

Contract of Employment

– between –

Lewis County, Washington, % Board of County Commissioners,
351 NW North Street, Chehalis, Washington 98532
(hereinafter referred to as the “County”);

– and –

Erik Martin, of 2606 30th Avenue SE, Olympia, Washington 98501
(hereinafter referred to variously as “Mr. Martin” and as the “Employee”).

Therefore the parties hereto contract as follows:

SECTION 1. EMPLOYMENT

The County employs Mr. Martin as Director of Public Works/County Engineer to perform such duties as are currently prescribed or may be prescribed by the Lewis County Board of Commissioners (hereinafter referred to variously as the “Commissioners” and as the “Board”), in its sole discretion. Such employment is at-will and may be terminated at any time, with or without cause. The current Description of Duties (Job Description), prescribed by the Board of the said position comprises Exhibit A and is incorporated by reference herein, and shall continue in full force unless and until modified by the Board in its sole discretion.

SECTION 2. TERM

This Agreement shall be effective from July 11, 2016, until such time as it may be terminated pursuant to any of the provisions set out hereinbelow. It may be terminated in accordance with the provisions hereof at any time, with or without cause.

SECTION 3. DUTIES OF EMPLOYEE

The Employee:

- a. Promises to diligently perform all duties assigned to him and will devote substantially all of the Employee's efforts to those duties on a full-time basis and to the best of the Employee's skill and ability.
- b. Shall not engage in any other employment (either paid or unpaid) which, in the sole opinion of the Commissioners, may interfere with his employment with the County.
- c. Shall faithfully adhere to the Code of Ethics for municipal officers RCW 42.23. The employee also shall comply with the provisions of the Code of Ethics in Public Service, RCW 42.52, construed such that each reference to "state officer" shall include and encompass an officer of a municipal corporation.
- d. Shall comply with the Lewis County harassment policy and complaint procedure and immediately report to the Board's Chair any and all harassment, violations of the policy, and complaints under the policy. Additionally, the Employee shall immediately disclose to the Board's Chair any romantic or intimate relationship between Employee and any subordinate employee.
- f. Shall 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, his employment with the County. The prohibitions of this section shall not apply to any information that is required by law to be divulged.
- g. Shall 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, his employment with the County. Employee shall not copy or appropriate any intangible property of the County for his own purposes or for the purposes of a third party.
- h. All references herein to a State statute or to a Lewis County policy, ordinance, or County Code provision shall be construed to include any future statute, policy, ordinance, or code provision which amends, supplements, replaces, or supplants such statute, policy, ordinance, or County Code provision.

SECTION 4. COMPENSATION

- a. The County shall pay the Employee, as compensation for services rendered, a monthly salary calculated as per Grade 35, Step H, of the Lewis County Salary Schedule. Any changes or adjustments to the said Schedule over time shall apply to Employee.
- b. Because Employee is engaged in a professional and executive capacity and compensated on a predetermined salary basis, his 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 county benefit plans for which the Employee is eligible in his position and as those benefit plans may be amended from time to time. The County reserves the right to amend or eliminate any benefit plan.
- c. At such time as Employee separates from employment with Lewis County, all pay-outs or accrued annual leave shall be made in accordance with Section 6.2.5 of the Employee Handbook, as amended from time to time, and all pay-outs for accrued sick leave shall be made in accordance with Section 6.3.7 (1) 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.
- d. Personal Time:
 1. Up to eighty (80) hours of Personal Time will be granted to the Employee on January 1st of each calendar year. Unused Personal Time shall expire on December 31st of each calendar year, and shall not carry over from one calendar year to the next. There shall be no restriction on the number of available hours of Personal Time that can be requested for use at any one time, nor is there a timetable for use of Personal Time within a calendar year. During calendar year 2016 Employee’s grant of Personal Time shall be *pro rated* as from July 1, 2016; *i.e.*, Employee shall be granted up to 38.5 hours of Personal Time for calendar year 2016.
 2. Employee shall submit his requests for Personal Time to the Board of County Commissioners, which, in its sole and exclusive discretion, shall decide whether

to grant or deny all or any portion of the requested leave. Employee's requests to take annual leave shall be subject to the same requirement and to the same discretion of the Board.

3. Provisions in the County's Employee Handbook inconsistent with the provisions concerning personal time set out hereinabove shall not apply to Employee.
4. The Board shall make reasonable efforts to permit Employee to utilize his leave entitlements set out herein. However, the parties recognize that exigent circumstances (including without limitation acts of God and unforeseeable requirements for Employee's professional services or expertise) may from time to time cause full utilization of Employee's leave entitlements to be either impractical or impossible. In such instances Employee shall not be entitled to monetary or other consideration for accrued but unused leave, nor shall he be entitled to carry such leave forward into a future calendar period if such carry-over would be contrary to provisions of this Agreement or of any adopted County policy, manual, or handbook.

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; however, use of a County motor pool vehicle cannot be guaranteed.

SECTION 6. PROFESSIONAL DEVELOPMENT

- a. The County may pay Employee's reasonable, pre-approved professional dues and subscriptions necessary for the Employee's continuing education, growth, and advancement for the benefit of the County.
- b. The County may pay reasonable, pre-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 its Board of County Commissioners. Termination of employment shall be upon the affirmative vote of a majority of the Board.
- b. Termination of Employee's employment without Cause shall be effective 35 calendar days after written notice thereof is mailed by certified mail to the Employee, or 30 calendar days after written notice thereof is hand-delivered to the Employee, whichever is sooner.
- c. Termination of employment also may 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 Board. If the Employee resigns without giving thirty (30) days' advance written notice to the Board, 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.
- d. The Board may, in its discretion and without notice, terminate the Employee for Cause, effective immediately. For purposes of this Agreement, "Cause" shall include: dishonesty; fraud; theft; intentional destruction of County property; physical attack upon a fellow employee; intentionally being under the influence of alcohol and/or illegal or recreational 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 or for a crime of moral turpitude; or conduct of the Employee outside of work that brings public discredit upon Lewis County.

- e. All notices required or anticipated by this Agreement may be hand delivered, in the case of the County, to the Chair from time to time of its Board of County Commissioners; or they may be mailed to him (or to her, as the case may be) at the address shown on the first page of this Agreement. All notices required or anticipated by this Agreement may be hand delivered, in the case of Mr. Martin, to him; or they may be mailed to him at the address shown on the first page of this Agreement.
 - 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 such notice provided to the County, a complete copy thereof shall simultaneously be hand delivered to the Prosecuting Attorney or to a Civil Deputy Prosecuting Attorney, or a complete copy thereof shall simultaneously 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

If the Board 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, and other such salary and benefits already earned by the Employee.

- b. If the Employee resigns and gives thirty (30) days advance written notice to the Board, then the Employee shall receive all earned pay, and accrued annual leave and sick pay, 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), on a form acceptable to the Prosecuting Attorney, releasing Lewis County, its Commissioners, elected officials, employees, attorneys, and other agents, from any and all liability to the fullest extent permitted by law.

- c. If the Board discharges the Employee, other than for Cause, the Employee shall receive all earned pay, accrued annual leave and sick pay, and, in addition, shall receive severance pay, equal to four (4) month's salary, including in the calculation of the four (4) months' salary the thirty (30) or thirty five (35) days notice period referenced in Section 7(b); provided, Employee first signs and returns to the Prosecuting Attorney and does not timely revoke (if applicable) a release, on a form provided by the Prosecuting Attorney or, if the Employee chooses, an alternative form acceptable by the Prosecuting Attorney, releasing Lewis County, its Commissioners, elected officials, employees, attorneys, and other agents, from any and all liability to the fullest extent permitted by law.

SECTION 9. DEATH OR DISABILITY

If the Employee dies or becomes permanently disabled and unable to perform the work described in Exhibit A, as amended, 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 he or his 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, as well as accrued, unused annual leave and sick pay.
- b. Reimbursement of any unpaid business expenses; and,
- c. Life insurance, disability insurance, and/or any other post-termination benefits in accordance with the terms and conditions of the applicable benefit plans, if any.

Employee shall be deemed to suffer permanent disability in any instance in which his health or physical condition render him unable to perform any essential functions described in Exhibit A, as amended, whether with or without reasonable accommodation. This definition is not intended to waive the County's duty of accommodation or its duty of due inquiry under federal and state laws pertaining to disabilities.

For purposes of this Section, Employee's essential job functions shall include, but not be limited to, those set out in Exhibit A, as amended from time to time.

SECTION 10. INDEMNIFICATION

Whenever an action or proceeding for damages is brought against the Employee, allegedly arising from actions or omissions of the Employee while performing or in good faith purporting to perform his official duties, the following provisions shall supplement the provisions of RCW 4.96.041 and Lewis County Resolution 87-26, which are incorporated herein by this reference:

- a. Within ten (10) days of receipt of notice of the existence of an action or proceeding for damages, the Employee shall submit a written request to the Clerk of the Board asking that the County defend and indemnify the Employee, including his marital community, if applicable.
- b. Upon receipt of such a written request from the Employee, the Board shall, within a reasonable time, make a prima facie determination whether the action or proceeding arose from actions or omissions of the Employee while performing or in good faith purporting to perform his official duties. If the finding is in the affirmative, the necessary expense of defending the Employee and his 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 his marital community, the County shall indemnify the 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, or unless a court of competent jurisdiction has ordered otherwise.
- d. Except as specifically directed by the Board, through its legal representative, the Employee may not engage in the following acts with respect to actions or proceedings for damages defended pursuant to this Agreement: (1) negotiate or otherwise effect the settlement of said action or proceeding; or (2) admit liability on

the part of the County, including admissions of personal liability. A violation of this provision shall constitute breach of this Agreement and shall result in the denial of defense and 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, or 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 Board 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. This indemnification provision 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.
- g. Nothing contained herein shall be construed to limit the County's discretion per RCW 4.96.041(4) to pay or not to pay any award of punitive damages.

SECTION 11. PUBLIC RECORDS ACT

Employee shall at all time (both during and subsequent to the term of this Agreement) render all possible assistance to the County in fulfilling the County's obligations to third parties pursuant to Washington's Public Records Act, including any necessary travel and/or testimony. If County requests such assistance subsequent to the termination of this Agreement, then County shall compensate Employee for all hours spent in rendering such cooperation at Employee's hourly rate of take-home pay effective on the date prior to his termination of County employment (less benefits). All such remuneration shall constitute taxable income of Employee. County also shall reimburse all expenses necessarily incurred by Employee in rendering such assistance.

SECTION 12. 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 a majority of the members from time to time of County's Board of County Commissioners have 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 13. 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 14. ASSIGNMENT OR DELEGATION

The Employee may not assign any right under this Agreement, nor may he delegate any benefit, or interest arising pursuant to this Agreement, without the express, written consent of the Board; any purported assignment without such consent will be void and in no event will the County honor such an assignment. However, nothing herein shall be construed to limit the right of Employee to allocate and reallocate the day-to-day work of his Department among himself and its other staff members.

SECTION 15. BINDING EFFECT

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

SECTION 16. HEADINGS

The section headings in this Agreement are for reference only and shall not by themselves determine the construction or interpretation of the Agreement.

SECTION 17. APPLICABLE LAWS

Both the County and the Employee agree to abide by all applicable federal, state, and local laws. This Agreement shall be governed by the laws of state of Washington excluding Washington's choice of law rules.

SECTION 18. WAIVER AND CONSENT

No waiver or consent, express or implied, by either party, to any breach or default by the other party of any or all of its obligations under this Agreement, will be valid unless it is in writing and stated to be a "waiver" or "consent."

SECTION 19. ARBITRATION

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the Washington Arbitration and Mediation Service (WAMS) under its Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. So long as WAMS maintains a Tacoma Office, arbitration shall occur at that Office.

SECTION 20. VENUE

Venue for any legal action or legal proceeding arising under or in any way relating to this Agreement shall lie exclusively in the Superior Court of Washington for Thurston County, at Olympia; or in the United States District Court for the Western District of Washington, at Tacoma.

SECTION 21. 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 Employee Handbook shall be determinative in any dispute. Where this Agreement addresses matters not contained in the Employee

Handbook, or where it may specifically contradict the Employee Handbook, it is the express intent of the County and Employee that this Agreement shall be determinative.

SECTION 22. 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 his own choosing before signing this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement on the ____ day of _____, 2016.

LEWIS COUNTY

P.W. Schulte, Chair, Board of County Commissioners

Gary Stamper, Vice Chair, Board of County Commissioners

Edna J. Fund, Commissioner

ERIK MARTIN

Erik Martin