

**SPECIAL EMPLOYMENT AGREEMENT  
DEPUTY DIRECTOR (DEPARTMENT OF COMMUNITY DEVELOPMENT)**

THIS AGREEMENT made and entered into by and between the Board of Pacific County Commissioners ("BOARD") through its Director of the Department of Community Development ("DIRECTOR") on behalf of Pacific County ("COUNTY"), a Washington political subdivision and municipal corporation, and Nichol Duff ("DEPUTY DIRECTOR"), for the purposes and on the terms and conditions set forth below.

**I. DUTIES AND RESPONSIBILITIES**

The DEPUTY DIRECTOR is being employed to assist in directing the operations of the COUNTY's Department of Community Development ("DEPARTMENT"). As such, her duties include (a) assisting in the supervision of South Bend and Long Beach DEPARTMENT operations; (b) serving as the Department Director in the DIRECTOR's absence; (c) assisting the DIRECTOR in the management of the overall agency including policy development, personnel administration, and financial management; (d) assisting in all personnel matters, (e) assisting with budget preparation and budget administration; (f) assisting with departmental fiscal and accounting oversight; (g) assisting with the monitoring of contracts and agreements to ensure compliance with applicable policies and regulations.

The DEPUTY DIRECTOR will be responsible for handling a broad scope of proprietary and private information. She will also assist with the administration of COUNTY functions within the BOARD's executive authority by performing such duties and functions that the BOARD or the DIRECTOR shall from time to time assign.

The DEPUTY DIRECTOR will participate in the development and revision of COUNTY goals and objectives, programs, policies, and procedures. She 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 understand that in all respects, and at all times, the DEPUTY DIRECTOR is not an independent contractor. The DEPUTY DIRECTOR realizes and accepts the fact that (a) she is responsible to and under the direction of the DIRECTOR, (b) she serves "at the pleasure of" the BOARD, and (c) her activities will be reviewed for adequacy of professional judgment, achievement of results consistent with objectives, and compliance with regulations.

The DEPUTY DIRECTOR will operate with appreciable latitude for independent actions and decisions commensurate with demonstrated ability and she 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 DEPUTY DIRECTOR to work before and beyond the scheduled business hours and occasionally on weekends and holidays.

It is further understood and agreed that the DEPUTY 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 DEPUTY DIRECTOR may be absent for vacations and/or medical reasons, including caring for immediate family members, or she 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 DEPUTY DIRECTOR with the following monthly salary:

- Effective January 1, 2023 through June 30, 2023: Step 1 for the Deputy Director position on the Wage Schedule for Special Employment Agreements adopted as part of "Exhibit A" of the Pacific County Budget; Step 1 of the aforementioned wage schedule is \$8,456 per month at 1.0 Full-Time Equivalency (FTE), and the actual amount paid to the DEPUTY DIRECTOR shall be based on the FTE appropriated within the County budget.
- Effective July 1, 2023 through December 31, 2023: Step 2 for the Deputy Director position on the Wage Schedule for Special Employment Agreements adopted as part of "Exhibit A" of the Pacific County Budget; Step 2 of the aforementioned wage schedule is \$8,667 per month at 1.0 Full-Time Equivalency (FTE), and the actual amount paid to the DEPUTY DIRECTOR shall be based on the FTE appropriated within the County budget.
- Effective January 1, 2024, upon successful performance review by the BOARD, the DEPUTY DIRECTOR will continue to progress through the steps for the Deputy Director on the Wage Schedule for Special Employment Agreements adopted as part of "Exhibit A" of the Pacific County Budget, including any "cost-of-living adjustment" provided therein, with the effective date of "Step Increases" being January 1<sup>st</sup> and July 1<sup>st</sup>.

The DEPUTY DIRECTOR's salary will be paid to her 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 her salary shall be made to the DEPUTY DIRECTOR via direct electronic deposit.

#### **IV. FRINGE BENEFITS**

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

#### **V. OTHER CONDITIONS**

The COUNTY will furnish the DEPUTY 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 DEPUTY DIRECTOR.

The COUNTY will reimburse the DEPUTY DIRECTOR for use of her 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 DEPUTY 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 DEPUTY DIRECTOR for her use in fulfilling her duties.

The parties agree that the need exists for the DEPUTY 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 DEPUTY 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 on January 1, 2023, and will continue in full force and effect through December 31, 2023. The COUNTY shall meet with the DEPUTY DIRECTOR in January of 2024 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 DEPUTY DIRECTOR or the DEPUTY DIRECTOR's right to resign from employment with the COUNTY.

The DEPUTY DIRECTOR shall serve at the pleasure of the BOARD. If the BOARD desires to terminate the DEPUTY DIRECTOR and she is willing to continue to fulfill her 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 DIRECTOR's next six (6) month's compensation (including fringe benefits).

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

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

If the DEPUTY DIRECTOR is found to have committed misfeasance, malfeasance or nonfeasance in office, the BOARD may, within its discretion, temporarily suspend the DEPUTY DIRECTOR or relieve her 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 DEPUTY DIRECTOR of an action to terminate or suspend her based on misfeasance, malfeasance or nonfeasance, with or without pay, she 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 DEPUTY 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 DEPUTY DIRECTOR while performing or in good faith purporting to perform her official duties to the same extent as if she were a private person or corporation. Whenever a claim, action or proceeding for damages is brought against the DEPUTY DIRECTOR, her beneficiary or heirs arising from acts or omissions while performing or in good faith purporting to perform her official duties, she/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 DEPUTY DIRECTOR were or in good faith purported to be within the scope of her 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 DEPUTY DIRECTOR, her 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 DEPUTY 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 DEPUTY DIRECTOR while performing or in good faith purporting to perform her 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 DEPUTY DIRECTOR. COUNTY provided automobile liability insurance coverage shall be maintained for COUNTY owned vehicles only.

## **X. SOLICITATION OF CONTRACT**

The DEPUTY DIRECTOR warrants that she has not employed or retained any company or person to solicit or secure this contract, and that she 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 DEPUTY 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 DEPUTY DIRECTOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the DEPUTY DIRECTOR agrees to make them promptly available to the COUNTY. If the DEPUTY DIRECTOR 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 DEPUTY DIRECTOR shall clearly identify any specific information that she 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 DEPUTY 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 DEPUTY DIRECTOR (a) of the request and (b) of the date that such information will be released to the requester unless the DEPUTY DIRECTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the DEPUTY DIRECTOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The DEPUTY 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 five thousand dollars (\$5,000). Any costs exceeding \$5,000 will be split evenly between the DEPUTY DIRECTOR and the COUNTY. However, if an arbitration proceeding is initiated by the DEPUTY

DIRECTOR and the arbitrator determines that the position of the DEPUTY DIRECTOR is frivolous; the DEPUTY 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. 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.

**[SIGNATURE BLOCK ON NEXT PAGE]**

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

DEPUTY DIRECTOR  
DEPT. OF COMMUNITY DEVELOPMENT

BOARD OF COUNTY COMMISSIONERS  
PACIFIC COUNTY, WASHINGTON

\_\_\_\_\_  
Nichol Duff Date

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

SSN: On File

\_\_\_\_\_  
Jerry Doyle, Commissioner

\_\_\_\_\_  
David Tobin, Commissioner

COUNTY ADMINISTRATIVE OFFICER

\_\_\_\_\_  
Paul Plakinger Date

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Prosecutor's Office WSBA #

\_\_\_\_\_  
Amanda Bennett, Clerk of the Board