

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ORANGE COUNTY CONSERVATION CORPS
AND THE CITY OF COSTA MESA**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this 1st day of April, 2016 ("Effective Date") by and between ORANGE COUNTY CONSERVATION CORPS, a California non-profit organization ("OCCC") and the CITY OF COSTA MESA, a municipal corporation ("City").

RECITALS

WHEREAS, OCCC is a non-profit organization that provides employment, training, and educational programs to at-risk adults ages 18 to 25; and

WHEREAS, OCCC provides services including, but not limited, to clearing of invasive vegetation species, habitat restoration, trail maintenance and restoration, preparing and placing sand bags, erosion control, debris removal, and weed abatement (collectively "Park Maintenance and Infrastructure Projects"); and

WHEREAS, City and OCCC desire to contract for various Park Maintenance and Infrastructure Projects on an as-needed or emergency basis.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, the parties hereto agree as follows:

1.0. TERM AND TERMINATION

1.1. Term. This MOU will commence on the Effective Date and will continue for a period not to exceed two (2) years, unless sooner terminated as provided for herein.

1.2. Termination. City reserves and has the right and privilege of terminating this MOU at any time, with or without cause, by providing written notice to OCCC. The termination of this MOU shall be deemed effective upon receipt of the notice of termination. In the event of such termination, OCCC shall immediately stop rendering services under this MOU unless directed otherwise by the City.

2.0. COMPENSATION

2.1. Compensation. OCCC shall be paid in accordance with the daily rate sheet attached hereto as Exhibit "A" and incorporated by this reference. OCCC's compensation shall not exceed Forty Thousand Dollars (\$40,000.00).

2.2. Additional Services. OCCC shall not receive compensation for any services provided outside the scope of services specified by the Project Manager unless the City approves such additional services in writing prior to their performance. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. OCCC may submit invoices to City's Project Manager for

approval on a progress basis, but no more often than once per month. Said invoice shall be based on the total of all OCCC's services which have been completed to City's sole satisfaction. City shall pay OCCC's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe, in detail, the services performed and the associated time for completion. Any additional services approved and performed pursuant to this MOU shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audit. Records of OCCC's services relating to this MOU shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the end of the term.

3.0. OBLIGATIONS OF CITY

During the term of this MOU, City hereby covenants and agrees to the following:

3.1. City will notify OCCC when it has a work assignment for OCCC corpsmembers.

3.2 City will provide a Project Manager to explain work assignments, work schedules, and City procedures and other rules and regulations of the City.

4.0. OBLIGATIONS OF OCCC

During the term of this MOU, OCCC hereby covenants and agrees to the following:

4.1. OCCC agrees to provide a work crew of between seven (7) and nine (9) OCCC corpsmembers between the ages of 18 and 25 to perform general labor job skills under the direct supervision of an OCCC supervisor for City work projects. OCCC understands that work assignments will generally require a work crew for approximately one to two weeks depending on the scope of work.

4.2. OCCC agrees to thoroughly screen, test, and interview prospective OCCC member participants in accordance with their internal procedures to ensure suitability for placement within the program.

4.3. OCCC will appoint a Program Manager to act as liaison between the CITY and OCCC during the term of the MOU. The Program Manager shall coordinate the activities of the corpsmembers work crew.

4.4. OCCC will provide all necessary transportation for OCCC work crews to City work sites.

4.5. OCCC agrees to provide all necessary hand tools, gloves, and protective safety equipment, including rain suits and rubber boots, as warranted by the work assignment.

4.6. OCCC will ensure that corpsmembers follow all standard City policies, procedures, rules, regulations and ordinances pertaining to, but not limited to, adherence to orders, directions, job safety, personal relations, and hygiene.

4.7. OCCC will comply with all insurance requirements set forth in Section 5.0.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. OCCC shall obtain, maintain, and keep in full force and effect during the life of this MOU all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this MOU or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. OCCC agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by OCCC for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the OCCC pursuant to its contract with the City; products and completed operations of the OCCC; premises owned, occupied or used by the OCCC; automobiles owned, leased, hired, or borrowed by the OCCC."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The OCCC's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The OCCC's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. OCCC shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this MOU. The certificates of insurance shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which OCCC may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This MOU constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This MOU may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this MOU shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this MOU.

6.2. Representatives. The Chief Executive Officer ("City CEO") or his or her designee shall be the representative of City for purposes of this MOU and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this MOU, except as otherwise expressly provided in this MOU. OCCC shall designate a representative for purposes of this MOU who shall be authorized to issue all consents, approvals, directives and agreements on behalf of OCCC called for by this MOU, except as otherwise expressly provided in this MOU.

6.3. Project Managers. City shall designate a Project Manager to work directly with OCCC in the performance of this MOU. OCCC shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this MOU. OCCC or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this MOU or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such

communication is sent through regular United States mail.

IF TO OCCC:

Orange County Conservation
Corps
1831 N. Raymond Avenue
Anaheim, CA 92801
Tel: 714.956.6222
Fax: 714.888.0910
Attn: Jeremy Newton

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628
Tel: 714.754.5303
Fax: 714.754.5281
Attn: Contract Administrator

6.5. Drug-Free Workplace Policy. OCCC shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "C" and incorporated herein by reference. OCCC's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this MOU and shall be cause for immediate termination of this MOU by City.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this MOU, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This MOU shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this MOU, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment. OCCC shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of OCCC's interest in this MOU without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this MOU and cause for termination of this MOU. Regardless of City's consent, no subletting or assignment shall release OCCC of OCCC's obligation to perform all other obligations to be performed by OCCC hereunder for the term of this MOU.

6.9. Indemnification and Hold Harmless. OCCC shall protect, defend, indemnify and hold harmless City and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, error or omissions of OCCC, its employees, agents or subcontractors in the performance of this Agreement.

6.10. Independent Contractor. OCCC is and shall be acting at all times as an independent contractor and not as an employee of City. OCCC shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agent shall have control over the conduct of OCCC, except as set forth in this MOU. OCCC shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. OCCC shall secure, at its

sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for OCCC and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. OCCC shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this MOU. OCCC further agrees to indemnify and hold City harmless from any failure of OCCC to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to OCCC under this MOU any amount due to City from OCCC as a result of OCCC's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that OCCC or any employee, agent, or subcontractor of OCCC providing services under this MOU claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, OCCC shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of OCCC or its agents, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, OCCC and any of its employees, agents, and subcontractors providing service under this MOU shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Prohibited Employment. OCCC will not employ any regular employee of City while this Agreement is in effect.

6.13. Order of Precedence. In the event of an inconsistency in this MOU and any of the attached Exhibits, the terms set forth in this MOU shall prevail.

6.14. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this MOU and in the performance of its obligations hereunder except as expressly provided herein.

6.15. No Third Party Beneficiary Rights. This MOU is entered into for the sole benefit of City and OCCC and no other parties are intended to be direct or incidental beneficiaries of this MOU and no third party shall have any right in, under or to this MOU.

6.16. Headings. Paragraphs and subparagraph headings contained in this MOU are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this MOU.

6.17. Construction. The parties have participated jointly in the negotiation and drafting of this MOU. In the event an ambiguity or question of intent or interpretation arises with respect to this MOU, this MOU shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this MOU.

6.18. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this MOU.

6.19. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this MOU shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.20. Severability. If any provision of this MOU is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this MOU, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.21. Counterparts. This MOU may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.22. Corporate Authority. The persons executing this MOU on behalf of the parties hereto warrant that they are duly authorized to execute this MOU on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this MOU.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation



CEO of the City of Costa Mesa

Date: 4/25/16



Department Director

Date: 4.20.16



Interim Finance Director

Date: 4.21.16

OCCC

[Redacted Signature]

Signature

Date: 4/14/16

KATHRYN Min BANPONI, CEO

Name and Title

[Redacted Taxpayer ID Number]

Taxpayer ID Number

APPROVED AS TO FORM:

[Redacted Signature]

City Attorney

Date: 04/18/16

APPROVED AS TO INSURANCE:

[Redacted Signature]

Risk Management

Date: 4/6/16

APPROVED AS TO CONTENT:

[Redacted Signature]

Project Manager

Date: 4/4/16

EXHIBIT A
DAILY RATE SHEET



ORANGE COUNTY
CONSERVATION CORPS

Proposal: Crew Labor for The City of Costa Mesa



March 29, 2016

PREPARED FOR
Robert Staples, Contract Administrator
City of Costa Mesa
77 Fair Drive
PO BOX 1200
Costa Mesa, CA 92628-1200

PREPARED BY
Jeremy Newton, Project Manager
Orange County Conservation Corps
1853 North Raymond Avenue
Anaheim, CA 92801
888.641.CORP x222
www.hireyouth.org



ORANGE COUNTY
CONSERVATION CORPS

March 29, 2016

City of Costa Mesa
Attn: Robert Staples, Contract Administrator
77 Fair Drive
PO Box 1200
Costa Mesa, CA 92628-1200

Re: Statement of Understanding for General Crew Labor

Dear Mr. Staples,

The Orange County Conservation Corps (OCCC) proposes to provide labor at the direction of City personnel for landscaping, vegetation removal, litter abatement and other entry-level type labor services.

The daily rate for a crew and a supervisor is \$826.50.

The City of Costa Mesa will be responsible for the disposal /recycling fees for all green waste generated.

We sincerely appreciate your interest in partnering with OCCC. Founded in 1993, OCCC is a private non-profit 501(c) (3) organization funded by grants, work contracts, donations and contributions. The OCCC serves young adults who need support in the transition from adolescence to adult employability by providing work projects that benefit the community while instilling a work ethic and a sense of public service. In many cases, OCCC provides the first paid work experience for Orange County's young adults.

Thank you,

Jeremy Newton



<u>INSIDE THIS PROPOSAL</u>	
Cover Sheet.....	
Statement of Understanding.....	1
Fee Schedule.....	2

Fee Schedule

<i>Item</i>	<i>#</i>	<i>Hourly Rate</i>	<i>Hours/Day</i>	<i>Total</i>
LABOR				
<i>Rate for a corps member</i>	1	\$21.00	7.25	\$152.25
<i>Rate for a Crew Supervisor</i>	1	\$30.00	7.25	\$217.50
<i>Item</i>	<i>#</i>	<i>Daily Rate</i>	<i>Hours/Day</i>	<i>Total</i>
Optional Equipment				
<i>Chipper/Dump Truck</i>	1	\$150.00	7.25	\$150
<i>Vermeer Brush Chipper</i>	1	\$150.00	7.25	\$150
<i>Mustang Track Loader</i>	1	\$350.00	7.25	\$350