

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
201903043

Originating Department:	Planning & Development Services
Division/Program: (i.e. Dept. Division and Program)	2020 Shoreline Management Program Periodic Update
Contract or Grant Administrator:	Cliff Strong, Senior Planner
Contractor's / Agency Name:	The Watershed Company

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No
 Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes No If No, include WCC: _____
 Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes No If yes, grantor agency contract number(s): _____ CFDA#: _____

Is this contract grant funded? Yes No If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process? Yes No If yes, RFP and Bid number(s): 18-53 Contract Cost Center: _____

Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

- Professional services agreement for certified/licensed professional.
- Contract work is for less than \$100,000.
- Contract work is for less than 120 days.
- Interlocal Agreement (between Governments).
- Contract for Commercial off the shelf items (COTS).
- Work related subcontract less than \$25,000.
- Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
 \$ 100,000.00
 This Amendment Amount:
 \$ _____
 Total Amended Amount:
 \$ _____

Council approval required for; all property leases, contracts or bid awards **exceeding \$40,000**, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, **except when:**

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
3. Bid or award is for supplies.
4. Equipment is included in Exhibit "B" of the Budget Ordinance
5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

Summary of Scope: Periodic Review of the Shoreline Master Program

Term of Contract: April 1, 2019 Expiration Date: December 31, 2020

Contract Routing:	1. Prepared by: <u>BBoxx</u>	Date: <u>3/7/19</u>
	2. Attorney signoff: _____	Date: <u>3-18-19</u>
	3. AS Finance reviewed: _____	Date: <u>3/18/19</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____ ✓	Date: <u>3-13-19</u>
	6. Submitted to Exec.: _____ ✓	Date: <u>3-27-19</u>
	7. Council approved (if necessary): _____ ✓	Date: <u>3-26-19</u>
	8. Executive signed: _____ ✓	Date: <u>3-27-19</u>
	9. Original to Council: _____ ✓	Date: <u>4-5-19</u>

The Watershed Company, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp.3 to 6,
- Exhibit A (Scope of Work), pp. 7 to 11,
- Exhibit B (Compensation), pp. 12,
- Exhibit C (Certificate of Insurance).

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1st day of April, 2019, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2020.

The general purpose or objective of this Agreement is to assist in the periodic review of the Shoreline Mater Program, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$100,000.00. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this 27th day of March, 2019.

CONTRACTOR:



Dan Nickel, Vice-President

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 13 day of March, 2019, before me personally appeared Dan Nickel to me, known to be the Vice President (title) of The Watershed Company (Company) and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



Christil L. Hallman
NOTARY PUBLIC in and for the State of Washington, residing at King. My commission expires 12-29-19.

WHATCOM COUNTY:

Recommended for Approval:

[Signature] 3-18-19
Department Director Date

Approved as to form:

[Signature] 3-18-19
Prosecuting Attorney Date

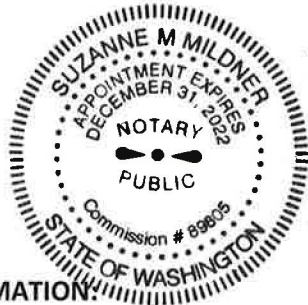
Approved:

Accepted for Whatcom County:

By: [Signature]
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 27th day of March, 2019, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



Suzanne M. Mildner
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham. My commission expires 12-31-22.

CONTRACTOR INFORMATION:

The Watershed Company
Dan Nickel, Vice President
750 Sixth Street South
Kirkland, WA 98033
425-822-5242

GENERAL CONDITIONS

Series 00-09: Provisions Related to Scope and Nature of Services

- 0.1 Scope of Services: The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A," during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

Series 10-19: Provisions Related to Term and Termination

- 10.1 Term: Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.
- 10.2 Extension: The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years
- 11.1 Termination for Default: If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.
- 11.2 Termination for Reduction in Funding: In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.
- 11.3 Termination for Public Convenience: The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

Series 20-29: Provisions Related to Consideration and Payments

- 20.1 Accounting and Payment for Contractor Services: Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

- 21.1 Taxes: The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement.

The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

- 22.1 Withholding Payment: In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause

- 23.1 Labor Standards: Not Applicable

Series 30-39: Provisions Related to Administration of Agreement

- 30.1 Independent Contractor: The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

- 30.2 Assignment and Subcontracting: The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

- 30.3 No Guarantee of Employment: The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

- 31.2 Patent/Copyright Infringement: Not Applicable

- 32.1 Confidentiality: Not Applicable

- 33.1 Right to Review: Not Applicable

- 34.1 Proof of Insurance:

The Contractor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:

- a. Property Damage per occurrence – \$500,000.00 (this amount may vary with circumstances)
- b. General Liability & Property Damage for bodily injury – \$1,000,000.00 (this amount may vary with circumstances)
- c. Professional Liability – \$1,000,000 per occurrence: If the professional liability insurance is a claims made policy, and should the contractor discontinue coverage either during the term of this contract or within three years of completion, the contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

A Certificate of insurance that identifies the County as an additional insured is attached hereto as Exhibit "C." This insurance shall be considered as primary and shall waive all rights of subrogation. The County insurance shall be noncontributory.

34.2 Industrial Insurance Waiver: Not Applicable

34.3 Defense & Indemnity Agreement: The Contractor agrees to defend, indemnify, and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, reasonable attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

35.1 Non-Discrimination in Employment: The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services: Not Applicable

36.1 Waiver of Noncompetition: Not Applicable

36.2 Conflict of Interest: If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract: This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is: Mark Personius, Director-Whatcom County Planning and Development

37.2 Notice: Not Applicable

38.1 Certification of Public Works Contractor's Status under State Law: Not Applicable

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions: Not Applicable

38.3 E-Verify: Not Applicable

Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes

40.1 Modifications: Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

41.1 Severability: If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver: Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General: Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, 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. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims: The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim: The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law: In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival: The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement: This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT A
2020 SHORELINE MASTER PROGRAM PERIODIC UPDATE
SCOPE OF WORK

Whatcom County

Phase 1: Preliminary Shoreline Jurisdiction, Public Participation Plan, and BAS Library

- 1. Project Coordination and Outreach.** This task includes ongoing communication and coordination between The Watershed Company (Watershed) team and Whatcom County (County) staff through the initial stages of the project. At the outset, Watershed will meet with County staff to review/refine scope and objectives, agree on initial tasks and timeline and coordinate on known resources to be delivered to the project team. Watershed will prepare a brief Project Management Strategy that identifies preferred communication methods, roles, and responsibilities, and a project schedule for both outreach and deliverables.
- 2. Public Participation Plan.** Working with County staff, the Watershed team will develop a Public Participation Plan to provide opportunities for public involvement in the SMP periodic review consistent with WAC 173-26-090. The plan will be tailored to the needs of the County and its update process, identifying the public outreach approach and defining a schedule of implementation to align with the overall project schedule. Watershed will prepare draft graphics and text for outreach content. The County will handle outreach logistics and coordination, including website management, public noticing, and any print production or mailing.
- 3. Consult with relevant agency staff, tribes, and neighboring jurisdictions.** As needed throughout the update process, Watershed will help the County coordinate with applicable State and Federal agencies, tribal staff members, and neighboring jurisdictions that share an active interest in the County's SMP and CAO framework. This includes an initial notification to such relevant stakeholders at the outset of the project.
- 4. Review and amend shoreline jurisdiction boundaries, as needed.** Watershed, with County assistance, will review the shoreline jurisdiction information and Watershed's recommended shoreline jurisdiction changes and verify whether any changes are necessary based on new information. At a minimum, Watershed will make changes to shoreline jurisdiction maps based on annexations and location of river and stream channels since 2007, per existing data sets (no new data will be created for this effort).
- 5. Compile and review applicable best available science that may affect goals, policies, and regulations.** Watershed will compile and review relevant changes in best available science (BAS) since the 2005 BAS report, including updated guidance from the Washington Department of Ecology, Washington State Fish and Wildlife Riparian Ecosystems Management Recommendations Volume 2, and buffers based on ecological functions, ecosystems, or geomorphology and performance based buffers. Additional subject matters that address climate change and sea level rise scenarios may also be included.
- 6. Review new, pertinent state laws or court cases and prepare SMP Gap Analysis Report.** The outcome of this task will serve as a guidance document for the periodic update process and will assist in scoping relevant tasks before the County Council.
 - a. Review the SMP for consistency with legislative amendments.** The Watershed team will review the County's SMP, Chapter 90.58 RCW, and Ecology's rules and determine where amendments are needed to the County's SMP to maintain compliance. This will be based on the Ecology periodic review checklist.
 - b. Review Ecology Guidelines WAC 173-26.** Watershed will review the County's SMP regulations for consistency with Ecology's guidance, noting where specific SMP provisions do not meet WAC 173-26.

- c. **Evaluate the Comprehensive Plan and Development Code.** Watershed will evaluate consistency of the County's current SMP with its Comprehensive Plan and development regulations, including changes that have been adopted since the SMP was last amended.
 - d. **Prepare SMP Gap Analysis Report.** Following the results and findings of the above listed tasks, the Watershed team will prepare a gap analysis report that provides summary recommendations. Watershed will prepare a draft Gap Analysis Report for review and comment by the County. Following County comments, Watershed will prepare a final Gap Analysis Report that can be used throughout the update process.
7. **Demonstrate how Phase 1 complies with the Guidelines.** Watershed will complete the required submittal elements for the Ecology grant, including the Public Participation Plan, documentation of outreach, and preliminary completion of the SMP Periodic Review Checklist.

Phase 2: Shoreline Inventory, Analysis, & Characterization

- 1. **Review new and relevant information related to the 2007 shoreline inventory.** Watershed will review relevant information pertaining to potential modification or addition to the 2007 shoreline inventory based on BAS discussed under Phase 1. This may include recent work by WDFW to assess land cover change via high resolution aerial imagery, the 2018 work by the Washington Coastal Resilience Project to assess sea level rise scenarios, and hydrologic/ geomorphic changes to various shoreline waterbodies.
- 2. **Conduct analysis of current shoreline conditions, as necessary.** Watershed will analyze historic Ecology shoreline photos for changes to the shoreline, where applicable, and current shoreline conditions based on available data sources, including areas of shoreline jurisdictional changes since 2007 discussed in Phase 1. The County will work with Watershed to identify areas of potential future development impacts.
- 3. **Prepare addendum to the 2007 shoreline inventory and characterization report.** As applicable, Watershed will prepare an addendum to the 2007 shoreline inventory and characterization (SIC) report.
- 4. **Demonstrate how Phase 2 complies with the Guidelines.** There is no required submittal to Ecology at this point in time per the periodic update process. For documentation purposes, the County may submit to Ecology the addendum to the SIC report, if applicable

Phase 3: Scoping & Visioning

- 1. **Public scoping/open houses.** The Watershed team will conduct a series of three (3) open houses across the County, with at least one directly involving the Planning Commission. County staff will be present and support the Watershed team. The open houses will be designed to review the anticipated scope of the project, revisit the County's existing vision for shorelines as prepared during the 2007 SMP update and as contained in the County's Comprehensive Plan. Watershed will begin to solicit public feedback, including suggestions and recommendations to improve shoreline management across the County. This may include preliminary findings from Phases 1 and 2, as applicable. At the completion of the series of open houses, Watershed will prepare an Open House Summary report for use by the County Council to help determine the project scope.
- 2. **County Council review and approval of scoping and visioning process.** Watershed, along with County staff, will present the findings from Phases 1 and 2 along with the Open House Summary report to the County Council, as a series of recommendations to be addressed in the periodic update of the SMP. The outcome of the County Council review will be a Scope Report that will clearly define future work efforts.

Phase 4: Shoreline Environment Designation, Policy & Regulation Development; Cumulative Impacts Analysis

- 1. **Evaluate past shoreline permits and update the Cumulative Impacts Analysis as needed.** While a detailed assessment of no net loss is not required by Ecology as part of this update, Watershed will review the County's record of shoreline permits issued since 2007 to assess whether any amendments to the SMP are warranted. Specifically, this review will focus on the effectiveness of mitigation requirements and the County's monitoring program. As amendments are proposed to the SMP, they each will be evaluated for

potential impacts to the County's prior no net loss determination. Any substantive change identified to need further evaluation will be documented in an addendum to the 2007 Cumulative Impacts Analysis.

2. **Meet with County staff.** Watershed will meet with County staff to discuss the Gap Analysis, Scope Report and the list of potential edits to the SMP and clarify any outstanding issues prior to drafting code amendments.
3. **Provide draft code.** Based on the prior tasks, Watershed will develop a complete preliminary draft of amendments to WCC Title 23, including recommendation for formatting and code simplification/reduction. This would include potential amendments to general goals, policies and regulations, environment designations, administrative provisions, and use and modification policies and regulations. Depending upon County direction regarding critical area regulations, Watershed may provide amendments to the County's Critical Areas Regulations, including shoreline jurisdiction.
4. **Demonstrate how Phase 4 complies with the Guidelines.** There is no required submittal to Ecology at this point in time. However, if desired by the County, Watershed could submit the working draft of the SMP amendments prior to public review.

Phase 5: Restoration Plan; Revisiting Phase 4 Products as Necessary

1. **Review and amend the Shoreline Restoration Plan.** Watershed, with County assistance, will provide an update of recent restoration activities within the County, assess the performance metrics of the restoration goals and amend the Restoration Plan as necessary. This will include coordination with restoration partners, including County departments, local tribes, non-governmental organizations, and other stakeholders. Watershed anticipates producing a supplementary memo to be appended to the Restoration Plan, and will address active restoration in Whatcom County.
2. **Revisit environment designations, policies and regulations, and finalize maps.** Watershed will work with the County to provide a final review of proposed amendments, including Watershed completing a GIS library of map changes to reflect changes to shoreline environment designations, prior to public review in Phase 6.
3. **Demonstrate No Net Loss (NNL) is achieved.** Any substantive changes to the SMP will be assessed to ensure compliance with Ecology's NNL criteria. However, a review of NNL and an amendment to the NNL report is not required by Ecology as part of the periodic review process. Watershed may prepare an addendum to the 2007 NNL report to document compliance.
4. **Demonstrate how Phase 5 complies with the Guidelines.** There is no required submittal to Ecology at this point in time. However, if desired by the County, Watershed could submit the Phase 5 work products to Ecology prior to public review.

Phase 6: Presentation to Public

1. **Public Open Houses.** Watershed will conduct a second series of three (3) open houses across the County, with at least one directly involving the Planning Commission. County staff will be present and support the Watershed team. These open houses will be designed to review with the public the proposed amendments and supporting documentation prepared in earlier phases and solicit feedback on the policy and regulatory revisions. At the completion of the series of open houses, Watershed will prepare another Open House Summary report that will summarize public comments and provide recommended revisions, if any, to the SMP and supporting documentation.

Phase 7: Local and State Approval

[The County would prefer to utilize the joint review process as outlined under WAC 173-26-104. This process allows for streamlined efficiency for joint comment periods, joint public hearings, early interim reviews, and ideally, a local adoption that is in compliance with all State mandates.]

Watershed will support the County efforts with the following tasks:

1. **Assemble the SMP.** Following completion of Phase 6, Watershed will work with County staff to assemble the complete SMP package to assist in the local and state adoption process, including assisting and preparing the draft staff report and ordinance.
2. **Prepare SEPA documentation.** Watershed will prepare a draft SEPA Checklist for County staff to review. The County will be responsible for issuing a Threshold Determination.
3. **Provide GMA 60-day notice of intent to adopt.** Watershed will assist the County as needed in the submittal of the 60-day notice, but anticipate the County leading this effort.
4. **Begin 30-day joint public comment period.** Watershed will assist the County in preparing public noticing for the comment period. Ecology will issue their own noticing and will need at least two weeks to prepare for their notice distribution.
5. **Public Meetings.** Watershed staff will attend the following three (3) anticipated public meetings. One Planning Commission workshop and public hearing held on the same night. One County Council workshop and one County Council public hearing. We anticipate that one of the public hearings will serve as the joint public hearing with Ecology. Watershed staff will be available to help County staff answer questions, as needed, throughout the public meeting process. Watershed will also assist the County in preparing staff reports and memos for each of these public meetings.
6. **Prepare responsiveness summary.** Watershed will prepare a response matrix to categorize all public comments received during the public comment period and public hearings. These comments will be organized by author, date, and issue and provide recommendations or rationale to address each item.
7. **Revise SMP to address public comments.** Per County direction, Watershed will prepare necessary edits to respond to public comments.
8. **Submit revised SMP to Ecology for consistency determination.** The County will take the lead on submitting the SMP for an interim consistency review prior to local adoption. Watershed will provide assistance as needed. Ecology will have 30-45 days to provide written responses.
9. **Revise SMP per Ecology comments.** Watershed will assist the County in making any necessary revisions to the SMP amendment following Ecology's interim review.
10. **Adopt the SMP and prepare formal submittal.** The County will take the lead in the adoption proceedings. Watershed will be available to assist as needed to answer questions.
 - a. **Prepare decision packet including findings & conclusions, transmittal letter, conditions of approval (if any), & responsiveness summary.** Watershed anticipates the County taking the lead in any coordination of the State's final approval. Watershed will be available to answer any technical or science related questions, as needed.
 - b. **Work with local government to finalize local adoption.** Watershed anticipates the County taking the lead in any coordination of the State's final approval. Watershed will be available to answer any technical or science related questions, as needed.
 - c. **Demonstrate how Phase 7 complies with the Guidelines.** Watershed will complete the SMP periodic checklist for submittal as part of the formal submittal to Ecology following adoption.

**EXHIBIT B
2020 SHORELINE MASTER PROGRAM PERIODIC UPDATE
BUDGET**

Whatcom County

As consideration for the services provided pursuant to Exhibit A, Scope of work, the County agrees to compensate the contractor according to the following hourly rates for services provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, meals and lodging reimbursements shall not exceed GSA approved rate for Bellingham area. Other expenditures such as printing, postage, and telephone charges shall be reimbursed at actual cost plus 10%. Copies of receipts are required for reimbursement of expenses other than mileage. Whatcom County does not reimburse the cost of alcoholic beverages. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor's expense.

Phase #	Task	Total Hours	County Cost ¹	Ecology Cost (grant) ²	Total Cost
1.	Prelim. Shoreline Jurisdiction, Public Participation Plan, and BAS	70	\$10,530		\$10,530
2.	Shoreline Inventory, Analysis, & Characterization	88	\$12,888		\$12,888
3.	Scoping and Visioning	174	\$25,560		\$25,560
4.	Shoreline Environment Designation, SMP Amendments, CIA	150		\$18,890	\$18,890
5.	Restoration Plan; Revisiting Phase 4 Products	86		\$13,352	\$13,352
6.	Presentation to the Public	124		\$18,012	\$18,012
7.	Local and State Adoption	446	\$36,644	\$24,746	\$61,390
Expenses			\$1,878		\$1,878
Sub -Total			\$87,500	75,000	\$162,500
Contingency Funds³			\$12,500		\$12,500
Total Budget			\$100,000	\$75,000	\$175,000

¹ Current contract limited to this amount.

² Grant anticipated to be awarded in June 2019. Once awarded, it is anticipated that this contract will be amended.

³ Requests by the County for additional services are unknown at this time, but may include additional public outreach, technical investigations not already identified, and attendance at public meetings (e.g. Planning Commission, City Council, public hearings). Other related tasks and services, which may arise out of the above scope items, may also be requested by the County. For these reasons, there will be a Contingency fund of \$12,500. No contingency funds will be used without prior authorization from the County.

The Watershed Company
Hourly Rates Effective January 2019*

Ed McCarthy, PE, PhD	Senior Water Resources Engineer	\$190
Dan Nickel, MSc	Environmental Engineer	\$180
Hugh Mortensen, PWS	Senior Ecologist	\$180
Jennifer Creveling, PWS	Senior Biologist	\$180
J. Kenny Booth, AICP	Senior Planner	\$180
Sarah Sandstrom, MSc, CFP, PWS	Senior Fisheries Biologist	\$160
Greg Johnston, EIT, CFP, MSc	Senior Fisheries Biologist	\$155
Al Wald	Hydrogeologist	\$160
Nell Lund, PWS	Senior Ecologist	\$145
Amber Mikluscak, PLA, GISP, MLA	Senior Landscape Architect/GIS Manager	\$145
Ryan Kahlo, PWS	Senior Ecologist	\$145
Mark Daniel, AICP	Associate Planner/GIS Specialist	\$135
Marina French, PLA, MLA	Landscape Architect	\$130
Clover McIngalls, PWS	Environmental Planner	\$130
Betsy Mann	Marketing Manager	\$120
Lucas Vannice, PLA	Landscape Architect/Arborist	\$115
Katy Crandall	Ecologist/Arborist	\$115
Kyle Braun	Landscape Architect/Arborist	\$115
Christi Hallman	Project Administrator	\$110
Debra Klein	Accountant	\$110
Logan McClish	Water Resource Specialist	\$110
Amanda Larson	GIS Specialist/Environmental Scientist	\$110
Michael Thai	Environmental Scientist	\$110
Peter Heltzel, MSc, CFP	Fisheries Biologist	\$100
Alex Capron	Planner/GIS Specialist	\$100
Roen Hohlfeld	Landscape Designer/Ecologist	\$95
Sam Payne	Ecologist	\$95
April Mulcahy	Landscape Designer	\$88
Grayson Morris	Landscape Designer	\$88
Alex Pittman	Planner	\$88
Logan Dougherty	Ecologist	\$85
Amanda "Alee" McDonald	Ecologist	\$78

Acronym Key:

CFP = Certified Fisheries Professional as certified by the American Fisheries Society
PE = Professional Engineer
EIT = Engineer In Training
GIS = Geographic Information System
PWS = Professional Wetland Scientist as certified by the Society of Wetland Scientists
PLA = State of Washington Professional Landscape Architect
AICP = American Institute of Certified Planners
MSc = Master of Science degree
MLA = Master of Landscape Architecture
GISP = GIS Professional

*Rates for 2019 only; escalator clause for cost of living may apply in future years

Kulshan Services LLC
All sub-consultant rates are subject to 10% escalation

Facilitation	\$150/hour
Negotiation Support/Expert Witness	\$150/hour
Project Management	\$125/hour
Planning and Policy Analysis	\$125/hour
Document Research	\$125/hour
Environmental Science/Biology	\$100/hour
Site Inspection/Technical Field Work	\$85/hour
Habitat Assessments/Site Evaluations	\$85/hour
Stormwater Facility Evaluations	\$85/hour
Cartography and GIS	\$85/hour
Public Involvement	\$85/hour
Intern Research	\$65/hour
Copyediting/Grant Writing/Graphics	\$65/hour
Travel Time (as applicable)	\$65/hour
Logistical Support/Note Taking	\$55/hour
Administrative Support	\$55/hour

Herrera Environmental Consultants, Inc.
All sub-consultant rates are subject to 10% escalation

Name	Classification	Total Hourly Billing Rate
Ewbank, Mark	Vice President	256.69
Parsons, Jeff	Engineer V	217.30
Merten, Christina	Scientist IV	187.23
Mitchell, Colleen	Engineer IV	167.68
Waggoner, Jonathan	Engineer III	159.46
Spear, Eliza	Scientist II	109.55
Geigel, Joseph	GIS Analyst II	106.26
Saavedra, Robin	Accounting Administrator III	115.58



MEMORANDUM

TO: Jack Louws, County Executive
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Director
RE: The Watershed Company contract to assist with the 2020 Shoreline Master Program Periodic Update
DATE: March 7, 2019

Enclosed are two (2) originals of contract between The Watershed Company and Whatcom County for your review and signature.

Background and Purpose

Pursuant to RCW 90.58.080, Whatcom County must update its Shoreline Master Program by June 2020, for which we will use a consultant to assist us. Staff issued a Request for Qualifications (RFQ) this past December, interviewing four consulting firms. The consultant chosen to assist us is The Watershed Company, based in Kirkland.

Funding Amount and Source

Council has budgeted \$100,000 for this endeavor (budget item 2500.6630). We also anticipate obtaining a Department of Ecology grant for \$75,000 this June. Therefore, this initial contact is only for *up to* \$100,000; staff anticipates amending the contract once the Ecology grant is realized.

Please contact Cliff Strong at extension 5942, if you have any questions or concerns regarding the terms of this agreement.

Encl.