

## **SPECIAL EMPLOYMENT AGREEMENT**

### **VEGETATION MANAGEMENT DIRECTOR**

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 Stanton "Jeff" Nesbitt, "VEGETATION MANAGEMENT DIRECTOR", 6855 SW Nyberg Street, Tualatin, Oregon, 97062, for the purposes and subject to the terms and conditions set forth herein:

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

The VEGETATION MANAGEMENT DIRECTOR is employed to plan, organize, and monitor the activities and operations of the Pacific County Department of Vegetation Management, under the direction of the BOARD and the Pacific County Noxious Weed Control Board "WEED BOARD"; by (1) preparing and administering its budget, preparing payroll, maintaining equipment, and managing inventory and facilities; (2) negotiating, preparing, and monitoring grants, contracts and agreements to ensure compliance with applicable policies and regulations; (3) initiating related and necessary program development and planning activities, (4) developing and administering departmental training policies, manual, and programs; (5) developing and scheduling of educational programs and educational materials for the public; (6) developing and recommending the noxious weed control work plan and annual classification of land within the County for noxious weed control; (7) arranging for public hearings as required; (8) managing control and enforcement of noxious weeds and other vegetation along public roadways and on private property; (9) assisting in the eradication of *Spartina alterniflora* and other aquatic weeds; (10) issuing notices of violation and/or notices of civil infraction to landowners following consultation with other County employees who provide technical and legal advice; (11) counseling the public with regard to complaints, problems, and questions about Vegetation Management's department activities and operations; (12) serves as the Weed Coordinator for the Pacific County WEED BOARD in accordance with RCW 17.10.060; (13) upon designation by the BOARD, serve as BOARD's representative on various boards, commissions, planning groups, etc; and (14) perform such related duties and functions that the BOARD shall from time to time assign.

The VEGETATION MANAGEMENT DIRECTOR will participate in the development and revision of COUNTY and WEED BOARD's goals and objectives, programs, policies and procedures. He will maintain close working relationships with other COUNTY, Local, State and Federal officials to promote efficient and harmonious achievement of BOARD and WEED BOARD's 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 VEGETATION MANAGEMENT DIRECTOR is not an independent contractor. The VEGETATION MANAGEMENT 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 VEGETATION MANAGEMENT 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 exempt from provisions of the Federal Fair Labor Standards Act (FLSA) and from collective bargaining representation. This position requires the VEGETATION MANAGEMENT DIRECTOR to work a minimum of 1872 hours per year, and often requires the VEGETATION MANAGEMENT DIRECTOR to work before and beyond the scheduled business hours and occasionally on weekends and holidays.

It is further understood and agreed that the VEGETATION MANAGEMENT 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 VEGETATION MANAGEMENT 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.

## **III. COMPENSATION**

For the services rendered pursuant to this AGREEMENT the COUNTY will provide the VEGETATION MANAGEMENT DIRECTOR with a salary of seventeen hundred and sixteen dollars (\$1,716) for the month of February, 2013. Effective March 1, 2013, the VEGETATION MANAGEMENT DIRECTOR will be paid a monthly salary of three thousand four hundred and thirty two dollars (\$3,432).

Beginning in January 2014, and in each year thereafter during which this contract and any extensions are valid, the VEGETATION MANAGEMENT DIRECTOR's monthly salary will be increased to reflect "cost of living adjustments" commensurate with those provided to other COUNTY non-represented employees. The VEGETATION MANAGEMENT DIRECTOR's salary will be paid to him 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 his salary shall be made to the VEGETATION MANAGEMENT DIRECTOR via direct electronic deposit.

## **IV. FRINGE BENEFITS**

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

The COUNTY will provide a health (medical, dental, and vision) and life (term life and accidental death or disability) insurance program for the VEGETATION MANAGEMENT DIRECTOR and his eligible dependents to the same extent as other non-represented COUNTY employees.

**V. OTHER CONDITIONS**

The COUNTY will furnish the VEGETATION MANAGEMENT DIRECTOR with suitable office space, necessary office supplies and equipment, support 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 VEGETATION MANAGEMENT DIRECTOR.

The COUNTY will reimburse the VEGETATION MANAGEMENT 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 VEGETATION MANAGEMENT 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 VEGETATION MANAGEMENT DIRECTOR for his use in fulfilling his duties.

The VEGETATION MANAGEMENT DIRECTOR must possess and maintain a current WSDA Public Operator's License that includes endorsements for Aquatic Weed and Agricultural Weeds. The VEGETATION MANAGEMENT DIRECTOR must successfully obtain a WSDA Right-of-Way endorsement by March 1, 2013.

The parties agree that the need exists for the VEGETATION MANAGEMENT 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. In addition, the parties agree that the need exists for the VEGETATION MANAGEMENT DIRECTOR to maintain pertinent state licenses, certifications, and registrations, and acknowledge that maintenance of said licenses and registrations requires continuing education. Within budget limitations, the COUNTY will pay the membership dues to those organizations that contribute to the VEGETATION MANAGEMENT DIRECTOR'S continued professional development and improved performance and will support the costs for his to travel to attend meetings, conferences and training programs.

## **VI. TERM/TERMINATION**

This AGREEMENT shall be deemed to have become effective the 19<sup>th</sup> day of February 2013, and will continue in full force and effect through December 31<sup>st</sup>, 2015. In the event either party to this AGREEMENT desires to 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. This agreement will continue thereafter on an annual basis until the proper written notice to terminate or modify is provided. 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 VEGETATION MANAGEMENT DIRECTOR or the VEGETATION MANAGEMENT DIRECTOR's right to resign from employment with the COUNTY.

If the BOARD desires to terminate the VEGETATION MANAGEMENT DIRECTOR and he is willing to continue to fulfill his duties, the COUNTY will furnish (a) written notice at least one (1) month prior to the date of official discharge, or (b) a lump sum payment equal to the VEGETATION MANAGEMENT DIRECTOR's next one (1) month's compensation (including fringe benefits), or (c) any combination of written notice and lump sum payment that totals one (1) month.

If the VEGETATION MANAGEMENT DIRECTOR desires to voluntarily resign, he shall furnish written notice of at least thirty (30) days prior to the date he intends to separate from employment with the COUNTY.

If the VEGETATION MANAGEMENT DIRECTOR is found guilty of a felony, the BOARD may, within its discretion, terminate this AGREEMENT without compensating payment to the VEGETATION MANAGEMENT DIRECTOR. The BOARD or its agent must personally serve or send by certified mail, return receipt requested, written notice to the VEGETATION MANAGEMENT DIRECTOR, setting forth with specificity, the grounds for termination at least ten (10) days before the effective termination date. This notice provision does not limit the authority of the BOARD to temporarily suspend the VEGETATION MANAGEMENT DIRECTOR 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 actions. With the exception of termination as a result of his having been found guilty of a felony, if the BOARD notifies the VEGETATION MANAGEMENT DIRECTOR 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 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 VEGETATION MANAGEMENT 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 VEGETATION MANAGEMENT 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 VEGETATION MANAGEMENT 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 VEGETATION MANAGEMENT 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 VEGETATION MANAGEMENT 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 VEGETATION MANAGEMENT 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 VEGETATION MANAGEMENT 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 XII – 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 VEGETATION MANAGEMENT DIRECTOR. COUNTY provided automobile liability insurance coverage shall be maintained for COUNTY owned vehicles only.

**X. SOLICITATION OF CONTRACT**

The VEGETATION MANAGEMENT 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 annul this contract without further liability.

**XI. OWNERSHIP OF DOCUMENTS**

The VEGETATION MANAGEMENT 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. 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 arbitrator is empowered to determine all issues including employment duties and employment status during the pendency of the arbitration. He/She 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, 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.

**XIII. ATTORNEY'S 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.

VEGETATION MANAGEMENT DIRECTOR:

Stanton J. Nesbitt 2/6/13

Stanton Nesbitt

Date

SSN

BOARD OF COUNTY COMMISSIONERS  
PACIFIC COUNTY, WASHINGTON:

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Lisa Ayers, Chair

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Steve Rogers, Commissioner

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Frank Wolfe, Commissioner

APPROVED AS TO FORM:

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Prosecuting Attorney

Date

ATTEST:

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Deputy Clerk of the Board

Date