

SPECIAL EMPLOYMENT AGREEMENT

DIRECTOR DEPARTMENT OF COMMUNITY DEVELOPMENT

THIS AGREEMENT made and entered into by and between the Board of Pacific County Commissioners ("BOARD") through its County Administrative Officer ("ADMINISTRATOR") on behalf of Pacific County ("COUNTY"), a Washington political subdivision and municipal corporation, and Shawn Humphreys ("DEPUTY DIRECTOR"), POB 875, Long Beach, WA 98631, for the purposes and subject to the terms and conditions set forth herein:

I. DUTIES AND RESPONSIBILITIES

The DIRECTOR is employed to direct the operations of the COUNTY's Department of Community Development by (a) administering its budget, personnel, equipment, and facilities; (b) monitoring its contracts and agreements to ensure compliance with applicable policies and regulations, (c) initiating related and necessary program development and planning activities, (d) analyzing a wide range of related proposals and services, and (e) performing such related duties and functions that the BOARD or its ADMINISTRATOR shall from time to time assign.

The DIRECTOR represents that he is a licensed septic inspector in Washington State, and will maintain such in good standing during the term of this AGREEMENT and any extensions. Failure to maintain such license shall be cause for suspension with or without compensation, and/or immediate termination of the DIRECTOR without provision of the notice and/or compensation specified in Article VI Term/Termination of this AGREEMENT.

The DIRECTOR will participate in the development and revision of COUNTY goals and objectives, programs, policies and procedures. He will maintain close working relationships with other COUNTY officials to promote efficient and harmonious achievement of BOARD objectives, and to assist with resolving problems affecting various COUNTY operations.

The parties to this AGREEMENT understand that in all respects and at all times, the DIRECTOR is not an independent contractor. The DIRECTOR realizes and accepts the fact that he is responsible to, under the direction of, and serves at the pleasure of the BOARD with his activities reviewed for adequacy of professional judgment, achievement of results consistent with objectives, and compliance with regulations and COUNTY policies.

It is understood that the DIRECTOR will likely have to make unpopular decisions which may benefit some while negatively affecting others for the public's health, safety and welfare, or to comply with regulations. It is further understood that as a public servant the DIRECTOR is vulnerable to criticisms, whether justified or not. The BOARD agrees to exercise patience and to reserve judgment until the facts are known.

The DIRECTOR will operate with appreciable latitude for independent actions and decisions commensurate with demonstrated ability and he recognizes that errors in judgment could result in substantial impact upon the COUNTY.

II. HOURS OF WORK

The parties to this AGREEMENT understand and agree that this position is full time and exempt from provisions of the Federal Fair Labor Standards Act (FLSA) and from collective bargaining representation. This position often requires the DIRECTOR to work before and beyond the scheduled business hours and occasionally on weekends and holidays.

It is further understood and agreed that the DIRECTOR will not accrue the annual (vacation) and/or medical (sick) leaves that other COUNTY employees accrue pursuant to various labor agreements and personnel policies. However, as long as the duties herein described are performed satisfactorily, the DIRECTOR may be absent for vacations and/or medical reasons, including caring for immediate family members, or he may work less than the scheduled business hours without penalty.

III. COMPENSATION

For the services rendered pursuant to this AGREEMENT the COUNTY will provide the DIRECTOR with a monthly salary as follows:

- Effective January 1, 2021 (Special Employment Agreement Wage Schedule, DCD Director, Step 6)
 - Eight Thousand Five Hundred and Twenty Eight Dollars (\$8,528)

The DIRECTOR's salary will be paid to him at the same time, and in the same manner, in which the COUNTY's non-represented employees receive their compensation, except that in all cases payment of his salary shall be made to the DIRECTOR via direct electronic deposit.

IV. FRINGE BENEFITS

The DIRECTOR is entitled to all the benefits enjoyed by other COUNTY non-represented employees. These benefits include, but are not limited to, regular contributions to Social Security (FICA/OASI), the Public Employees Retirement System, State industrial insurance/medical aid, unemployment insurance, and life and health insurance.

The DIRECTOR will be covered by and participate in social security (FICA/OASI), the Public Employees Retirement System, and the state industrial insurance/medical aid, and unemployment insurance programs. The COUNTY will contribute to these programs on behalf of the DIRECTOR in the same manner and to the same extent as for other non-represented COUNTY employees.

The COUNTY will provide a health (medical, dental, and vision) and life (term life and accidental death or disability) insurance program for the DIRECTOR and his eligible dependents to the same extent as other non-represented COUNTY employees.

V. OTHER CONDITIONS

The COUNTY will furnish the DIRECTOR with suitable office space, necessary office supplies and equipment, support and clerical services, and access to personal computing and other data processing and records management equipment to assist him with fulfilling the duties noted herein. It is understood that COUNTY property is to remain with the COUNTY upon severance of the DIRECTOR.

The parties to this AGREEMENT agree that this position's incumbent must retain his primary residence within the jurisdictional boundaries of Pacific County during the duration of this AGREEMENT and any extensions.

The COUNTY will reimburse the DIRECTOR for use of his personal vehicle when used for COUNTY business in the same manner and to the same extent as the COUNTY'S other non-represented employees. The DIRECTOR shall maintain state mandated insurance coverage on any personal vehicle used for COUNTY business during the duration of this contract and any extension(s), and shall provide proof of such to the COUNTY upon request. Alternately, the COUNTY may elect to furnish a COUNTY vehicle to the DIRECTOR for his use in fulfilling his duties.

The parties agree that the need exists for the DIRECTOR to keep abreast of professional development including budget, personnel, resource, grant, and project management methods, legislation pertinent to local government, and to maintain professional contacts, attend professional meetings, and to participate in professional organizations. Within budget limitations, the COUNTY will pay the membership dues to those organizations that contribute to the DIRECTOR's continued professional development and improved performance and to support the costs for him to travel to and attend their meetings, conferences and training programs.

VI. TERM/TERMINATION

This AGREEMENT shall be deemed to become effective the 1st day of January 2021, and will continue in full force and effect through the 31st day of December 2021. The COUNTY shall meet with the DIRECTOR in November, 2021 to review performance. This AGREEMENT will continue thereafter on an annual basis and will be adjusted annually by any cost of living adjustment (COLA) afforded other FSLA exempt management employees. This provision will not prevent the parties from amending this AGREEMENT by mutual written consent. This provision will not prevent, limit or otherwise interfere with the BOARD's right to terminate the services of the DIRECTOR or the DIRECTOR's right to resign from employment with the COUNTY.

The DIRECTOR shall serve at the pleasure of the BOARD. If the BOARD desires to terminate the DIRECTOR and he is willing to continue to fulfill his duties, the COUNTY will provide (a) written notice at least six (6) months prior to the date of official discharge, (b) a lump sum payment equal to the DIRECTOR's next six (6) month's compensation (including fringe benefits), or (c) a combination of written notice and lump sum payment that when added together meets the six (6) month requirement.

If the DIRECTOR desires to voluntarily resign from employment with Pacific County, he shall furnish written notice of at least sixty (60) days prior to the date he intends to separate from employment with the COUNTY.

If the DIRECTOR is found guilty of a felony, the BOARD may, within its discretion, terminate this AGREEMENT without compensating payment to the DIRECTOR. The BOARD or its agent must personally serve or send by certified mail, return receipt requested, written notice to the DIRECTOR, setting forth with specificity, the grounds for termination at least ten (10) days before the effective termination date.

If the DIRECTOR is found to have committed misfeasance, malfeasance or nonfeasance in office, the BOARD may, within its discretion, temporarily suspend the DIRECTOR or relieve him from duty immediately, if the action is set forth in writing specifying the basis for and the degree or nature of the actions. If the BOARD notifies the DIRECTOR of an action to terminate or suspend him based on misfeasance, malfeasance or nonfeasance, with or without pay, he may ask for arbitration as set forth in Article XIII-DISPUTES, by filing a request in writing with the BOARD within twenty (20) days of being personally served with written notice of the BOARD's action, or within twenty (20) days of the BOARD sending written notice by certified mail, return receipt requested.

VII. SAVINGS AND SEVERABILITY

If any provision, or any portion thereof, contained in this AGREEMENT is held to be unconstitutional, invalid or unenforceable, said provision(s), or portions(s) thereof, shall be deemed severable and the remainder of this AGREEMENT shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.

VIII. NON-DELEGATION

The services to be furnished under the terms of this AGREEMENT shall be performed by the DIRECTOR personally and shall not be delegated or subcontracted in whole or in part without the express consent of the COUNTY.

IX. LEGAL RELATIONS, INDEMNIFICATION AND INSURANCE

Pursuant to Chapter 4.96, RCW, the COUNTY shall be liable for damages arising out of the tortuous conduct of the DIRECTOR while performing or in good faith purporting to perform his official duties to the same extent as if he were a private person or corporation. Whenever a claim, action or proceeding for damages is brought against the DIRECTOR, his beneficiary or heirs arising from acts or omissions while performing or in good faith purporting to perform his official duties, he/they may request the BOARD to authorize the defense of the action or proceeding at the expense of the COUNTY. If the BOARD, or the COUNTY using the evaluation procedure established by Resolution No. 93-128A or its replacement, finds that the acts or omissions of the DIRECTOR were or in good faith purported to be within the scope of his official duties, the request will be granted and the necessary expenses of defending the action or proceeding shall be paid by the COUNTY. Any resulting monetary judgment or settlement, including punitive damages, against the DIRECTOR, his beneficiary or heirs, shall be paid on approval of the BOARD or by an approval procedure created by resolution of the BOARD.

If the BOARD and the DIRECTOR disagree as to whether the COUNTY should authorize the defense of an action or proceeding at the COUNTY's expense or whether the COUNTY should pay to settle any

claim or resulting monetary judgment arising out of the tortuous conduct of the DIRECTOR while performing or in good faith purporting to perform his official duties, the dispute shall be submitted to arbitration as set forth in Article XII – DISPUTES.

The COUNTY will maintain continuously for the term of the AGREEMENT, at its own expense, general, automobile, employment liability, and professional liability insurance, or self-insurance on an occurrence policy basis, for the services and activities provided by the DIRECTOR. COUNTY provided automobile liability insurance coverage shall be maintained for COUNTY owned vehicles only.

X. SOLICITATION OF CONTRACT

The DIRECTOR warrants that he has not employed or retained any company or person to solicit or secure this contract that he 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 shall have the right to annul this contract without further liability.

XI. OWNERSHIP OF DOCUMENTS

The DIRECTOR agrees that all systems, documents, reports, and compilations of any kind or nature developed during the performance of the work undertaken pursuant to this AGREEMENT shall belong to or become the property of the COUNTY to be used and retained without payment of any fee or license of any kind whatsoever by the COUNTY.

XII. 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 DIRECTOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the DIRECTOR agrees to make them promptly available to the COUNTY. If the OPERATIONS MANAGER 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 DIRECTOR shall clearly identify any specific information that he 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 DIRECTOR 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 DIRECTOR (a) of the request and (b) of the date that such information will be released to the requester unless the DIRECTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the DIRECTOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The DIRECTOR may only use privately owned communication devices (whether telephone, computer or other) for COUNTY business if the records created by that COUNTY business can be accessed by the COUNTY to fulfill public records requests.

XIII. DISPUTES

The parties agree that disputes concerning interpretation of the meaning of any of the terms of this AGREEMENT, scope of the duties to be performed under this AGREEMENT, or other question relating to the performance of the terms of this AGREEMENT shall be subject to arbitration according to the following procedures; however, the parties agree to make reasonable attempts to resolve disputes before moving forward with arbitration:

Either party may initiate arbitration. The initiating party must first provide the other written notice of such setting forth with specificity the nature of the dispute. Within fifteen (15) days of receiving a notice requesting arbitration, each party will choose a selector. The two (2) selectors chosen will, within fifteen (15) days of both being chosen, select a disinterested third person to serve as the arbitrator who is capable, willing and prepared to conduct the hearing and render the written decision within the specified time limits. If the time frames are not met, the Pacific County Superior Court Judge will select the arbitrator. A "day" will be as defined in the County Civil Rules.

The COUNTY agrees to pay for the services of an arbitrator at a rate not to exceed one hundred dollars (\$100) per hour up to a total amount which shall not exceed three thousand dollars (\$3,000). However, if an arbitration proceeding is initiated by the DIRECTOR and the arbitrator determines that the position of the DIRECTOR is frivolous; the DIRECTOR shall pay for the arbitration services.

The arbitrator is empowered to determine all issues including employment duties and employment status during the pendency of the arbitration. He/She will be allowed to make temporary decisions regarding the dispute; provided, the arbitrator will conduct a formal hearing to take testimony concerning the dispute before reaching a final decision. "Rules of evidence" shall not apply, but the parties shall have the opportunity to present relevant evidence, to call witnesses, and to cross examine adverse witnesses.

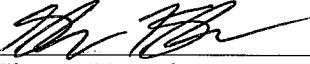
Within thirty (30) days of the conclusion of the hearing, the arbitrator will decide the dispute by issuing a written decision; otherwise, either party may re-initiate the arbitration process, in which case the present arbitrator will be released from further duty without compensation. The arbitrator's decision will be final and binding upon the parties hereunder and enforceable, if necessary, in a court of law.

XIV. ATTORNEYS FEES AND COSTS

In the event either party files a lawsuit in any trial or appellate court seeking enforcement of an arbitrator's decision, the filing party, if successful, shall be entitled to costs of suit, court costs and reasonable attorney's fees.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year so noted.

DIRECTOR:

 12-15-2020
Shawn Humphreys Date

SSN: On File

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON:

Frank Wolfe, Chairman

Lisa Olsen, Commissioner

Michael Runyon, Commissioner

APPROVED AS TO FORM:

Prosecutor's Office WSBA#

ATTEST:

Clerk of the Board Date

Kathy Spoor
County Administrative Officer