

## **EMPLOYMENT AGREEMENT PACIFIC COUNTY FAIR – FAIR MANAGER**

**THIS AGREEMENT**, made and entered into by, and between the Board of Pacific County Commissioners ("BOCC") on behalf of Pacific County ("COUNTY"), a Washington political subdivision and municipal corporation, and Scott McDougall ("FAIR MANAGER"), [REDACTED] South Bend, WA 98586, is subject to the terms and conditions set forth herein:

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

Though more specifically described in the job description attached hereto and made a part hereof by this reference, the FAIR MANAGER is generally being employed to plan, organize, lead and administer all activities of the Pacific County Fair in accordance with State Laws and the County Regulations and By-laws adopted by BOCC and/or FAIR ADVISORY BOARD. He shall positively promote, manage and administer the Fair and other events utilizing the Fairgrounds facilities, and ensure the effective and efficient use of agency personnel, funds, material, and time.

The FAIR MANAGER realizes and accepts the fact that he is responsible to and works in cooperation with the FAIR ADVISORY BOARD and that he serves "at the pleasure of" the BOCC, with his activities reviewed for adequacy of professional judgment, achievement of results consistent with objectives, and compliance with regulations. It is understood that the FAIR MANAGER may possibly have to make unpopular decisions to protect the public's safety and welfare, which may benefit some while negatively affecting others. It is further understood that, as a public servant, the FAIR MANAGER is vulnerable to criticisms, whether justified or not. The FAIR ADVISORY BOARD and BOCC agrees to exercise patience and to reserve judgment until the facts are known, and will take steps to protect the FAIR MANAGER's professional status when confronted with disparaging accusations.

### **II. HOURS OF WORK**

The parties understand and agree that this position is considered part time and exempt from both the provisions of the Federal Fair Labor Standards Act (FLSA) and collective bargaining. It often requires the incumbent to work before and beyond scheduled business hours, occasionally on weekends and holidays, and during the month of August.

It is further understood and agreed that the FAIR MANAGER will not accrue the annual (vacation) or medical (sick) leaves some other COUNTY employees accrue pursuant to labor agreement or personnel policy; however, so long as the duties are performed satisfactorily, he may be absent for vacations and medical reasons, including caring for immediate family members.

### **III. COMPENSATION**

For the services rendered pursuant to this agreement the COUNTY will provide the FAIR MANAGER with a monthly salary of ONE THOUSAND THIRTY ONE DOLLARS (\$1,031.00). Annual salary reviews will take place as part of the COUNTY's normal budget process. The FAIR MANAGER's salary will be paid to him at the same time and in the same manner as the COUNTY's non-represented employees are paid to them.

### **IV. FRINGE BENEFITS**

The FAIR MANAGER is entitled to limited benefits. These benefits include regular employer contributions to Social Security (FICA/OASI), industrial insurance/medical aid and unemployment insurance.

### **V. OTHER CONDITIONS**

The parties agree that the need exists to participate in professional organizations, keep abreast of professional developments, maintain contacts, and attend meetings. The COUNTY will pay, within budget constraints, the membership dues for the Washington State Fair Association (WSFA). The COUNTY will also pay, within budget constraints the FAIR MANAGER's registration fees and reasonable travel expenses for attendance at various WSFA conferences, meetings and training sessions.

The FAIR MANAGER is required to maintain a private vehicle in good working condition, for use while performing the necessary functions of this employment. The FAIR MANAGER will be reimbursed in the same manner and to the same extent as the COUNTY's non-represented employees would be reimbursed for the use of their vehicles. The FAIR MANAGER 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.

The COUNTY will furnish the FAIR MANAGER with suitable work/office space at the Pacific County Fairgrounds and necessary supplies and equipment.

#### **VI. TERM/TERMINATION**

This agreement will become effective January 1, 2013, and will continue in full force and effect through December 31, 2013 both dates inclusive. In the event either party desires to terminate or modify the provisions of this agreement, written notice of such intention will be personally served upon or sent by certified mail, return receipt requested, to the other party a minimum of two (2) months prior to the expiration date, or this agreement will be extended one (1) additional year. Nothing contained herein shall prevent the parties from amending this agreement by mutual written consent. This provision will not prevent, limit or otherwise interfere with the BOCC's right to terminate the FAIR MANAGER's services or the FAIR MANAGER's right to resign from employment with the COUNTY.

If the COUNTY desires to terminate the FAIR MANAGER and he is willing to continue to fulfill his duties, the BOCC will furnish (a) written notice at least two (2) months prior to the date of official discharge, or (b) a lump sum payment equal to the FAIR MANAGER's next two (2) months compensation (including fringe benefits), or (c) any combination of written notice and lump sum payment that when added together meets the two (2) month requirement.

If the FAIR MANAGER desires to voluntarily resign, he shall furnish written notice at least two (2) months prior to the date he intends to separate from employment.

If the FAIR MANAGER is found guilty of a felony, the COUNTY may, within its discretion, terminate this contract without compensating payment to the FAIR MANAGER. The BOCC or their agent must personally serve or send by certified mail, return receipt requested, written notice to the FAIR MANAGER, setting forth with specificity, the grounds for the termination at least thirty (30) days before the effective termination date. This notice provision does not limit the authority of the BOCC to temporarily suspend the FAIR MANAGER or to relieve him from duty in cases of misfeasance, malfeasance or nonfeasance if the action is set forth in writing, stating with specificity the basis for and the degree or nature of the action(s). With the exception of termination as a result of having been convicted of a felony, if the BOCC notifies the FAIR MANAGER of an action to terminate him without compensation, to suspend him, or to relieve him from duty, with or without pay, he may ask for arbitration as set forth in Article XII - DISPUTES, by filing a request in writing with the BOCC within twenty (20) days of being personally served with written notice of the BOCC's action, or within twenty (20) days of the BOCC 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 portion(s) thereof, shall be deemed severed 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 FAIR MANAGER personally and shall not be delegated or subcontracted in whole or in part without the express written consent of the BOCC.

## **IX. LEGAL RELATIONS, INDEMNIFICATION and INSURANCE**

Pursuant to Chapter 4.96, RCW, the COUNTY shall be liable for damages arising out of the tortious conduct of the FAIR MANAGER while performing or in good faith purporting to perform his/her official duties to the same extent as if he were a private person or corporation. Whenever an action or proceeding for damages is brought against the FAIR MANAGER, his beneficiary or heirs arising from acts or omissions while performing his official duties, he/they may request the COUNTY to authorize the defense of the action or proceeding at the expense of the COUNTY. If the COUNTY, in accordance with Resolution 2009-044, finds that the acts or omissions of the FAIR MANAGER 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, including punitive damages, against the FAIR MANAGER, his beneficiary or heirs shall be paid on approval of the BOCC, or by an approval procedure created by resolution of the BOCC.

If the BOCC and the FAIR MANAGER 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 any resulting monetary judgment, the dispute shall be submitted to arbitration as set forth in Article XII - DISPUTES.

The COUNTY will maintain continuously for the term of the Agreement, at its own expense, professional liability insurance or self-insurance, for the services and activities provided by the FAIR MANAGER.

## **X. SOLICITATION OF CONTRACT**

The FAIR MANAGER warrants that he has not employed or retained any company or person to solicit or secure this contract 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 or making of this Agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this contract without further liability.

## **XI. OWNERSHIP OF DOCUMENTS**

The FAIR MANAGER 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. 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 hereunder, or other question relating to the performance of the terms of this Agreement shall be subject to arbitration according to the follow procedures; however, the parties agree to make reasonable attempts to resolve disputes amongst themselves 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, who is capable, willing and prepared to conduct the hearing and render the written decision within the specified time limits, to serve as the arbitrator. 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 Court Civil Rules.

The COUNTY agrees to pay for the services of an arbitrator at a rate not to exceed Sixty Dollars (\$60) per hour up to a total amount that shall not exceed Two Thousand Dollars (\$2,000). However, if an arbitration proceeding is initiated by the FAIR MANAGER and the arbitrator determines that the position of the FAIR MANAGER is frivolous; the FAIR MANAGER shall pay for the cost of the arbitrator's services.

The arbitrator is empowered to determine all issues including employment duties and employment status during the pendency of the arbitration. He will be allowed to make temporary decisions regarding the dispute; provided, the arbitrator will conduct a formal hearing to take testimony concerning the dispute before

reaching a final decision. "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 will decide the dispute by issuing a written decision; otherwise, either party may re-initiate the arbitration process. The arbitrator's decision will be final and binding upon the parties hereunder and enforceable, if necessary, in a court of law.

**XIII. ATTORNEY 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 shall be entitled to costs of suit, court costs and reasonable attorney fees.

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



12/18/2012

Scott McDougall Date

**BOARD OF COUNTY COMMISSIONERS  
PACIFIC COUNTY, WASHINGTON**

SS# \_\_\_\_\_

\_\_\_\_\_  
Lisa Ayers, Chairman

**APPROVED AS TO FORM:**  
Prosecuting Attorney

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

\_\_\_\_\_  
David Burke Date

\_\_\_\_\_  
Steve Rogers, Commissioner

**ATTEST:**

\_\_\_\_\_  
Deputy Clerk of the Board Date