



## AT-WILL EMPLOYMENT AGREEMENT

**James D. Herberg  
General Manager**

### ORANGE COUNTY SANITATION DISTRICT

THIS AT-WILL EMPLOYMENT AGREEMENT ("Agreement") is entered into, to be effective the **1<sup>st</sup> day of July, 2019**, by and between:

ORANGE COUNTY SANITATION DISTRICT, hereinafter referred to as "District";

AND

JAMES D. HERBERG, sometimes hereinafter referred to as "General Manager"; collectively referred to herein as ("the Parties")

### RECITALS

WHEREAS, District desires to continue to employ James D. Herberg ("Mr. Herberg"), as General Manager of District, pursuant to the terms and conditions as set forth in this Agreement; and

WHEREAS, Mr. Herberg, by virtue of his education, training and experience, is fully qualified to fill the position of General Manager and desires to continue to serve the District as its General Manager, pursuant to the terms and conditions of this Agreement; and

WHEREAS, per Resolution No. 19-12 adopted on September 25, 2019, the District's Board of Directors has approved and authorized the Board Chair to execute this "At-Will Employment Agreement" to include a base building salary increase of 5.5% of his current salary.

WHEREAS, at the beginning of negotiations of a new Employment Agreement, the

parties agreed that any salary changes agreed to would take effect retroactively to the first pay period of July 2019, which is the first pay period in the current fiscal year.

NOW, THEREFORE, the Parties hereto agree as follows:

**Section 1:** District hereby continues to employ Mr. Herberg to serve as General Manager of the Orange County Sanitation District, commencing on the effective date hereof, and continuing until termination by either Party, as provided in this Agreement.

In that capacity, Mr. Herberg agrees to perform the functions and duties of General Manager, the administrative head of the District, as prescribed by the laws of the State of California, and by the rules, regulations, decisions, and directions of the Board of Directors of District (hereinafter referred to as "Board"). The General Manager's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty-hour work week and may also include time outside normal office hours (including attendance at Board and Committee meetings). General Manager is classified as an exempt employee under the Fair Labor Standards Act ("FLSA") and shall not be entitled to any additional compensation for hours worked in excess of forty in a work week.

**Section 2:** Mr. Herberg shall be employed in an "at-will" capacity serving at the sole pleasure of the Board. Either party to this Agreement may terminate the Agreement at any time for any reason with or without cause, and without hearing, upon 30 days' notice to the other party. Mr. Herberg is advised and acknowledges that he has none of the termination rights of a Regular employee of the District. Except as expressly provided herein, and as a condition of employment, Mr. Herberg knowingly, willingly and voluntarily gives up, waives, and disclaims any and all rights he may have, express or implied, to any notice and/or hearing before or after termination, and/or to any continued employment with the District after termination.

As an "at-will" employee, Mr. Herberg understands that he may be subject to termination with or without cause at the sole discretion of the Board, notwithstanding that the other provisions of the District's Personnel Policies and Procedures Manual (hereinafter referred to as "Manual") apply to Mr. Herberg. If the District terminates employment without cause, Mr. Herberg shall be given a thirty (30) day Notice of Termination and severance pay in an amount equal to six (6) months of his then current annual base salary upon Mr. Herberg's execution of a valid written release of legal claims.

If the District terminates this Agreement (thereby terminating Mr. Herberg's employment) without cause, and Mr. Herberg executes a valid written release of legal claims, the severance pay is considered a cash settlement related to the termination of Mr. Herberg and waiver of legal claims and

shall be fully reimbursed to the District by Mr. Herberg if Mr. Herberg is convicted of a crime involving an abuse of his office or position. Abuse of office or position shall have the meaning set forth in Government Code 53243.4, as may be amended, of either (1) an abuse of public authority, including, but not limited to, waste, fraud and violation of the law under color of authority, or (2) a crime against public justice, including, but, not limited to, a crime described in Title 7 (commencing with Section 92 of Part 1 of the Penal Code). Mr. Herberg shall reimburse such severance pay to the District no later than six (6) months after such conviction. If Mr. Herberg terminates his employment with 30 days' notice, the Board shall have the right to accept his resignation effective the date notice is given. Such decision to accept his resignation earlier shall not be considered a termination without cause and shall not entitle Mr. Herberg to receive the severance pay noted above.

**Section 3:** The term of this Agreement shall commence on the effective date above and continue for an indefinite duration, until terminated by either Party pursuant to Section 2 above, or unless terminated or amended as provided herein.

**Section 4:** As compensation for the services to be performed hereunder, upon the effective date of this Agreement, District agrees to pay General Manager an annual base salary for services rendered of three hundred six thousand one hundred ninety-six dollars (\$306,196), subject to all applicable deductions and withholdings of any and all sums required by then current state, federal or local law, along with deductions of applicable sums the General Manager is obligated to pay because of participation in plans and programs described in this Agreement, and paid biweekly in accordance with the District's established accounting and payroll practices at the same time and in the same manner as other employees of the District. No increase in salary may exceed the compensation permitted by the applicable salary range for the classification established by duly adopted Resolution of the Board.

For Years Two and Three of the employment contract, compensation will adjust as follows:

1. A salary increase in the first pay period of July 2020, consisting of a 3.0% salary range adjustment and corresponding salary increase and up to 2.5% merit increase to be determined by the Board of Directors based on job performance, not to exceed 5.5% total;
2. A salary increase in the first pay period of July 2021, consisting of a 3.0% salary range adjustment and corresponding salary increase and up to 2.5% merit increase to be determined by the Board of Directors based on job performance, not to exceed 5.5% total.

**Section 5:** For the period of this Agreement, District shall provide Mr. Herberg with a fixed benefit package that includes the following:

- Personal Leave – accrued based on years of service for all paid hours, including hours actually worked and hours in a paid-leave payroll status, on a biweekly basis in accordance with the Manual. Personal leave accruals shall not exceed four hundred forty (440) hours as of December 31 of each year. Any hours in excess of said limit, will be paid to Mr. Herberg in January in an amount equal to the hourly rate of compensation.
- Administrative Leave - 40 hours per fiscal year, granted and not eligible for annual cash out.
- Investment Incentive Salary (IIS) - 6% of base salary applied on a biweekly fiscal year basis, and a flat amount of one thousand two hundred fifty dollars (\$1,250) annually.
- Deferred Compensation - OCSD-paid annual allocation for 2019, 2020, and 2021 of \$11,000 allocated on a biweekly calendar year basis.
- Car Allowance – OCSD-paid annual allocation of \$8,400.
- Added Medical Allowance – OCSD-paid annual allocation for 2019, 2020, and 2021 of six thousand dollars (\$6,000).

Mr. Herberg's benefit package also shall include benefits consistent with the Manual for: holiday pay; medical, dental, vision and life insurance at three times base salary; long-term and short-term disability insurance; and employee assistance program. Additionally, Mr. Herberg's benefit package shall include executive disability insurance benefits, consistent with those provided to OCSD managers.

These benefits shall remain in full force and effect unless and until replaced by an amendment to this Agreement, signed by Mr. Herberg and approved by the Board, which amendment shall include the effective date thereof.

**Section 6:** District's Steering Committee shall meet with General Manager in August of each year during the term of this Agreement to review and evaluate his performance over the prior year. The Steering Committee shall make its recommendation(s) to the Board concerning adjustment to the compensation and/or benefits paid or provided to General Manager, to be effective in July of the year of review. After consideration of the recommendation(s) of the Steering Committee, the Board shall determine and approve the compensation, including benefits, payable to General Manager, which generally becomes effective July of the fiscal year of the review. Failure of the District to review and evaluate the performance of the General Manager pursuant to this section shall not affect the right of the District to terminate the General Manager's employment and shall not be considered a breach of this Agreement.

**Section 7:** Mr. Herberg shall be a Participant Member in the Orange County Employees Retirement System ("OCERS"). District shall pay the required employer's contribution and 0% of Mr. Herberg's required contribution towards membership in OCERS.

**Section 8:** District shall reimburse General Manager for all expenses paid by him and incurred for non-personal, job-related District business that are reasonably necessary to the General Manager's service to the District. The District agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to the criteria established by District's budget and/or normal expense reimbursement procedures pursuant to applicable policy Resolutions. To be eligible for reimbursement, all expenses must be supported by documentation meeting the District's policies and requirements and must be submitted within time limits established by the District. Such reimbursement shall not be considered a benefit.

**Section 9:** During the period of this Agreement, it is agreed that General Manager shall devote his fulltime, skills, labor and attention to said employment. At no time may General Manager undertake outside activities consisting of consultant work, speaking engagements, writing, lecturing, or other similar professional activities for money or other consideration without prior approval of District's Steering Committee. However, the expenditure of reasonable amount of time for educational, charitable, or professional activities shall not be deemed a breach of this Agreement if those activities do not conflict or materially interfere with the services required under this Agreement, and shall not require the prior written consent of the Steering Committee.

This Agreement shall not be interpreted to prohibit General Manager from making passive personal investments or conducting private business affairs, provided those activities are not deemed to be a conflict of interest by state law nor do they conflict or materially interfere with the services required under this Agreement.

**Section 10:** The Board has the sole discretion to determine whether the District shall pay General Manager pending an investigation into any alleged misconduct by General Manager. In the event that the District's Board determines, in its sole discretion, that it is in the best interest of the District for General Manager to be placed on paid administrative leave pending such an investigation, General Manager shall fully reimburse any salary provided for that purpose if the misconduct for which the General Manager was under investigation results in the General Manager being convicted of a crime involving an abuse of his office or position as defined in

Section 2 of this Agreement. General Manager shall reimburse such salary to the District no later than six months after such conviction.

**Section 11:** In the event that the District provides funds for the legal criminal defense of General Manager, General Manager shall fully reimburse said funds to the District if the General Manager is convicted of a crime involving an abuse of his/her office or position as defined in Section 2 of this Agreement. General Manager shall reimburse such criminal legal defense fees to the District no later than six months after such conviction.

**Section 12:** The terms and conditions of employment for General Manager, including other employment benefits for the General Manager that are not specifically provided for in this Agreement, shall be governed by the Manual, to the extent that amendments to the Manual made after the effective date of this Agreement are not inconsistent with the provisions of this Agreement. In the event of any such inconsistency or conflict, the provisions of this Agreement shall govern.

**Section 13:** This Agreement supersedes any and all other prior agreements, either oral or in writing, between the Parties hereto with respect to the employment of Mr. Herberg by District, and contains all of the covenants and agreements between the Parties with respect to that employment in any manner whatsoever. Each Party to this Agreement acknowledges that no representation, inducement, promise, or agreement, orally or otherwise, has been made by any Party, or anyone acting on behalf of any Party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement or Employment shall be valid or binding on either Party.

**Section 14:** Any notices to be given hereunder by either Party to the other shall be in writing and may be transmitted by personal delivery, or by mail, registered or certified, postage prepaid, with return receipt requested. Mailed notices shall be addressed to the Parties at the addresses maintained in the personnel records of District, but each Party may change that address by written notice in accordance with this Section. Notices delivered personally shall be deemed communicated as of the date of actual receipt; mailed notices shall be deemed communicated as of the date of mailing.

**Section 15:** Any modifications of this Agreement will be effective only if set forth in writing and signed by the Parties.

**Section 16:** The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party, shall not be deemed a

waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

**Section 17:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

**Section 18:** This Agreement shall be governed by and construed in accordance with the laws of the State of California and all applicable ordinances, policies and resolutions.

**Section 19:** General Manager acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. General Manager acknowledges that he has made an independent judgment upon the financial and legal effects of the Agreement and has not relied upon representation of the District, its elected or appointed officers and officials, agents or employees other than those expressly set forth in this Agreement. General Manager acknowledges that he has been advised to obtain, and has availed himself of, legal advice with respect to the terms and provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this At-Will Employment Agreement as follows.

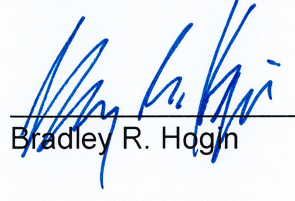
"DISTRICT"

ORANGE COUNTY SANITATION DISTRICT

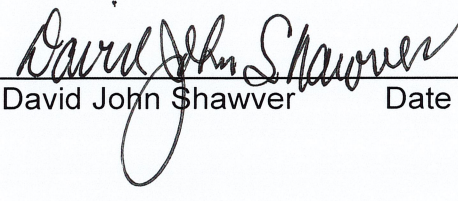
"GENERAL MANAGER"

By: James D. Herberg 10/03/2019  
James D. Herberg Date

APPROVED AS TO FORM:  
BRADLEY R. HOGIN  
GENERAL COUNSEL

  
\_\_\_\_\_  
Bradley R. Hogg

"CHAIR, BOARD OF DIRECTORS"

By:   
\_\_\_\_\_  
David John Shawver      Date