

EMPLOYMENT AGREEMENT BETWEEN
LEWIS COUNTY
AND
AMBER SMITH:
Director of Human Resources & Risk Management

This Agreement is made with effect from November 2, 2022 between Lewis County, a Washington municipal corporation, of 351 NW North Street, Chehalis, Washington 98532 (hereinafter referred to as the "County"); and Amber Smith, an employee of Lewis County (hereinafter referred to variously as "Ms. Smith" or as the "Employee").

RECITALS

- A. The relationship between Lewis County and the appointed head of the County's Department of Human Resources & Risk Management requires the utmost confidence and trust.
- B. The County Manager has appointed Ms. Smith as Director of Human Resources & Risk Management pursuant to the terms of a written Agreement to be executed between the County and Employee.
- C. The County and Employee now agree to establish and delineate the terms and conditions of Employee's employment, and to that end the parties hereto elect to enter into this Agreement set forth herein below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this agreement, the County and the Employee agree as follows:

SECTION 1. EMPLOYMENT

The County employs Ms. Smith, as Director of Human Resources & Risk Management, to perform such duties as are currently prescribed or may be prescribed by its County Manager, the Chief of Internal Services (CIS) or, exceptionally, by decision of a majority of the County's BOCC. Ms. Smith's employment is at-will and may be terminated by the County at any time, with or without cause. The Job Description for the position of Director of Human Resources & Risk Management is attached as Exhibit A and is incorporated by reference herein, and shall continue in full force unless and until modified by the County in its sole discretion.

SECTION 2. TERM

This Agreement shall be effective November 2, 2022. It may be terminated in accordance with the provisions hereof at any time, with or without cause.

SECTION 3. DUTIES OF EMPLOYEE

The Employee shall -

- a) diligently perform all duties assigned to her and will, to the best of the Employee's skill and ability, devote every possible effort to those duties on a full-time, basis;
- b) refrain from in any employment or other activity, whether compensation or non-compensated, that will interfere with her employment with the County;
- c) observe and abide at all times by the Code of Ethics for municipal officers (RCW 42.23), and the Code of Ethics in Public Service (RCW 42.52, with each reference to the word "State" in such code being deemed to refer to "Lewis County" for purposes of this Agreement) (in each instance as the statute may be amended from time to time);
- d) comply with the Lewis County harassment policy and complaint procedure, and report immediately to the County Manager, or CIS any and all harassment, violations of the policy, and complaints under

the policy. Additionally, Employee shall immediately report to the County Manager or CIS, any and all romantic relationships between Employee and any subordinate employee;

- e) disclose, prior to entering into this Agreement, or at such time as the Employee becomes aware of such circumstances, any financial ties that violate the provisions of RCW 42.23, as amended, and any violations, financial or otherwise, of RCW 42.52, as amended, with every reference to the term "State" in RCW 42.52 being deemed a reference to "Lewis County" for purposes of this Agreement.
- f) Keep confidential and not disclose, during or subsequent to employment with the County, any information that is generally not available to the public concerning the business or affairs of the County which the Employee may have acquired in the course of, or incidental to, her employment with the County. The prohibitions of this section shall not apply to any information that is required by law to be divulged and/or is public information under applicable public disclosure laws; and leave in place, or return immediately upon termination of employment with the County, all property of the County which was provided to or generated by the Employee in the course of, or in connection with, her employment with the County.

SECTION 4. COMPENSATION

- a. The County shall pay the Employee, as compensation for services, a monthly salary as stated in the Lewis County Salary Schedule, as it may be adjusted from time to time, a current copy of which is attached as Exhibit B and incorporated by reference herein. Employee's salary shall be set at Grade 133 Step 6 of the current Salary Grid. The amount of Employee's salary shall be consistent with the Salary Grid as it may be adjusted and adopted.
- b. Because the Employee is engaged in a professional and executive capacity and compensated on a predetermined salary basis, this position is exempt from the provisions of the Fair Labor Standards Act and the Washington Minimum Wage Act. The County will provide benefits subject to the terms and conditions of the various benefit plans as amended from time to time. The County reserves the

right to amend or eliminate any benefit plan. Should the Employee separate from employment with Lewis County, all pay outs for annual leave shall be made in accordance with Section 6.2.5 of the County's Employee Handbook, as amended from time to time, and all pay outs for sick leave shall be made in accordance with Section 6.3.7 of the Employee Handbook, as amended from time to time. These provisions shall hereinafter apply to all references to "benefits," "annual leave," or "sick pay" in this Agreement. Section references in this present 4(b) are to the provisions of the Lewis County Employee Handbook edition of March 12, 2018.

c. Personal Time:

1. Personal Time for the Administrators shall be governed by this Agreement, and not by the Personnel Manual.
2. Eighty (80) hours of Personal Time will be granted on January 1 of each calendar year. In no circumstances shall Personal Time shall carry over from year to year.
3. There shall be no restriction on the number of hours of Personal Time that can be requested at any one time, nor is there a time limit for use within a calendar year.
4. Employee shall submit her requests for Personal Time to the Chief of Internal Services (CIS), who shall decide whether to grant or deny leave. A request for Personal Time shall be subject to the same considerations given to requests for annual leave.

SECTION 5. REIMBURSEMENT OF EXPENSES

Reimbursement for expenses incurred in the performance of Employee's job duties will be made pursuant to the relevant sections of the Employee Handbook, with the provision that access to a County motor pool vehicle cannot be guaranteed.

SECTION 6. PROFESSIONAL DEVELOPMENT

- a. The County, with prior approval by the CIS, may pay reasonable, approved professional dues and subscriptions, included but not limited to Washington State Bar Association membership dues, of the Employee necessary for the Employee's continuing education, growth, and advancement for the benefit of the County.
- b. The County may pay reasonable, approved travel and subsistence expenses of the Employee for continuing education courses necessary for the Employee's professional development for the benefit of the County.

SECTION 7. TERMINATION OF EMPLOYMENT

The County may terminate this Agreement at any time, with or without Cause.

- a. Employee serves at the will and pleasure of the County, acting by and through the CIS. Termination of employment shall at all times be at the discretion of the County Manager or as delegated to the Chief of Internal Services (CIS). Although action by the BOCC is not required for termination of employment, Employee's employment shall also be terminable by way of a motion duly made and passed by the BOCC.
- b. Termination of Employee's employment without Cause shall be effective thirty-five (35) days after written notice is mailed by certified mail to the Employee, or thirty (30) days after notice of termination is hand-delivered to Employee.
- c. Termination of employment may also occur by resignation of the Employee. Termination by resignation shall be effective thirty (30) days after written notice is mailed or delivered by the Employee to the CIS. If the Employee resigns without giving thirty (30) days' advance written notice, the resignation will be effective immediately. In such event, Employee shall be entitled to receive only earned pay, accrued annual leave and sick pay, and other such salary and benefits already earned by the Employee to the extent payable in accordance with County policy.

- d. The County Manager may, or as delegated to the Chief of Internal Services in his/her discretion and without notice, terminate the Employee for Cause, effective immediately. For purposes of this Agreement, "Cause" shall include: dishonesty; fraud; theft or intentional destruction of County property; physical attack upon a fellow employee; being under the influence of alcohol and/or illegal drugs while at work or performing the duties of the Employee's employment; willful malfeasance, misfeasance, or gross negligence in the performance of the Employee's duties; violation of any provision of the Municipal Code of Ethics codified at RCW 42.23, as amended; violation of any provision of the Code of Ethics of Public Service codified at RCW 42.52, as amended (with every reference to the "State" being deemed a reference to Lewis County); violation of the harassment policy of the County; violation of the policies of the County applicable to electronic communications; breach of any provision of this Agreement; conviction of a felony, a gross misdemeanor, or a misdemeanor (or conviction in another jurisdiction of an offense which, had it occurred in Washington, would be a felony, a gross misdemeanor, or a misdemeanor); or conduct of the Employee outside of work that brings public discredit upon Lewis County.
- e. In the case of notice to the County, all notices required by this Agreement may be hand delivered to the County Manager, or mailed to the County Manager at the address listed on the first page of this Agreement. In the case of notice to Employee, all notices required by this Agreement may be hand delivered to the Employee; or they may be mailed to Employee at the address in Employee's personnel file.
 - i. Either party may, at any time, provide the other party with a new address, in writing, for service of notice by mail.
 - ii. In the case of any notice provided to the County Manager, a complete copy thereof shall be hand delivered to the Prosecuting Attorney or to a Civil Deputy Prosecuting Attorney, or a complete copy thereof shall be sent by certified mail and addressed as follows: Civil Division, Prosecuting Attorney's Office, 345 West Main Street, Floor 2, Chehalis, Washington 98532.

SECTION 8. SEVERANCE PAY

- a. If the County discharges the Employee for Cause, or the Employee resigns without giving thirty (30) days' advance written notice, the County shall not provide severance pay; however, the Employee shall be entitled to receive earned pay, accrued annual leave and sick pay pursuant to county policy, and other such salary and benefits already earned by the Employee pursuant to county policy.
- b. If the Employee resigns and gives thirty (30) days advance written notice to the County Manager, then the Employee shall receive all earned pay, and accrued annual leave and sick pay pursuant to county policy, and, in addition, shall receive severance pay equal to one (1) month's salary; provided Employee first signs and returns to the Prosecuting Attorney a release (and does not timely revoke, if applicable), such release to be in a form acceptable to the Prosecuting Attorney.
- c. If the County discharges the Employee other than for Cause, the Employee shall receive all earned pay, accrued annual leave and sick pay pursuant to county policy, and, in addition, shall receive severance pay equal to four (4) months' salary, including in the calculation of the four (4) months' salary the thirty (30) or thirty-five (35) day notice period referred to in Section 7(b) above; provided, Employee first signs and returns to the Prosecuting Attorney and does not timely revoke (if applicable) a release, on a form acceptable to the Prosecuting Attorney.

SECTION 9. DEATH OR DISABILITY

If the Employee dies or becomes permanently disabled and unable to perform the work of the position, the employment relationship shall be terminated as of the last day of the month during which death or permanent disability occurs. Upon the death or permanent disability of the Employee, neither the Employee nor her or her beneficiaries or estate shall have any further rights against the County, except the right to receive:

- a. The unpaid portion of salary for the month in which employment ends and accrued, unused annual leave, and the portion of sick pay allowable per the County's Employee Handbook;
- b. reimbursement of any unpaid business expenses; and,

- c. such life insurance, disability, or other insurance benefits (if any) which may be due to the Employee.

In this Section 9, the term "permanent disability" any situation in which the Employee's health condition has rendered the Employee unable to perform the essential functions of her position with or without reasonable accommodation. This definition is not intended to waive the County's duty of accommodation or due inquiry under federal and state laws pertaining to disabilities.

SECTION 10. INDEMNIFICATION

Whenever an action or proceeding for damages or for a civil penalty is brought against the Employee allegedly arising from actions or omissions of the Employee while performing or in good faith purporting to perform her official duties, the following provisions shall supplement the provisions of RCW 4.96.041 and Lewis County Resolution 19-167, which are incorporated herein by this reference:

- a. Within ten days of receipt of notice of the existence of an action or proceeding for damages, the Employee shall submit a written request to the Chief of Internal Services under RCW 4.96.041 and Lewis County Resolution 19-167 asking that the County defend and indemnify Employee, including her marital community, if applicable. The County may elect to deem the Employee's failure to do so to be a waiver of her rights under RCW 4.96.041.
- b. Upon receipt of such a written request from the Employee, the County, by and through the BOCC, shall make a prima facie determination of whether the action or proceeding arises from actions or omissions of the Employee while performing or in good faith purporting to perform her official duties. If the finding is in the affirmative; the necessary expenses of defending the Employee and her marital community in the action or proceeding shall be paid by the County. If the answer is in the negative, no defense shall be provided and no expenses paid by the County.
- c. In the event the action or proceeding results in an award of damages against the Employee or her marital community, the County shall indemnify Employee for the damages award, unless the finder of

fact determines that the act(s) or omission(s) giving rise to the action or proceeding did not arise from the good faith performance of an official duty.

- d. Except as specifically directed by the County through its attorney, the Employee shall neither negotiate or otherwise effect the settlement of such an action or proceeding, nor admit liability on the part of the County or of herself. A violation of this provision shall constitute breach of this Agreement and shall result in the denial, cessation, or revocation of defense and/or indemnification.
- e. The County shall not be required to defend or indemnify the Employee in criminal proceedings, or in civil proceedings in which the Employee is the plaintiff. Nor shall the County be required to indemnify and defend the Employee in actions brought against the Employee by the County (other than derivative actions asserted by third parties on behalf of the County), to the extent the County makes a prima facie finding and/or it is finally adjudicated that the Employee did not act in good faith and in the reasonable belief that the Employee's actions were appropriate in the discharge of the Employee's duties for the County, or to the extent prohibited by law.
- f. The obligation to defend and to indemnify set forth in the present Section 10 shall survive termination of this Agreement. The Employee agrees to cooperate and participate as necessary to defend an action or proceeding. If the Employee is no longer a County employee at the time of such defense, the County shall compensate the Employee at an hourly rate equal to the adjusted hourly rate of the Employee's final salary while employed by the County, and in addition, will reimburse the Employee for reasonable travel and lodging expenses directly related to the Employee's participation in said defense.

SECTION 11. AMENDMENT; AUTHORITY TO AMEND OR TO GIVE NOTICE

The terms of this Agreement may not be altered, amended, or otherwise modified except by the express, written consent of the parties. Employee acknowledges that only the County Manager, or as delegated

to the BOCC by way of a motion duly made and passed, has the authority to give any notice required or anticipated by the Agreement, or to amend or to waive any provision hereof. Accordingly, Employee stipulates that he shall at no time assert that any other officer or employee of the County (including any one member of its Board of County Commissioners) has apparent or ostensible authority to amend, modify, or waive any provision of this Agreement, or to give any notice required or anticipated by this Agreement.

SECTION 12. SEVERABILITY

If any section or other provision of this Agreement is held to be invalid or unenforceable, the remaining sections or provisions shall remain in full force and effect.

SECTION 13. ASSIGNMENT OR DELEGATION

The Employee may not assign any right, benefit, or interest in this Agreement without the prior written consent of the County; any purported assignment without such consent will be void. The Employee may not delegate any obligation imposed upon her by this agreement to any third party without the prior written consent of the County.

SECTION 14. BINDING EFFECT

This Agreement is for the benefit of, and shall remain binding upon, the respective legal representatives and successors of the parties.

SECTION 15. INTERPRETATION

- a. The section headings in this Agreement are for reference only and shall not by themselves determine the construction or interpretation of the Agreement.
- b. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted that provision, and this Agreement shall be construed as if jointly prepared by the parties.

- c. In this Agreement the singular shall be deemed to embrace the plural and the masculine shall be deemed to embrace the feminine.

SECTION 16. APPLICABLE LAWS

This Agreement is made in Chehalis, Washington. It shall be construed in accordance with the laws of the State of Washington (excluding Washington's choice of law rules) and of the United States of America.

SECTION 17. WAIVER AND CONSENT

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by the parties hereto or by their authorized representatives.

SECTION 18. ARBITRATION

County and Employee agree to resolve any and all disputes between them arising out of or in any way related to the employment relationship, including any disputes upon termination, by binding arbitration to the fullest extent permitted by law. The disputes subject to arbitration include, but are not limited to, all potential claims relating to employment and termination of employment, such as breach of contract, tort, whistleblower, discrimination, harassment, wrongful termination, demotion or discipline, failure to accommodate, denial of family and medical leave, compensation or benefits claims, constitutional claims and claims for violation of any local or state law including all claims under Chapter 49.60 RCW, federal law, statute, regulation or ordinance or common law. This Agreement applies to all claims against any of County's departments, agencies, elected officials, appointed officials, employees, agents, directors, representatives, and attorneys,

where such claims arise out of, or relate to, their actions on behalf of County. Employee and County understand that by entering into this Agreement, both parties are giving up their constitutional right to have any such dispute decided in a court of law, and if applicable, before a jury, and instead, agree to the use of binding arbitration as described in this Agreement. This Agreement does not include claims that, by law, may not be subject to mandatory arbitration.

The arbitration will be conducted in accordance with the JAMS Employment Arbitration Rules (the "JAMS Rules" which are available online at www.jamsadr.com). To the extent that any of the JAMS Rules conflicts with any arbitration procedures required by state law, the arbitration procedures required by state law shall govern. The arbitration will be conducted in the State of Washington. The arbitration will be conducted by a single neutral arbitrator selected in accordance with the JAMS Rules. The parties are entitled to representation by an attorney or other representative of their choosing. Discovery shall be allowed and conducted in accordance with the then current JAMS Rules. The arbitrator shall have the power to enter an award as could be entered by a court having competent jurisdiction. The award shall be issued in writing and state the essential findings and conclusions on which such award is based. The parties agree to abide by any valid award rendered by the arbitrator, and judgment on the award may be entered in any court having jurisdiction thereof.

SECTION 19. VENUE

Venue for any legal action arising under or in any way relating to this Agreement, such as enforcement of an arbitration award entered pursuant to Section 18 hereof, shall lie exclusively in the Superior Court of Washington for Lewis County in Chehalis, Washington.

SECTION 20. ENTIRE AGREEMENT

This Agreement, including attached Exhibits referenced herein, constitutes the entire agreement between the parties and supersedes all prior oral or written agreements or understandings between the parties with respect to the subject matter of this Agreement. Where this Agreement does not address personnel policies and procedures adopted in the Employee Handbook, the Handbook shall be determinative in any dispute. Where this Agreement addresses matters not contained in the Handbook, where this Agreement may specifically contradict the Handbook, or if any party asserts that an ambiguity exists between this Agreement and the Employee Handbook, it is the express intent of the County and of the Employee that this Agreement shall be determinative.

SECTION 21. SURVIVAL OF AGREEMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and all of their respective heirs, successors, and (to the extent assignment is permitted by this Agreement) their assigns. The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Agreement shall so survive.

SECTION 22. NOTICES

In the case of notice to the County, all notices required by this Agreement may be hand delivered to the County Manager, or mailed to the County Manager at the address listed on the first page of this Agreement. In the case of notice to Employee, all notices required by this Agreement may be hand delivered to Employee; or they may be mailed to Employee at the address in Employee's personnel file. Either party may, at any time, provide the other party with a new address, in writing, for service of notice by mail.

In the case of any notice to the County, a complete copy thereof shall be hand delivered to the Prosecuting Attorney or to a Civil Deputy Prosecuting Attorney, or a complete copy thereof shall be sent by certified mail and addressed as follows: Civil Division, Prosecuting Attorney's Office, 345 West Main Street, Floor 2, Chehalis, Washington 98532.

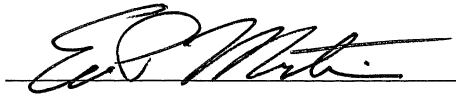
SECTION 23. AGREEMENT READ AND UNDERSTOOD BY EMPLOYEE

Employee acknowledges that he has read and understood each and every section and provision of this Agreement. Employee further acknowledges that he has had ample opportunity to consult with an attorney of her own choosing before signing this Agreement.

SIGNED BY THE PARTIES HERETO ON THE DATES NOTED BELOW:

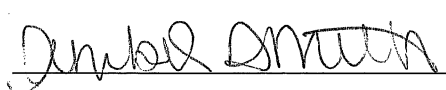
LEWIS COUNTY

By: Erik Martin,
County Manager

 Date: 10/26/2022

EMPLOYEE

Amber Smith

 Date: 10/26/22