

INTERAGENCY AGREEMENT

**Between
Pacific County**

**and the
Pacific Conservation District
(VSP 23-25)**

This agreement is by and between Pacific County, P.O. Box 68, South Bend, WA 98586 (hereinafter “the County”) and the Pacific Conservation District a municipal corporation of Washington State, P.O. Box 336, South Bend, WA 98586 (Tax ID # 91-1537018) (hereinafter “the District”).

In this Agreement, the party who is contracting to receive services shall be referred to as “the County” and the party who will be providing the services shall be referred to as “the District.”

The District was established in 1948 to implement natural resource conservation practices within the boundaries of the District. The County desires to have professional services provided by the District. Therefore, the parties agree as follows:

- 1. DESCRIPTION OF SERVICES.** The County has contracted with the Washington Conservation Commission for the development and implementation of a Voluntary Stewardship Program (VSP). The County would like to contract with the district to perform the following services described in Exhibit A.
- 2. PAYMENT.** The County agrees to reimburse the District for eligible costs not to exceed \$215,000.00 to perform the services described in Exhibit A from the time period of July 1, 2023 through June 30, 2025. The payment requests shall be submitted monthly by the 10th and include all necessary documentation to support the payment request, including but not limited to: timesheets, composite rate sheets, mileage logs, documentation of outreach, etc. The County shall reimburse the District within two (2) weeks of a complete payment request submittal.

The rate calculated by using the Washington State Conservation Commission VSP Billing Composite Rate shall be used when calculating hourly rates for personnel.

- 3. TERM/TERMINATION.** This Agreement shall become effective on July 1, 2023 and shall terminate on June 30, 2025. Either party may terminate the Agreement at any time. The party terminating the agreement shall provide written notice to the other party at least 30 days prior to termination as per the requirements within Section 6. Notices.
- 4. RELATIONSHIP OF PARTIES.** It is understood by the parties that the District is an independent District with respect to the County and is not an employee of the County. The County will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefits, for the benefit of the District.
- 5. ASSIGNMENT.** The District’s obligations under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the County.

6. **NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid to the party representing the County and Center at the following address:

The District: Mike Nordin
Pacific Conservation District
P.O. Box 336
South Bend, WA 98586

The County: Shawn Humphreys
Pacific County, Department of Community Development
P.O. Box 68
South Bend, WA 98586

Address changes by either party must be provided by written notice to the other in the manner set forth above.

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

8. **AMENDMENT.** This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

9. **SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

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

The County has, and by this section assumes, no obligation on behalf of the District to claim any exemption from disclosure under the Act. The County shall not be liable to the District for releasing records not clearly identified by the District as confidential or proprietary. The County shall not be liable to the District for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction. The District shall, to the maximum extent permissible by law, hold harmless and indemnify the County against any third-party claims for the release of records that the District did not seek a restraining order or otherwise seek to protect disclosure of confidential or privileged records.

11. OWNERSHIP. 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 the District or the District's subDistricts 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 the District 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 the District and is not "work made for hire" within the terms of this Agreement.

12. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

13. INDEMNIFICATION/HOLD HARMLESS

- a. **Indemnification by District.** To the fullest extent permitted by law, the DISTRICT 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, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property, including the loss of use resulting therefrom. The indemnity includes but is not limited to: 1) liability arising in whole or in part by any action or omission, negligent or otherwise, of the DISTRICT, its employees, agents or volunteers or DISTRICT's subDistricts and their employees, agents or volunteers; or 2) liability directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) liability based upon the DISTRICT'S or its subDistricts' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the DISTRICT shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the DISTRICT shall not be limited in any way by the Washington State Industrial Insurance Act RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the

DISTRICT hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the DISTRICT are a material inducement to COUNTY to enter into the Agreement, are reflected in the DISTRICT's compensation, and have been mutually negotiated by the parties.

- b. **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 DISTRICT's indemnity obligations under the Agreement.
- c. **Survival of District's Indemnity Obligations.** The DISTRICT agrees all DISTRICTS's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

14. ATTORNEY'S FEES/COST OF SUIT AND VENUE. 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.

- a. **Disputes.** Differences between the DISTRICT and the COUNTY, arising under and by virtue of this Agreement, 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. Any dispute relating to the quality or acceptability of performance and/or compensation due DISTRICT shall be decided by the COUNTY'S Agreement representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Agreement representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue**.
- b. **Choice of Law, Jurisdiction and Venue.** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific County, Washington.

- c. **Severability.** 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 the Agreement did not contain the particular provision held to be invalid.

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.

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

15. AGREEMENT PROVISIONS. Payments due to the District under this Agreement are expressly conditioned upon the District's strict compliance with all insurance requirements under this Agreement. Payment to the District shall be suspended in the event of non-compliance. Upon receipt of evidence of full compliance, payments not otherwise subject to withholding or set-off will be released to the District.

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

- a. **General Liability Insurance.** The District shall maintain commercial general liability insurance with at least as broad as Insurance Services Office form GG OO O, in the 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.** The District 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 the District agrees to maintain continuous coverage through a period of no less than three years after completion of the services required by this Agreement.
- c. **Workers' Compensation Insurance.** The District shall, at its own expense, maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

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 officer, agents, officials, employees and volunteers or shall specifically allow the District or others providing insurance evidence in compliance with these specifications to waive their rights of recover prior to a loss. The District hereby waives its own right of recover against the County, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

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

17. APPLICABLE LAW. The laws of the State of Washington shall govern this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors, and assigns.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed this ____ day of _____ 2023.

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

PACIFIC CONSERVATION DISTRICT

Lisa Olsen, Chair

Chairman

Jerry Doyle, Commissioner

David Tobin, Commissioner

ATTEST:

Amanda Bennett, Clerk of the Board

EXHIBIT A
Scope of Work

- Conduct outreach and build/maintain Individual Stewardship Plans with agricultural producers in Pacific County to fulfill the goals and benchmarks of the Pacific County VSP workplan.
- Document the collection of the Individual Stewardship Plans (ISPs) to track trends of watershed protection and the five identified critical areas by the Washington state statute.
- Conduct watershed monitoring as identified in the workplan and track overall watershed health.
- District staff will work with landowners to improve watershed health, using available resources to implement best management practices on local agricultural lands.
- Coordinate VSP workgroup meetings, and engage with stakeholders to continue community engagement.
- Perform quarterly reports, biennial reports, and 5 year reports as identified by the Washington State Conservation Commission.

Total Budget: \$215,000.00