

COLLEGE/PREHOSPITAL CITY AGREEMENT  
TO PROVIDE SUPERVISED FIELD SERVICE EXPERIENCE  
FOR EMS PROGRAM STUDENTS

This COLLEGE/PRE-HOSPITAL CITY AGREEMENT (hereinafter referred to as "Agreement") is entered into by and between the OCEMT Corp, a California Corporation and EMT Training Provider (hereinafter referred to as "COLLEGE") and the City of Costa Mesa (hereinafter referred to as "CITY" or "Costa Mesa Fire Department"). The COLLEGE and CITY shall collectively be referred to herein as the "PARTIES" and each a "PARTY" to this Agreement.

The COLLEGE maintains an Emergency Medical Services Program for students studying in the fields of Emergency Medical Technician Basic ("EMT-B"), Emergency Medical Technician Intermediate ("EMT-I"), and Emergency Medical Technician Paramedic ("EMT-P"), hereinafter collectively referred to as the "EMS Program".

The EMS Program has certain requirements for students to gain supervised field experience while enrolled in the EMS Program.

The CITY Fire and Rescue Department supplies emergency medical services to the community which lend themselves to the provision of said supervised field experience for students of the EMS Program.

The CITY shall retain complete responsibility for fire protection, disaster preparedness and response, fire prevention, rescue, hazardous materials mitigation, technical rescue response, medical emergency services, and public service assists (hereinafter called "FIRE SERVICES"). Students in the program are restricted from performing any FIRE SERVICES that are not EMS related.

The students' training experience will provide observation of the day to day responsibilities of the CITY as well as provide the required hours and field experience in emergency medical patient care in correlation with the Costa Mesa Fire Department Program Internship Field Guide in accordance with the pertinent sections of Division 9 of Title 22 of the California Code of Regulations and Division 2.5 of the California Health and Safety Code. The CITY shall retain ultimate responsibility at all times for the care of all patients receiving EMS treatment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the PARTIES hereto agree as follows:

AGREEMENT

1. The COLLEGE shall:
  - a. Assume full responsibility for the preparation of instructors for positions in EMS Academy.

- b. Be responsible for the development, organization and implementation of the EMS Program curriculum under the direction of a qualified EMS Program Director.
- c. Select, test, and supervise the students admitted to the EMS Program at the time of admittance and throughout the period of time prescribed for the students' completion of the EMS Program.
- d. Provide certificated instructors to teach all prescribed courses in the EMS Program, including any instruction or training which may be carried on at the CITY. The instructors and the Director of EMS Program shall be named, appointed and assigned by the COLLEGE in accordance with its established procedures for employment of instructional personnel.
- e. Provide each new instructor an opportunity to participate in an orientation with the CITY. This orientation shall be arranged through mutual agreement of the COLLEGE and the CITY.
- f. Provide all instructional supplies and equipment as needed for the EMS Program, except those which the CITY hereinafter specifically agrees to provide.
- g. Provide administrative functions, including admission, counseling, scheduling, attendance, accounting and achievement records in connection with the EMS Program, similar to those maintained for all other students at California EMS Academy.
- h. Furnish copies of class schedules and student rotation assignments to the CITY, prepared by the EMS Program Director after consultation and mutual agreement with the CITY.
- i. Provide documentation that recognized the EMT – Paramedic program meets national standards and is an accredited program through CAAHEP and CoAEMSP.
- j. Provide CITY a copy of the Emergency Notification Form for each student prior to participation in the EMS Program Field Training.
- k. Shall abide by and shall ensure that its students abide by the Health Insurance Portability and Accountability Act (HIPAA) of 1996 Privacy Rule, which provides for comprehensive Federal protection for the privacy of personal health information.
- l. Shall, prior to each student's or instructor's participation in the program, obtain from each student and instructor, and deliver to CITY, a completed and fully executed **Release and Waiver of All Liability and Assumption of Risk Agreement** in a form approved by the City Attorney holding

harmless and releasing the CITY, its Boards, Commissions, and their officials, employees and agents, from any and all damages or injuries which may occur during the student's or instructor's performance, services or activities during, related to, or resulting from the Agreement. If a student is also a CITY employee, this condition does not apply.

- m. Warrant that its students and instructors shall be subject to the requirements and restrictions as mutually specified by representatives of the CITY and COLLEGE, and subject to the CITY's pre-screening requirements and the CITY's rules and regulations governing conduct. Such rules and regulations may include, but not be limited to:
  - i. Confidential Student Information - COLLEGE student records shall remain confidential as required by the Family Educational Rights and Privacy Act (FERPA). Neither Party shall release any protected student information without written consent of the student, unless required to do so by law or as dictated by the terms of this Agreement.
  - ii. Pre-Placement Clearances - If COLLEGE students' interactions with minors or other vulnerable people may involve unsupervised contact, COLLEGE students shall be fingerprinted as required by the CITY. All participating COLLEGE students are required to obtain a CTC issued Certificate of Clearance, or similar clearance document, and possess a negative TB test result, dated within the last four years prior to beginning their field experience.
  - iii. Orientation, Student Safety and Health Risks - CITY shall provide an orientation of its site and all relevant policies and procedures to assigned COLLEGE students and COLLEGE instructors. CITY shall inform the participating University students of potential health or safety risks associated with the location of their field experience.

2. The CITY shall:

- a. Provide, at its sole discretion, facilities, staff, materials and other resources it deems necessary to enhance the learning experiences of students designated by the COLLEGE. The experience for each student shall cover such period of time as shall be specified by the COLLEGE.
- b. Permit designated students and instructors of COLLEGE to use services of the CITY as set forth herein. The level of services and the number of students involved will be determined by mutual agreement between the PARTIES.
- c. Identify CITY employees to serve as preceptors to the students. The final selection of the preceptors shall be made by mutual consent between the

CITY and COLLEGE's representative. The preceptors shall serve on a volunteer basis.

- d. Have the right, after consultation with the COLLEGE, to refuse to accept further work experience of any participating student who in the CITY's sole judgment is not participating satisfactorily in the Program.
  - e. Cooperate with the CITY to help ensure success of the EMS program.
  - f. Provide a broad experience with opportunities for observation, participation, or independent activity involving day to day responsibilities of emergency medical patient care through the program offered by the CITY.
  - g. Retain complete control and responsibility of victim/patient care as well as supervision and oversight of students' participation at all times.
3. Should emergency treatment be necessary for students in the event of accident or sudden illness, the cost of such treatment shall be covered by such students. It will be the duty and obligation of the COLLEGE to insure that a claim is properly filed with the COLLEGE's Risk Management Department. The PARTIES agree that the standards of the EMS program shall be maintained at a level equal to or exceeding those required by the State of California as outlined in Rule 22 of the Code of Regulations.
  4. The PARTIES agree that the students and staff of the COLLEGE participating in the EMS Program are not employees or agents of the CITY, nor shall they become employees or agents of the CITY by virtue of their participation in the EMS Program, but shall be subject to and shall abide by all CITY rules, regulations and policies, including, but not limited to: those governing professional conduct, confidentiality, discrimination, affirmative action, substance abuse and Blood Borne Pathogen Control Plan. In the event a student fails or refuses to do so, the CITY reserves the right to deny the use of its facilities and services by such student.
  5. Each student in the EMS Program, prior to beginning field training with the CITY, shall have on file, documentation of health status with the College EMS Program Director including: documentation of negative TB test within the previous year and current Hepatitis B vaccination. This documentation shall be provided to CITY upon request.
  6. The number of students participating in the EMS Program who are assigned to the CITY shall be determined by mutual agreement of the PARTIES. Notwithstanding anything to the contrary in this Agreement, CITY shall have the authority to accept its own employees for field training with CITY on a priority basis, and may accept College students that are not CITY employees as additional students at their sole discretion depending on availability and resources.

7. Per Division 9 of Title 22 of the California Code of Regulations, no more than one (1) EMT student, of any level, shall be assigned to a response vehicle at any one time during the student's field training.
8. Students are not authorized to drive any CITY vehicle, but may ride in such vehicles during their participation in this program when driven by a CITY employee.
9. A strict code of confidentiality of victim/patient information shall be maintained by all participants in the EMS Program.
  - a. Students will sign a Statement of Confidentiality as part of the Orientation. This signature binds the student to maintain patient confidentiality throughout the field experience. No copies of patient records shall be made, and no records or copies thereof shall be removed from the CITY.
  - b. The discussion, transmission, or narration in any form by students of any individually identifiable client/patient information, medical or otherwise, obtained in the course of the EMS Program is forbidden. Students shall use de-identified information only in any discussions about the clinical experience with the COLLEGE, its employees or agents, as a necessary part of the practical experience.
  - c. In the event of an individual's failure to comply with the confidentiality requirements stated herein, or his/her refusal to enter into a confidentiality agreement hereinafter required to be entered into with the CITY's resources, as applicable, shall be denied approval to participate under this Agreement.

#### 10. Initial Term and Renewal

- a. The term of this Agreement shall be from the last date of final execution from the PARTIES to December 31, 2028.
- b. One hundred eighty (180) days prior to the date of expiration of this Agreement, COLLEGE shall give CITY written notice of whether COLLEGE desires to extend this Agreement or enter into a new agreement with CITY for EMS Program Services.

#### 11. Termination

Either party to this Agreement may terminate this Agreement by providing a written notice of termination to the other party hereto with no less than one (1) month advanced notice from the effective termination date. Such notice shall include the effective date of termination. The foregoing notwithstanding, the CITY may terminate this Agreement immediately if the City Manager determines, in his or her sole and absolute discretion, that this AGREEMENT no longer provides a benefit to the CITY.

## 12. Discrimination

The COLLEGE employees, agents, and students accessing CITY resources hereunder shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities or employment of personnel on the basis of race, religion, medical condition, disability, marital status, sex, age, or sexual orientation and shall comply with all other requirements of law regarding nondiscrimination and affirmative action including those laws pertaining to the prohibition of discrimination against qualified handicapped persons in all programs or activities. For the purposes of this Agreement, distinction on the grounds of race, religion, medical condition, disability, marital status, sex, age, or sexual orientation include but are not limited to the following:

- a. Denying an eligible person or providing to an eligible person any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other eligible persons under this Agreement.
- b. Subjecting an eligible person to segregation or separate treatment in any manner related to his/her receipt of any service or benefit, except when necessary for infection control.
- c. Restricting an eligible person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving a similar service or benefit.
- d. Treatment of an eligible person differently from others in determining whether person has satisfied any eligibility, membership or other requirement or condition which individuals must meet in order to be provided the same or similar service or benefit.
- e. The assignment of times or places for the provision of services on the basis of race, religion, medical condition, disability, marital status, sex, age or sexual orientation of the eligible person to be served.

## 13. Insurance

13.1. Minimum Scope and Limits of Insurance. COLLEGE shall obtain, maintain, and keep in full force and effect during the life of this Agreement 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:

- i. 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) per occurrence, three million dollars (\$3,000,000.00) general aggregate.

- ii. 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 limit per accident for bodily injury and property damage.
- iii. Workers' compensation insurance as required by the State of California. COLLEGE 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 COLLEGE for the CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- iv. Professional errors and omissions ("E&O") liability insurance with policy limits of not less than one million dollars (\$1,000,000.00) combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retroactive date shall be prior to the start of the contract work. COLLEGE shall obtain and maintain said E&O liability insurance during the life of this Agreement and for three (3) years after completion of the work hereunder.

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

- i. 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 COLLEGE pursuant to its contract with the CITY; products and completed operations of the COLLEGE; premises owned, occupied or used by the COLLEGE; automobiles owned, leased, hired, or borrowed by the COLLEGE."
- ii. 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."
- iii. Other insurance: "The COLLEGE'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."

- iv. 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.
  - v. The COLLEGE'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.
- 13.3. 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.
- 13.4. Certificates of Insurance. COLLEGE 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 Agreement.
- 13.5. 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 COLLEGE may be held responsible for payments of damages to persons or property.

#### 14. Indemnification and Hold Harmless

To the fullest extent permitted by applicable law, COLLEGE shall indemnify, protect, defend with the attorneys of CITY's choosing, and hold harmless CITY, its agencies, departments, directors, officers, employees, elected and appointed officials and representatives (collectively, "CITY Indemnitees") for, from and against any and all liabilities, claims, damages, losses, liens, causes of action, suits awards, judgments and expenses, attorney and/or fees and costs, taxable or otherwise, of any nature, kind, or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (1) the services performed hereunder this Agreement by COLLEGE including its students, officers, employees, subcontractors, agents, and/or representatives (collectively, "COLLEGE Indemnitors"); (2) this Agreement, including any approved amendments or modifications; or (3) any negligent act of omission of COLLEGE Indemnitors. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by COLLEGE Indemnitors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the COLLEGE Indemnitors, and/or whenever any claim, action, complaint or suit asserts liability against the City Indemnitees, based upon the work performed by or actions or inactions of the COLLEGE Indemnitors under this Agreement, whether or not the COLLEGE



Indemnitors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the COLLEGE shall not be liable for the defense or indemnification of the CITY for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the CITY.

This section shall survive the termination of this Agreement.

#### 15. Disputes

COLLEGE shall select and appoint a "Contract Administrator" who shall, under the supervision and direction of COLLEGE, be available for contract resolution or policy intervention with CITY, when, upon determination by the Chief, that a situation exists under this Agreement in which a decision to serve the interest of COLLEGE has the potential to conflict with CITY interest or policy. Any dispute concerning a question of fact arising under the terms of this agreement which is not disposed of within a reasonable period of time by the COLLEGE and CITY employees normally responsible for the administration of this Agreement shall be brought to the attention of the Fire Chief (or designated representative) of each organization for joint resolution. For purposes of this provision, a "reasonable period of time" shall be ten (10) calendar days or less. COLLEGE and CITY agree to continue with the responsibilities under this Agreement during any dispute. Disputes that are not resolved informally by and between COLLEGE and CITY representatives may be resolved, by mutual agreement of the PARTIES, through alternate forms of dispute resolution including but not limited to mediation or non-binding arbitration. The costs associated with the selected form of dispute resolution such as mediation or non-binding arbitration shall be shared equally among the participating PARTIES. If the alternate form of dispute resolution does not resolve the issue(s), the PARTIES reserve the right to seek remedies as provided by law or in equity. Venue for litigation shall be in Orange County, California.

16. Entire Agreement. This Agreement 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 Agreement may be modified only in writing, and signed by the PARTIES in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.
17. Representatives. The Fire Chief or his or her designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the CITY called for by this Agreement, except as otherwise expressly provided in this Agreement.

COLLEGE shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of COLLEGE called for by this Agreement, except as otherwise

expressly provided in this Agreement.

18. [Intentionally omitted]
19. **Notices.** Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery 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, and (b) forty-eight (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.

<b>IF TO COLLEGE:</b> OCEMT Corp. 26489 Rancho Parkway South Tel: (949) 421-3958 Attn: Corey Gremel	<b>IF TO CITY:</b> City of Costa Mesa Costa Mesa Fire and Rescue Dept. 77 Fair Drive Costa Mesa, CA 92626 Tel: (714) 754-5000 Attn: _____
	<b>COURTESY COPY TO:</b> City of Costa Mesa 77 Fair Drive Costa Mesa, CA 92626 Attn: Finance Dept.   Purchasing

20. **Drug-Free Workplace Policy.** COLLEGE shall provide a drug-free workplace by complying with all provisions set forth in CITY's Council Policy 100-5, attached hereto as Exhibit "A" and incorporated herein. COLLEGE's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by CITY.
21. **Attorneys' Fees.** In the event that litigation is brought by any party in connection with this Agreement, 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.
22. **Governing Law.** This Agreement 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 Agreement, the PARTIES hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

23. Assignment. COLLEGE shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of COLLEGE's interest in this Agreement without CITY's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of CITY's consent, no subletting or assignment shall release COLLEGE of COLLEGE's obligation to perform all other obligations to be performed by COLLEGE hereunder for the term of this Agreement.
24. Independent Contractor. COLLEGE is and shall be acting at all times as an independent contractor and not as an employee of CITY. COLLEGE 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 agents shall have control over the conduct of COLLEGE or any of COLLEGE's employees, except as set forth in this Agreement. COLLEGE 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. COLLEGE 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 COLLEGE and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. COLLEGE 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 Agreement. COLLEGE further agrees to indemnify and hold CITY harmless from any failure of COLLEGE to comply with the applicable workers' compensation laws. CITY shall have the right to offset against the amount of any fees due to COLLEGE under this Agreement any amount due to CITY from COLLEGE as a result of COLLEGE's failure to promptly pay to CITY any reimbursement or indemnification arising under this paragraph.
25. Cooperation. In the event any claim or action is brought against CITY relating to COLLEGE's performance or services rendered under this Agreement, COLLEGE shall render any reasonable assistance and cooperation which CITY might require.
26. Public Records Act Disclosure. COLLEGE has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by COLLEGE or any of its subcontractors pursuant to this Agreement and provided to CITY may be subject to public disclosure as required by the California Public Records Act. (Gov. Code § 6250 et seq.) Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in California Government Code section 6254.7, and of which COLLEGE informs CITY of such trade secret. The CITY will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The CITY shall not, in any way, be liable or responsible for the disclosure of any trade secret including,

without limitation, those records so marked if disclosure is deemed to be required by law or by order of the court.

27. Conflict of Interest. COLLEGE and its officers, employees, associates and sub-contractors, if any, will comply with all conflict of interest statutes of the State of California applicable to COLLEGE's services under this agreement, including but not limited to, the Political Reform Act (Government Code sections 81000 et seq.) and Government Code section 1090. During the term of this Agreement, COLLEGE and its officers, employees, associates and sub-contractors shall not, without the prior written approval of the CITY representative, perform work for another person or entity for whom COLLEGE is not currently performing work that would require COLLEGE or one of its officers, employees, associates or sub-contractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.
28. Prohibited Employment. COLLEGE will not employ any regular employee of CITY while this Agreement is in effect.
29. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.
30. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.
31. Binding Effect. This Agreement binds and benefits the PARTIES and their respective permitted successors and assigns.
32. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of CITY and COLLEGE and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.
33. Headings. Paragraphs and subparagraph headings contained in this Agreement 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 Agreement.
34. Construction. The PARTIES have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other college for review and comment. In the event an ambiguity or question of intent

or interpretation arises with respect to this Agreement, this Agreement 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 Agreement.

35. Amendments. Only a writing executed by the PARTIES hereto or their respective successors and assigns may amend this Agreement.
36. 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 Agreement 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.
37. Severability. If any provision of this Agreement 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 Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination 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.
38. Counterparts. This Agreement 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.
39. Corporate Authority. The persons executing this Agreement on behalf of the PARTIES hereto warrant that they are duly authorized to execute this Agreement on behalf of said PARTIES and that by doing so the PARTIES hereto are formally bound to the provisions of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the last date of final execution.

**COLLEGE**

  
Signature

Date: 1-30-23

CIRBY GREENE - CHIEF FINANCIAL OFFICER  
[Name and Title] OCEMT Corp

**CITY OF COSTA MESA**

  
Lori Ann Farrell Harrison, City Manager


Date: 3/8/23

**ATTEST:**

  
Brenda Green, City Clerk

Date: 3/9/23

**APPROVED AS TO FORM AND CONTENT:**

  
Kimberly Hall Barlow, City Attorney

Date: 2/7/23

**APPROVED AS TO INSURANCE:**

  
Ruth Wang, Risk Manager

Date: 2/21/23

**DEPARTMENTAL APPROVAL:**

  
Dan Stefano, Fire Chief

Date: 2/7/2023