watershed Company:

Printed Name: A. William Way_____

Title: President_____

Signature: _____

Dated: _____

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EXHIBIT A

PACIFIC COUNTY

CRITICAL AREAS AND RESOURCE LANDS ORDINANCE UPDATE

SCOPE OF WORK

Task 1: Gap Analysis

Prepare a gap analysis of the current Critical Areas and Resource Lands Ordinance for clarity and compatibility with the Washington Department of Commerce Checklist and Best Available Science (BAS). This will include referral to the gap analysis already completed by the Washington Department of Ecology (Ecology), supplementing with additional known gaps or recommendations for improvements to the regulations. Recent CAO work, including reference to current BAS, completed by The Watershed Company for the City of Ilwaco will serve as a benchmark. The gap analysis will be completed in a memo style and directed to County staff and the Shoreline Planning Committee (SPC) for concurrent review.

Assumptions:

1. No meetings attendance required at this time
2. Data gaps relative to Best Available Science will be general and only highlight key areas relative to the critical areas ordinance. They will be using Department of Ecology's model ordinance

Anticipated Number of Meetings by Consultant: None

Deliverables by Consultant: Gap Analysis Memo

Due Date: June 15, 2015

Estimated Task 1 Budget: $1,890

Task 2 Develop Updated Critical Areas Regulations

Based on the Gap Analysis produced in Task 1 and input from the SPC and County staff, the Consultant will prepare an updated Critical Areas and Resource Lands Ordinance. The ordinance will include three draft document stages prior to the preparation of a final product which will be used in the County's local adoption process. At each stage of the draft document, public meetings will be held (see Task 3) to gather public feedback. Throughout the update process, the SPC, or more appropriately, a sub-committee of the SPC, would provide input to the Consultant. Initially, the SPC is expected to provide input to the Consultant via the ongoing Shoreline Master Program update which will be incorporating shoreline critical areas regulations. The Consultant will collate all comments received from the County, SPC, and the general public. This input is expected prior to the development of the Consultant's first draft product in Task 2. The proposed schedule is as follows:

1st Draft (due July 31, 2015)
2nd Draft (due September 30, 2015)
3rd Draft (due November 15, 2015)
Final Adoption Draft (due December 31, 2015)

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Assumptions:

1. SPC and County staff to provide comments on the Gap Analysis memo by June 30, 2015
2. SPC and County staff to provide comments on 1st Draft by August 31
3. Subsequent drafts will be prepared for review in public forums. The SPC and County staff to provide comments concurrent with public feedback.
4. No mapping to be provided during this work effort.
5. Public meetings are identified under Task 3.

Estimated Task 2 Budget: $12,840

Task 3 Public Meetings

The Consultant will participate in up to six (6) public outreach meetings as part of this process. In an effort to maximizing available resources and minimize extraneous costs, the Consultant will include an initial review of the 1st Draft ordinance during the County's SMP Open House events in summer 2015. Additionally, to further minimize costs, public outreach meetings will be held on concurrent days but in different locations throughout the County. The Consultant will present the information with document changes, etc. Each set of public meetings will be held within two weeks of the release of each draft document (see dates listed in Task 2).

Comment [FT1]: Is this possible? It seems like short notice.

Assumptions:

1. The first set (2 meetings total) of public meetings to be held in conjunction with an open house scheduled as part of the Shoreline Master Program Update.
2. The second (2 meetings) and third (2 meetings) set of public meetings would be held on back-to-back days in different locations throughout the County.
3. Coordination of public meetings (advertising, outreach, meeting room reservations, etc.) will be performed by the County.
4. No GIS map products will be necessary

Comment [FT2]: Aug?

Comment [FT3]: Oct?

Comment [FT4]: Nov?

Anticipated Number of Meetings by Consultant: Six (6)

Deliverables and Due Dates by Consultant:

Meeting notes (due 1 week following each series of public meetings)

Estimated Task 3 Budget: $5,270

Project Expenses

All expenses are included within the Tasks outlined above, estimated at 3% of project costs. These include mileage and other travel related expenses, standard State per diem rates, supplies, printing/plotting, and other reprographic services for production of deliverables as stipulated above.

Consultant Project Budget: $20,000

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