

## **SPECIAL EMPLOYMENT AGREEMENT**

### **COUNTY ADMINISTRATIVE OFFICER**

THIS AGREEMENT made and entered into by and between the Board of Pacific County Commissioners ("BOARD") on behalf of Pacific County ("COUNTY"), a Washington political subdivision and municipal corporation, and Paul Plakinger ("CAO"), 209 Monohon Landing Road, Raymond, WA, 98577, for the purposes and on the terms and conditions set forth below.

#### **I. DUTIES AND RESPONSIBILITIES**

The CAO is employed to assist the BOARD as its chief administrator with the oversight of those COUNTY operations within the BOARD's executive authority including; the supervision of the Directors of the Departments of Community Development, Public Health and Human Services, Vegetation Management and Public Works; direct the operations of the COUNTY's Department of General Administration by administering its budget, personnel, equipment and facilities, monitoring its contracts and agreements to ensure compliance with applicable policies and regulations; serving as the County's fiscal analyst; initiating related and necessary program development and planning activities, and analyzing a wide range of related proposals and services; upon their request, assist other COUNTY officials with administering applicable personnel policies and collective bargaining agreements and analyze modifications to those documents for the BOARD; upon designation by the BOARD, lead negotiation of labor contract renewals and agreements under the purview of the BOARD; upon designation by the BOARD, serve as BOARD's representative on various boards, commissions and committees; upon designation of the BOARD, serve as Pacific County Public Health Administrative Officer; and perform such related duties and functions that the BOARD shall from time to time assign.

The CAO will participate in the development and revision of COUNTY goals and objectives, capital planning, and general 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 CAO is not an independent contractor. The CAO 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.

The CAO 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 CAO to work before and beyond the scheduled business hours and occasionally on weekends and holidays.

It is further understood and agreed that the CAO 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 CAO 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 CAO with the following monthly salary:

- Effective March 1, 2022:
  - Step 1, County Administrative Officer, of the Fiscal Year 2022 Wage Schedule for Special Employment Agreements (\$9,279)
- Effective September 1, 2022:
  - Step 2, County Administrative Officer, of the Fiscal Year 2022 Wage Schedule for Special Employment Agreements (\$9,510)
- Effective January 1, 2023, upon successful performance review by the BOARD, the CAO will continue to progress through the steps for the County Administrative Officer of the Wage Schedule for Special Employment Agreements, including any across-the-board "cost-of-living adjustment" provided other COUNTY non-represented employees.

The CAO'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 CAO via direct electronic deposit.

## **IV. FRINGE BENEFITS**

The CAO 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 CAO 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 CAO in the same manner and to the same extent as for other non-represented COUNTY employees.

## **V. OTHER CONDITIONS**

The COUNTY will furnish the CAO 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 CAO.

The COUNTY will reimburse the CAO 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 CAO 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 CAO for his use in fulfilling his duties.

The parties agree that the need exists for the CAO 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 CAO'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 March 2022, and will continue in full force and effect through the 28<sup>th</sup> day of February, 2023. The COUNTY shall meet with the CAO in January, 2023 to review performance. This AGREEMENT will continue thereafter on an annual basis. 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 CAO or the CAO's right to resign from employment with the COUNTY.

The CAO shall serve at the pleasure of the BOARD. If the BOARD desires to terminate the CAO 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 or a (b) a lump sum payment equal to the CAO's next six (6) month's compensation (including fringe benefits).

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

If the CAO is found to have committed misfeasance, malfeasance or nonfeasance in office, the BOARD may, within its discretion, temporarily suspend the CAO 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 CAO 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 CAO 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 CAO 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 CAO, 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 CAO 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 CAO, 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 CAO 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 CAO while performing or in good faith purporting to perform his official duties, the dispute shall be submitted to arbitration as set forth in Article XIII – 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 CAO. COUNTY provided automobile liability insurance coverage shall be maintained for COUNTY owned vehicles only.

#### **X. SOLICITATION OF CONTRACT**

The CAO warrants that he has not employed or retained any company or person to solicit or secure this contract, and 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 rescind this AGREEMENT without further liability.

#### **XI. OWNERSHIP OF DOCUMENTS**

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

The CAO 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 (\$150) per hour up to a total amount which shall not exceed five thousand dollars (\$5,000). Any costs exceeding \$5,000 will be split evenly between the CAO and the COUNTY. However, if an arbitration proceeding is initiated by the CAO and the arbitrator determines that the position of the CAO is frivolous; the CAO 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. The arbitrator will be allowed to make temporary decisions regarding the dispute; provided that the arbitrator will conduct a formal hearing to take testimony concerning the dispute before reaching a final decision. The Washington State 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 shall 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.

County Administrative Officer

BOARD OF COUNTY COMMISSIONERS

PACIFIC COUNTY, WASHINGTON

 Feb. 16, 2022

Paul Plakinger

Date

\_\_\_\_\_  
Lisa Olsen, Chair

SSN: On file

\_\_\_\_\_  
Frank Wolfe, Commissioner

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Michael Runyon, Commissioner

APPROVED AS TO FORM:

ATTEST:

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Prosecutors Office

WBA #

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Amanda Bennett, Deputy Clerk of the Board