

## MARKETING SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between PACIFIC COUNTY hereinafter referred to as the "County" and JAKE A SPERLEY LLC, an Oregon limited liability company, hereinafter referred to as "Sperley."

WHEREAS the County desires to hire Sperley to provide marketing services for the Pacific County Fair to be held between August 24-27, 2022, and Sperley has the necessary equipment, skills, experience and expertise to provide said marketing services;

NOW THEREFORE, in consideration of the terms, conditions and obligations contained herein, the parties hereto agree as follows:

1. **SERVICES PROVIDED BY SPERLEY.** During the term of this Agreement, Sperley shall provide the following services (the "Services"):

A. Create a flyer advertising the 2022 Pacific County Fair. The flyer must be created and delivered to Pacific County no later than \_\_\_\_\_, 2022. The flyer shall be delivered in PDF or Word format and formatted for printing on letter-size paper (8.5" x 11").

B. Design and create a minimum of thirty (30) unique Facebook social media posts advertising the 2022 Pacific County Fair.

C. Provide expertise and services to design, plan, and implement other social media advertising for the 2022 Pacific County Fair.

2. **TERM.** This Agreement shall commence on June 14, 2022, and conclude on August 28, 2022.

3. **PAYMENT.** The County shall pay Sperley the total sum of Three Thousand Dollars (\$3,000.00) for performance of the Services described herein. One Thousand Five Hundred Dollars (\$1,500.00) shall be paid within three days of the mutual execution of this Agreement, and One Thousand Five Hundred Dollars (\$1,500.00) shall be paid within fifteen (15) days of the end of the term of this Agreement.

4. **COMPLIANCE WITH LAWS.** Sperley shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, and intellectual property laws and regulations.

5. **EMPLOYEES OF SPERLEY.** Sperley shall not employ anyone in fulfillment of this Agreement who is required to register as a sex offender under Chapter 9A.44.130 RCW or who has been prohibited from contact with a vulnerable adult under Chapter 74.34.130 RCW. Upon request, Sperley shall provide the County with a list of the names and addresses of all employees, volunteers, and subcontractors of Sperley.

6. **RELATIONSHIP OF PARTIES.** It is understood and agreed by the parties that Sperley is an independent contractor with respect to the County, and is not an employee of the County. The County shall not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of Sperley or its employees.

7. **FEDERAL, STATE, AND LOCAL PAYROLL TAXES.** No federal or state income tax, or payroll tax of any kind shall be withheld or paid by the County on behalf of Sperley or the employees of Sperley. No employees of Sperley shall be treated as employees with respect to services performed hereunder for federal or state tax purposes. Sperley shall be solely responsible for paying any and all taxes, FICA, worker's compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit-sharing, and other benefits for Sperley and its employees, servants, and agents.

8. **WORKERS' COMPENSATION.** No workers' compensation insurance shall be obtained or paid for by the County concerning Sperley or the employees of Sperley. Sperley shall comply with workers' compensation laws concerning Sperley and the employees of Sperley.

9. **ASSIGNMENT/SUBCONTRACTORS.** Sperley's obligations under this Agreement may not be assigned or transferred to any other person or entity without the prior written consent of the County. Sperley shall not subcontract any part of the work to be performed under this Agreement or assign this Agreement without the specific written consent of the County provided that Sperley shall remain liable for such performance and shall indemnify the County against any loss or damage suffered by the County arising from any act or omission of such subcontractor.

10. **TERMINATION.** The County may freely terminate this Agreement at will at the County's sole discretion upon verbal or written notice to Sperley.

11. **PUBLIC RECORDS ACT.**

A. 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 Sperley are needed for the County to respond to a request under the Act, as determined by the County, Sperley agrees to make them promptly available to the County. If Sperley 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, Sperley shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by Sperley 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 Sperley (a) of the request and (b) of the date that such information will be released to the requester unless Sperley obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540.

If Sperley fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

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

C. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by Sperley or Sperley's subcontractors or consultants for delivery to the County under this Agreement shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which Sperley uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by Sperley and is not "work made for hire" within the terms of this Agreement.

12. **INSURANCE.** Without limiting Sperley's indemnification of the County, and prior to commencement of this Agreement, Sperley shall obtain, provide and maintain during the term of this Agreement, policies or insurance of the type and amounts described below and, in a form, satisfactory to the County.

A. General Liability Insurance. Sperley shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

B. Professional Liability (Errors & Omissions) Insurance. Sperley shall maintain professional liability insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Sperley agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement.

C. Workers' Compensation Insurance. Sperley shall, at its own expense, maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

D. Automobile Liability Insurance. Sperley shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Sperley arising out of or in connection with the Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

E. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against the County, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Sperley or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Sperley hereby waives its own right of recovery against the County, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

F. Additional Insured. Sperley must name the County as an additional insured. Sperley agrees that its liability insurance shall be primary and non-contributory to the County's and that Sperley's liability insurance policy shall so state.

13. **INDEMNIFICATION.** To the fullest extent permitted by law, Sperley agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which (1) are caused in whole or in part by any action or omission, negligent otherwise, of Sperley, its employees, agents or volunteers or Sperley's subcontractors and their employees, agents or volunteers, or (2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or (3) are based upon Sperley's or its subcontractors' use of, presence upon or proximity to the property of the County. This indemnification obligation of Sperley shall not apply in the limited circumstances where the claim, damage, loss or expense is caused by the sole negligence of the County. This indemnification obligation of Sperley shall not be limited in any way by the Washington State Industrial Insurance Act RCW Title 51, or by application of any other worker's compensation act, disability benefit act or other employee benefit act, and Sperley hereby expressly waives any immunity afforded by such acts. The foregoing identification obligations of Sperley are a material inducement to the County to enter into this Agreement, are reflected in Sperley's compensation, and have been mutually negotiated by the parties.

14. **PARTICIPATION COUNTY – NO WAIVER.** The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Sperley's indemnity obligations under this Agreement.

15. **SURVIVAL.** Sperley's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

16. **NOTICES.** All notices hereunder may be delivered or mailed. If mailed, they shall be sent by certified or registered mail, return receipt requested, and addressed as follows:

To the County at: PO Box 187, South Bend, WA 98586  
To Sperley at: PO Box 3221, Bay City, OR 97107

17. **ATTORNEY'S FEES.** If either party files suit to enforce this Agreement, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.

18. **AMENDMENT.** The parties may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, are approved by the authorized representative of each party, and are approved by the County's governing body. Such amendments will neither invalidate this Agreement nor relieve or release either party from its obligations under this Agreement.

19. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Washington. The venue of any litigation between the parties relating to this Agreement shall be the Superior Court of Pacific County, State of Washington.

20. **SEVERABILITY.**

A. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.

B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

C. Should the County determine that the severed portions substantially alter this Agreement so that the original intent and purpose of this Agreement no longer exists, the County may, in its sole discretion, terminate this Agreement.

21. **NON-WAIVER.** The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

22. **FORCE MAJEURE.** If any party is unable to perform any of its obligations under this Agreement as a direct result of any law, ordinance, regulation, ruling, order, or other governmental action, or restriction arising out of acts of nature, local or national emergencies, fire, epidemics, flood, war, sabotage, accidents, labor disputes, or any other similar circumstances beyond the control of the party, the time of performance and payment may be waived, modified or extended by the number of days and degree of impact directly attributed to the force majeure event. Each party shall use best effort to minimize the effects of such failures, restrictions, or delays.

23. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

