

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 21-11-30-09

IN THE MATTER OF UPDATING
COUNTY COUNSEL'S EMPLOYMENT
AGREEMENT

WHEREAS, Steve Dingle was hired as County Counsel with an employment agreement effective January 8, 2013; and

WHEREAS, since 2013, County Counsel Dingle's employment agreement has been renewed several times with the current employment agreement expiring on November 30, 2021; and

WHEREAS, the current employment agreement originally required notice of non-renewal by October 1, 2021 but the parties extended that timeline twice to allow a robust discussion of the options for an updated agreement. The notice of non-renewal date is currently November 30, 2021; and

WHEREAS, the Board has met in executive session multiple times since September to discuss County Counsels employment agreement; and

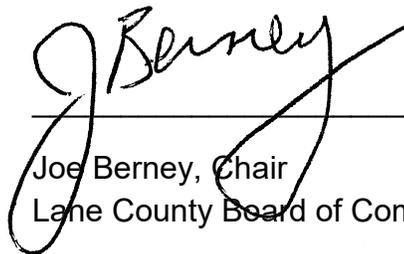
WHEREAS, the County Counsel has received a successful or better annual performance review each year since he entered into an employment agreement on January 8, 2013;

NOW, THEREFORE, the Board of County Commissioners of Lane County ORDERS as follows:

1. That Steve Dingle continue his employment with Lane County in the position of County Counsel through the end of 2022.
2. That his current contract is replaced with an updated employment agreement as reflected in the attachment to this order.

3. That the Board Chair is authorized to immediately execute the final employment agreement.

DATED this 30th day of November 2021.



Joe Berney, Chair
Lane County Board of Commissioners

EMPLOYMENT AGREEMENT

BETWEEN: Lane County (Employer or County)
AND: Stephen Dingle (Employee or County Counsel)
Collectively the “Parties.”

EFFECTIVE DATE: Date last signed by both Parties.

RECITALS

- A. County Counsel has been employed by the County since 2013 and has been in public service for over thirty-seven years. Over the course of his career with the County, County Counsel has received high reviews from his colleagues and peers and has created and overseen an effective and well-respected legal team.
- B. County Counsel’s employment with the County has historically been governed by annual employment contracts and applicable rules that apply to unrepresented County employees. His current contract runs through December 1, 2021.
- C. Given changing circumstances, the parties have agreed that County Counsel’s current one-year contract will be replaced with a transition employment contract with the goal of hiring and training a new County Counsel by the end of 2022 and utilizing County Counsel over the next year to help with additional transition and training duties.
- D. The terms of this transition contract (the Agreement) completely supersede and replace all current and previous employment contracts with County Counsel and, in the event of a conflict, the Agreement will apply in lieu of any applicable County employment policies.
- E. The below outlines the terms of County Counsel’s employment over the next year and the parties’ transition plan. County Counsel has been advised to seek independent legal counsel when reviewing the terms of this Agreement and the associated release.

AGREEMENT

1. Position, Policies, Duties and Term: Stephen Dingle hereby accepts the position of Lane County Counsel under the following terms and conditions:

1.1 Reporting Structure and Applicable Employment Policies and Contract Terms: The County Counsel is an employee of the County and will continue to report directly to the Lane County Board of Commissioners (“Board”). County Counsel is subject to all Lane County rules, policies, and procedures unless specifically modified in writing by this Agreement. In the event of a direct conflict between this Agreement and Lane County rules, policies or procedures, this Agreement shall control. As of the Effective Date, the terms of this Agreement control. This Agreement supersedes and replaces any and all previous contracts between the Parties.

12 Term: The County Counsel's employment under this Agreement shall commence on the Effective Date and end on December 30, 2022 (Expiration Date), unless earlier terminated or extended as provided for in this Agreement. This contract expires by its terms on the Expiration Date. Notice of non-renewal is not required.

13 Duties: County Counsel will continue to perform all duties historically performed as County Counsel and as directed and required by the Board. Throughout the term of this Agreement, however, County Counsel will perform additional transition duties. Those duties include, but are not limited to, assisting with and providing feedback with respect to recruiting, hiring and training new County Counsel; transferring long-term projects to other attorneys in the County Counsel office; documenting daily duties and procedures; and otherwise making efforts to ensure operational continuity after the Expiration Date.

14 Reviews: No formal performance reviews will be conducted during the term of the Agreement. The Board, however, retains the right to collect and provide feedback to County Counsel as necessary to ensure performance of his duties.

2 Compensation and Benefits:

2.1 Base Rate: Effective the first full pay period after January 1, 2021, and except as stated herein, County Counsel's base salary will be \$108.18 per hour (Original Base Rate), less applicable deductions and withholdings. Periodic monthly salary payments will be made in accordance with normal Lane County payroll practices and procedures, although payments due for work already performed may be paid in a lump sum no later than December 17, 2021. County Counsel's base rate for 2021 and 2022 was determined after reviewing comparator organizations.

2.2 Cost of Living: The County shall pay to County Counsel any cost of living increases and benefits that are provided to County non-represented employees.

2.3 Stipends: County shall provide the County Counsel with a vehicle and phone stipend in an amount as provided by Lane County policy. Starting on the first full pay cycle after December 1, 2021, County Counsel shall receive a monthly stipend in the amount of 1.2% of his annualized Original Base Rate, not considering any other increases in compensation, for the additional transition duties outlined above to be paid out periodically through the County's normal payroll processes.

2.4 Deferred Compensation: The County shall pay 2% of County Counsel's salary each pay period into County Counsel's deferred compensation account.

2.5 Benefits: The County shall provide to County Counsel any benefits that are provided to County non-represented employees.

2.6 Public Employee Retirement System (PERS): County shall make PERS payments into the County Counsel's account consistent with PERS payments for other non-represented Tier 1 employees and Oregon law.

2.7 Time Management: County shall provide the County Counsel with Time Management (TM) accrual in accordance with the Administrative Procedures Manual Chapter 3, Section 34, Issue 7 at the rate of 14.462 hours per pay period and annual TM sales and TM payout

upon separation in accordance with the Administrative Procedures Manual.

3. Transition Details:

3.1 Separation Date: County Counsel's last day of employment with the County shall be the Expiration Date. By the end of the day on the Expiration Date, County Counsel will complete all necessary transition duties and take steps to ensure the safe and secure return of all County property (i.e., laptop, keys, cards, cars, etc.). County Counsel understands and agrees that his current County email, County documents and other County property and intellectual property are solely the property of the County and that such documents will be preserved, relied upon and used by the County to ensure operational continuity after the Expiration Date.

3.2 Transition Communications: At least ten days before the Expiration Date, County Counsel will provide the Director of Human Resources with a suggested transition message for Lane County employees and a message to be posted as an away message on his County email account. The County will approve such messages before they are communicated.

3.3 Final Payments and Benefits: Accept as otherwise provided for in this Agreement, on the Expiration Date, County will pay County Counsel his accrued but unused TM as of the Expiration Date in accordance with County policy. If County Counsel is employed by the County under this agreement on the Expiration Date and in order to ensure that County Counsel remains an employee through the contract term, the County will pay County Counsel an amount equal to 20% of the annualized Original Base Rate ("retention pay"). Within the time prescribed by Oregon law, County Counsel will also be provided with a final paycheck that includes all wages due and owing. County Counsel agrees that after payments are made under this Section, he will not be entitled to any additional wages, compensation or payments, nor will such wages or payment be due and owing to County Counsel. The payments provided in this section constitute payment in full. Except for payments made through PERS, other employer-sponsored retirement plans, and insurance benefits required under state or federal law, after the Expiration Date, County Counsel will not be entitled to any County benefits, including but not limited to those stated in Section 2, after the Expiration Date.

3.4 Release: In order to ensure a smooth transition, County Counsel hereby releases and forever discharges County, its affiliates, subsidiaries, and respective agents, present and former commissioners, officers, executives, employees, predecessors and/or successors in interest, attorneys, heirs and assigns (individually and collectively "Released Parties"), from any and all matters, claims, complaints, charges, demands, damages, causes of action, debts, liabilities, controversies, judgments and suits of every kind and nature whatsoever, as of the date of this Agreement, foreseen or unforeseen, known or unknown, including but not limited to, those arising out of County Counsel's employment with, separation from, or association with Employer. Claims released under this Agreement shall broadly include, but shall not be limited to, claims for the following, to the extent such claims can be legally released: breach of contract, including any previous employment contracts between the parties; federal, state, and local statutory wage and hour claims; employment references; workers' compensation benefits; federal and state claims concerning use of family and medical leave; federal, state and local claims of discrimination, retaliation or harassment based on race, color, religion, national origin, sexual orientation, sex, age, disability, marital status, familial status, injured worker status, status as a workers' compensation claimant, or any other protected status or protected activity under any state, federal, or other law or regulation; and claims for interference with contract, promissory estoppel, wrongful discharge, infliction of emotional distress, whistleblowing, invasion of privacy, or defamation. The

scope of this release shall be construed as broadly as possible, and any ambiguity shall be read in favor of the full and complete release. However, nothing in this paragraph shall be construed to prevent the Parties from enforcing the provisions of this Agreement.

This waiver and release specifically include, but is not limited to, any claim under the following, to the extent such claims can be legally released: ORS Chapters 652, 653, 654, 657, and 659, and 659A et. seq.; Title VII of the Civil Rights Act of 1964; the Post Civil War Civil Rights Act as currently codified at 42 U.S.C. § 1981-1988; the Civil Rights Act of 1991; the National Labor Relations Act; ERISA, as currently codified at 29 U.S.C. §§ 1001 et seq.; the Age Discrimination in Employment Act, as currently codified at 29 U.S.C. § 623 et seq; the Older Workers' Benefit Protection Act; the Equal Pay Act of 1963; the Fair Labor Standards Act; the Pregnancy Discrimination Act; the Occupational Safety and Health Act; the Americans with Disabilities Act; the Vietnam Era Veterans' Readjustment Act; the Walsh-Healy Act; the Contract Work Hours and Safety Standards Act; the Rehabilitation Act of 1973; the Davis-Bacon Act; Executive Order 11246; the Surface Transportation Assistance Act of 1982; any past, present, or future regulations, rules, opinions, or decisions promulgated pursuant to the aforementioned laws or other authority granted, or in the future granted, by a state or the federal legislature; and any contract, tort, or other common-law or statutory theory of recovery. As part of this release, Employee agrees to waive the right to pursue any retaliation claim arising from actions or events that occurred through the date of execution of this Agreement under any applicable state and federal law against the Released Parties.

Nothing in this Agreement releases claims that cannot be released as a matter of law, including but not limited to, any claims Employee may have for unemployment compensation benefits, worker's compensation benefits, claims under the Fair Labor Standards Act, health insurance benefits under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), or any claims with regard to vested benefits under a retirement plan governed by the Employee Retirement Income Security Act ("ERISA") to the extent that those claims cannot be waived by law. In addition, nothing in this Agreement shall be construed to prohibit Employee from pursuing or participating in any investigation or proceeding conducted by the Equal Employment Opportunity Commission ("EEOC") or another federal, state, or local agency with jurisdiction over workplace or employment issues, to the extent the law requires Employee be allowed to do so. Further, nothing in this Agreement, including without limitation, any provision of this Agreement regarding Employee's duty of cooperation of the Agreement's terms, prohibits, prevents, or interferes with Employee's right to communicate, and/or initiate communications, with the EEOC and other federal, state, or local agencies with jurisdiction over workplace or employment issues, to the extent the law requires Employee be allowed to do so. Notwithstanding the foregoing, Employee agrees to waive Employee's right to recover any monetary gain whatsoever in any charge, complaint, or lawsuit against Employer's Released Parties filed by Employee or by anyone else on Employee's behalf arising out of events or actions which occurred up until the date of execution of this Agreement, including the recovery of attorney's fees from the filing of administrative complaints, except as such recovery cannot be waived by law.

Employee agrees and understands that this Agreement is made in settlement of, and in full satisfaction of, all County Counsel's actual and potential claims of any nature whatsoever, whether known or unknown. Employee acknowledges that this Agreement is full and fair compensation for the release of any and all County Counsel's claims, whether such claims have been asserted or are as yet unasserted.

County Counsel further waives, releases, and discharges any rights that he may have under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq (“ADEA”). The ADEA prohibits age discrimination in the terms, conditions, and privileges of employment. County Counsel makes the following representations with respect to this release: this Agreement is made knowingly and voluntarily. County Counsel has been advised to consult an attorney concerning the review and execution of this Agreement and the release of his rights under the ADEA. County Counsel was given at least twenty-one (21) days to review and consider this Agreement. If County Counsel signs this Agreement prior to the expiration of the twenty-one (21) day consideration period, he acknowledges that he is doing so voluntarily and of his own free will and that doing so will end the twenty-one (21) day consideration period and begin the revocation period. County Counsel understands he has a seven-day (7) period of revocation following execution of this Agreement and that the waiver of his ADEA rights will not be effective until the seven-day (7) revocation period has expired. To revoke this waiver of ADEA rights, County Counsel shall deliver written notice to the Director Human Resources, not later than 5:00 p.m. on the seventh (7th) day following his execution of this Agreement.

In the event of a legal determination that this ADEA waiver did not comply with applicable law, the Parties agree that the Release of Claims set forth in this Agreement, except for the release of any ADEA claims, shall nevertheless continue in full force and effect.

The compensation and final benefits provided for in this agreement and other obligations contained in this Agreement are contingent on this Agreement not being timely revoked as provided above. In the event County Counsel timely notifies Employer that he is revoking this waiver of his ADEA rights, Employer may elect, at Employer’s sole option, to: a) declare the entire Agreement void and unenforceable, maintaining the provisions that void and terminate County County’s previous employment contracts, and withhold benefits and other benefits that would otherwise be owed pursuant to this Agreement; or b) pay and provide the benefits offered herein and other benefits and, except for the waiver of ADEA rights, declare that the remainder of the Agreement shall continue in full force and effect.

Nothing stated above shall be construed as impacting the County’s obligation to pay County Counsel’s payment of wages for services provided.

4. Modifications to the Agreement:

4.1 Early Termination:

- *With Cause:* The County may terminate this Agreement immediately for cause, as that term is defined by County policy. “With Cause” is defined as a violation of the County Rules in the Lane County Administrative Procedures Manual. In the event there is a dispute between the parties, the final and binding determination will be made by an arbitrator selected from the Lane County Circuit Court list and using all of the procedures provided therein for the selection of an arbitrator. The costs of the arbitration will be split equally between the Parties. Each party will bear their own costs for the arbitration. In the event of a for cause termination, County Counsel is entitled to all salary and wages due and owing for work performed prior to the termination date. All other compensation, benefits (including the value of accrued but unused TM, stipends and retention pay) and rights provided under this Agreement or provided for under Lane County policies, procedures or guidance are

forfeited upon a for cause termination. If there are allegations or reason to believe that County Counsel engaged in behavior that may warrant a for cause termination or behavior that would otherwise endanger the community, County personnel, property, information, or reputation, County Counsel may be placed on administrative leave or the County may take other administrative actions to mitigate the risk, including but not limited to changing duties and work location.

- *Without Cause:* Either the County or County Counsel can terminate this Agreement early by providing the other party 60 days' notice of termination. If the County terminates without cause, County agrees to pay County Counsel the full value of the remaining months of salary and benefits due under this Agreement, including value of PERS payments, and accrued time management (TM) under County policy. If County Counsel terminates without cause, he is entitled to all salary and wages due and owing for work performed prior to his termination date. All other compensation, benefits (including the value of accrued but unused TM under County policy, stipends and retention pay) and rights provided under this Agreement or provided for under Lane County policies, procedures or guidance will be forfeited upon a without cause termination initiated by County Counsel. Nothing about either parties' early termination will impact, modify, narrow or limit the scope of County Counsel's release provided for above.

42 Extension: By mutual agreement, the parties can extend the term of this Agreement. Such extensions shall be agreed to in writing. In the event of an extension, the Expiration Date will be modified to reflect the extension. The rest of the terms of the agreement shall remain in full force in effect.

43 Other amendments: Amendments must be in writing and mutually agreed to.

5 Notices and Governing Law: Notices required by this Agreement must be in writing and must be personally delivered to the Human Resources Director for the County, or to the County Counsel, as applicable. In the event personal delivery is not possible, written notice must be given in the manner most likely to provide actual notice. This contract is governed by Oregon law. Any disputes arising out of or relating to this Agreement shall be heard in Lane County, Oregon.

6 Counterparts and Duty of Cooperation: This Agreement can be signed in counterparts. County Counsel agrees and represents that he will take any and all actions necessary to effectuate the terms and intent of this Agreement. He further agrees to cooperate with the implementation and intent of this Agreement, including but not limited to cooperating with the transition of duties to other attorneys in County Counsel's office and/or new County Counsel.

7. Acknowledgments: County Counsel represents the following:

7.1 Employee understands this Agreement and has had a fair opportunity to review this Agreement and release, ask questions concerning its content and meaning, and discuss it with persons of County Counsel's choosing and has been advised to consult an attorney of his choice with regard to questions or concerns, and specifically whether it is in Employee's best interest to execute this agreement.

(Employee's initials)

72 Employee represents that as of the Effective Date, Employee has been fully compensated for all of Employee's working time and has received all compensation and benefits that Employee has earned or may have been entitled to as an employee of Employer.

73 Employee acknowledges and agrees that the compensation and final pay and benefits described in this Agreement, are in addition to those benefits to which Employee is otherwise entitled and are sufficient consideration for this Agreement. Employee understands that he shall not receive any payment or benefit from Employer other than that specified above, and Employee further understands and covenants that Employer does not have, and will not have, any obligation to make any further payment, for any reason whatsoever, to or on Employee's behalf.

Lane County
Board of County Commissioners

County Counsel

By: _____

Stephen Dingle

Name: _____
Chair, Lane County Board of Commissioners

Date: _____, 2021

Date: _____, 2021