

EMPLOYEE LENDING AGREEMENT

This Agreement is made this ____ day of _____, 2020, by and between Orange County Sanitation District, a special district, (hereinafter, "OCSD") with Costa Mesa Sanitary District, a special district, (hereinafter, "CMSD").

- A. CMSD is a special district formed under the Sanitary District Act of 1923 (Health & Safety Code §§ 6400 et seq.). The District boundaries encompass all of the City of Costa Mesa and portions of Newport Beach and unincorporated Orange County. The District provides wastewater collection and transmission to Orange County Sanitation District facilities for treatment and disposal;
- B. OCSD is a special district formed under the County Sanitation District Act of 1939 (Health & Safety Code §§ 4700 et seq.) that provides wastewater collection, treatment, and disposal services for central and northwest Orange County.
- C. CMSD and OCSD desire to enter into an agreement wherein OCSD will permit employee Daniel Lee, P.E ("Alternate") to serve as Alternate District Engineer ("Position") for CMSD on an as-needed basis for up to 12 months as a workforce development opportunity;
- D. The workforce development opportunity arrangement will provide a public benefit to both Parties as it will allow CMSD to provide ongoing sewer-related project design and approval when conflicts of interest exist with current CMSD employees as well as providing ongoing opportunities beneficial to OCSD and its employees; and
- E. The purpose of this Agreement is to set forth the terms and conditions governing the understanding between the Parties.

THE PARTIES AGREE AS FOLLOWS:

I. GENERAL TERMS

- A. This Agreement shall be effective for services performed by Alternate on behalf of CMSD from May 25, 2020 through May 24, 2021, unless terminated earlier or extended as provided below.
- B. The beginning date and ending date of the Position shall be mutually agreed by the parties prior to the Alternate beginning in the Position.
- C. The Parties may mutually agree to extend the term of this Agreement for a subsequent 12 months. The General Manager for OCSD shall have authority to exercise the 12-month extension on behalf of OCSD. The General Manager of the CMSD shall have the authority to exercise the 12-month extension on behalf of CMSD.
- D. Either party may terminate this Agreement without cause for any reason at any time upon giving at least thirty (30) days prior written notice to the other party. Such notice shall state the termination date. The General Manager for OCSD shall have authority to terminate this Agreement on behalf of OCSD. The General Manager for the CMSD shall have the authority to terminate this Agreement on behalf of CMSD.

- E. Either Party may immediately terminate this Agreement for cause including, but not limited to, the failure of the other Party to satisfy its obligations under this Agreement. The General Manager for OCSD shall have authority to terminate this Agreement on behalf of OCSD. The General Manager of the CMSD shall have the authority to terminate this Agreement on behalf of CMSD.
- F. In the event of termination of this Agreement, Alternate shall immediately cease all activities in the Position or as provided in any termination date given. Additionally, any payments owed by either party to the other will immediately become due and outstanding.
- G. Both Parties agree not to subcontract, assign, or otherwise transfer the Agreement or any part of the services to be performed under this Agreement without prior written consent and approval from the other Party.
- H. The Alternate shall provide services to CMSD through the OCSD on a project-basis and shall be for all purposes, an independent contractor working through the OCSD to provide services to CMSD. No employment relationship between Alternate and CMSD is expressed or implied by this Agreement.

II. CMSD'S RIGHTS AND RESPONSIBILITIES

- A. CMSD shall pay to OCSD based on the time worked by Alternate in the Position and at the rate of \$73.03 per hour and any fraction thereof. Should the Alternate's pay structure at OCSD increase, CMSD agrees to engage in good faith discussions with OCSD to adjust the above pay rate to reflect any increase to Alternate's OCSD-based wage rate. In no event shall Alternate provide services in the Position in excess of five hours per month without the express written approval of OCSD.
- B. OCSD shall be the sole and exclusive Party responsible for determining Alternate's rate of pay and amount of salary, wages, and benefits payable to Alternate during the period Alternate works in the Position. Should OCSD need to increase the rate of compensation due to increases in contractually obligated cost increases (e.g. merit increases, cost of living, health benefits, etc.), CMSD agrees to negotiate with OCSD on such matter upon receiving proper notice from OCSD of the need to discuss increases to the reimbursement rate above \$73.03 per hour.
- C. OCSD shall serve as the location for Alternate to provide all services for CMSD in the Position. CMSD shall not require Alternate to provide services at any CMSD location without the express written approval of OCSD.
- D. CMSD shall pay all invoices within thirty (30) days of invoice date.
- E. CMSD agrees not to enter into any contract or agreement with any other party, agency, entity, or person which may have the effect of obligating OCSD in any way, except with the prior written consent of OCSD.
- F. CMSD, at its sole cost and expense, shall obtain, keep in force, and maintain any policy of insurance necessary or appropriate to provide coverage, defense, or indemnification of OCSD as it relates to Alternate or Alternate's performance during the period Alternate works in the Position.
- G. CMSD shall inform Alternate of all CMSD policies, procedures, rules, and regulations applicable to Alternate and notify Alternate that they are responsible for complying with CMSD's policies, procedures, rules, and regulations during the period Alternate works in the Position.

- H. CMSD agrees and covenants that they will maintain a work environment free from unlawful discrimination and/or harassment in compliance with federal and state law.
- I. CMSD may stop Alternate from serving in the Position in its sole discretion and for any reason. Should CMSD remove Alternate from the Position prior to the agreed termination date, CMSD shall notify OCSD of the removal and this Agreement will be deemed terminated upon said notice and any payments owed by either party to the other will immediately become due and outstanding.

III. OCSD'S RIGHTS AND RESPONSIBILITIES

- A. Alternate is an employee of OCSD and primarily engaged in work duties, tasks, and support for OCSD. Alternate will provide contract services for CMSD in Position as time is available. Should OCSD determine that CMSD's requests or demands of OCSD or Alternate unreasonably interferes with Alternate's regular and expected work duties at OCSD, OCSD shall have the authority to terminate the Agreement for cause.
- B. OCSD shall assume sole and exclusive responsibility for the payment of Alternate's salary, wages, and benefits during the period Alternate works in the Position. OCSD shall be the sole and exclusive Party responsible for determining Alternate's rate of pay and amount of salary, wages, and benefits payable to Alternate during the period Alternate works in the Position.
- C. OCSD shall be solely responsible for the payment of any payroll taxes, withholdings, and any other insurance premiums and benefits of any kind owed to Alternate.
- D. OCSD shall invoice CMSD on a project-basis for all amounts incurred by Alternate for time spent working in Position.
- E. OCSD shall be responsible for counseling and disciplining Alternate. CMSD may provide input on Alternate's performance to OCSD and may request OCSD take disciplinary action against Alternate. OCSD shall maintain Alternate records, including but not limited to, personnel file, medical file, and discipline file.

IV. INDEMNIFICATION.

- A. CMSD agrees to defend all claims of loss, indemnify and hold harmless OCSD and its officers, officials, agents, volunteers and employees from any and all claims for damage to property, personal injury, wrongful death or other losses and costs, including but not limited to reasonable attorney fees and defense costs, arising out of the negligent acts or omissions or willful misconduct of CMSD or its agents, employees, officers, officials, or volunteers in the performance of this Agreement.
- B. OCSD agrees to defend all claims of loss, indemnify and hold harmless CMSD and its officers, officials, agents, volunteers and employees from any and all claims for damage to property, personal injury, wrongful death or other losses and costs, including but not limited to reasonable attorney fees and defense costs, arising out of the negligent acts or omissions or willful misconduct of OCSD or its agents, employees, officers, officials, or volunteers in the performance of this Agreement.
- C. No employee benefits shall be available to Alternate from CMSD in connection with work performed under this Agreement. Except for the hourly rates paid by CMSD to OCSD as provided

in this Agreement, CMSD shall not pay any other form of compensation to OCSD or Alternate for performing services hereunder. CMSD is not responsible for any taxes or government withholdings on behalf of Alternate. OCSD agrees to defend, indemnify, and hold CMSD harmless against any claims for wages, salary, benefits, or withholdings made by or on behalf of Alternate or any government entity for work performed under this Agreement.

- D. CMSD agrees to defend all claims of loss, indemnify, and hold harmless OCSD and its officers, officials, agents, volunteers and employees from any and all claims for damage to property, personal injury, wrongful death or other losses and costs, including but not limited to reasonable attorney fees and defense costs, arising out of the negligent acts or omissions or willful misconduct of the Alternate during the period Alternate works in the Position.
- E. CMSD hereby releases, waives, and discharges OCSD its officers, officials, agents, volunteers and employees from, and covenants not to sue OCSD for, any and all claims for damage to property, personal injury, wrongful death or other losses and costs, including but not limited to reasonable attorney fees and defense costs, arising out of the negligent acts or omissions or willful misconduct of the Alternate during the period Alternate works in the Position.
- F. In the event that it is determined by a Court or similar judicial body that Alternate was subjected to discrimination, harassment, or retaliation under any local, state, or federal law during the time Alternate was performing work in the Position, CMSD shall pay the costs of OCSD's legal defense and fully indemnify OCSD against any and all claims asserted against OCSD or its officers, officials, agents, volunteers or employees per the terms of all indemnification provisions in this Agreement.
- G. In the event that it is determined by a Court or similar judicial body that Alternate discriminated, harassed, or retaliated against anyone in violation of any local, state, or federal law during the time Alternate was performing work in the Position, OCSD shall pay the costs of CMSD's legal defense and fully indemnify CMSD against any and all claims asserted against CMSD or its officers, officials, agents, volunteers or employees per the terms of all indemnification provisions in this Agreement.
- H. CMSD expressly agrees that the foregoing Indemnification and Release provisions are intended to be as broad as possible and inclusive as is permitted by the laws of the State of California and that if any portion is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.
- I. In the event of inconsistency in Indemnification provisions, the more specific provision shall control.

V. MISCELLANEOUS PROVISIONS

- A. Captions and headings in this Agreement are solely for the convenience of the parties, are not a part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement or any of its provisions.
- B. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

- C. This Agreement is the entire agreement between the parties. No other agreements, oral or written, have been entered into with respect to the subject matter of this Agreement.

D. The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

VI. EXECUTION

By signing below, each of the following represent that they have authority to execute this Agreement and to bind the party on whose behalf their signature is made.

COSTA MESA SANITARY DISTRICT

ORANGE COUNTY SANITATION DISTRICT

James Ferryman

By: Costa Mesa Sanitary District

By: _____

Name: James Ferryman

Name: _____

Title: Board President

Title: _____

Date: 4/27/2020

Date: _____