

SPECIAL EMPLOYMENT AGREEMENT DIRECTOR OF PUBLIC WORKS

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 David T. Anderson ("DIRECTOR"), for the purposes and on the terms and conditions set forth below.

I. DUTIES AND RESPONSIBILITIES

The essential duties and responsibilities of the DIRECTOR are outlined in the POSITION DESCRIPTION for the Director of Public Works as adopted by the BOARD. The POSITION DESCRIPTION is included as "Attachment A" of this Special Employment 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.

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.

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 15th day of March 2022, and will continue in full force and effect through the 14th day of March, 2023. The COUNTY shall meet with the DIRECTOR in January of 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 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 or a (b) a lump sum payment equal to the DIRECTOR's next six (6) month's compensation (including fringe benefits).

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 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 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, 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 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 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 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 (\$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 DIRECTOR and the COUNTY. 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. 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.

DIRECTOR OF PUBLIC WORKS

David T. Anderson

Date

SSN: On File

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Lisa Olsen, Chair

Frank Wolfe, Commissioner

Mike Runyon, Commissioner

COUNTY ADMINISTRATIVE OFFICER

Paul Plakinger

Date

APPROVED AS TO FORM:

Prosecutor's Office

WSBA #330618

ATTEST:

Amanda Bennett, Clerk of the Board

PACIFIC COUNTY**POSITION DESCRIPTION**

POSITION: Director
OFFICE/DEPARTMENT: Department of Public Works
REPORTS TO: County Administrative Officer/Board of County Commissioners
UNION STATUS: Exempt
SALARY GRADE: Special Employment Agreement
DATE LAST REVISED: February 8, 2022

1.0 PRIMARY FUNCTION AND PURPOSE

The Director oversees and directs the operations, programs and services of the Department of Public Works (DPW) and its divisions, which includes engineering, operations and construction of roads, utilities, diking and also includes Equipment Rental and Revolving Fund (ER&R) and Administration. Directly supervises and oversees the managerial staff of each division under the Department of Public Works. Directs the research, development, preparation of the department and its divisions' budgets and presents it to the Board of County Commissioners (BOCC) for approval. Directs the budget oversight efforts and revisions. Develops and implements the strategic planning for the department and its divisions. Ensures the department and its divisions are complying and following established plans, department and county policies and procedures, and adherence to labor contract stipulations.

2.0 ORGANIZATIONAL RELATIONSHIPS**2.1 Supervision Received**

Reports to the County Administrative Officer and the Board of County Commissioners.

2.2 Supervision Exercised

Supervises all staff within the Department of Public Works.

3.0 ESSENTIAL DUTIES AND RESPONSIBILITIES

- Develop, propose, implement and oversee the plans and programs for the DPW and its divisions. Determine its mission and goals, core services and allocation of financial, human and capital resources.
- Develop and manage short-term and long-term department and divisions goals and priorities.
- Directly oversee the top managerial staff of all divisions. Conducts the hiring, training, counseling, evaluation, motivation and employee relations, and discipline of the managerial staff. Ensure effective and efficient supervisory performance of the managers over the staff in each division, oversee and approve hiring, discipline and terminations, and ensures compliance with labor contract stipulations.
- Ensure adequate staff levels in all the divisions. Assess and coordinate staff training needs and ensures staff maintains mandatory certifications and required skills.
- Direct the development and implementation of policies, procedures and practices of each division. Ensure each division's performance to the established plans, goals and objectives.
- Develop and oversee programs and activities involving community relations, community education and public information. Promote optimum customer service throughout the division and the manager's participation in community issues relevant to the department. Serve as the primary liaison to the public and the media in all matters pertaining to DPW and its divisions.

8.0 SELECTION PROCESS

The selection process will include a formal application and evaluation of education and experience, and may also include an oral interview, background and/or reference checks and job-related tests.