**EMPLOYEE LOANING AGREEMENT**

 THIS AGREEMENT is entered into this \_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between , a local government agency (“Loaning Employer”) and , a local government agency (“Borrowing Employer”), who agree as follows:

1. **Recitals.** This Agreement is made with reference to the following background recitals:
	1. Borrowing Employer desires a worker to perform the services and/or work described in Exhibit A, attached hereto and incorporated herein (the “Work”).
	2. Loaning Employer employs John Smith (the “Employee”), who possesses the appropriate education, skills and experience to perform the Work. Loaning Employer is willing to provide and loan the services of Employee to Borrowing Employer, and Borrowing Employer is willing to accept the Employee’s Work, on and subject to the terms of this Agreement.
	3. The parties acknowledge that Loaning Employer is the general employer of Employee and that, under the terms of this Agreement, Borrowing Employer is the special employer of Employee.
2. **Special Employment.**
	1. Loaning Employer agrees to provide and loan the services of Employee to perform the Work for and on behalf of Borrowing Employer, and Borrowing Employer agrees to accept and utilize the services of Employee, as provided by this Agreement. When working for Borrowing Employer, Employee shall be under the supervision and direction of Borrowing Employer and its management and supervisory employees. Borrowing Employer shall determine the precise tasks, services and assignments that Employee will perform pursuant to this Agreement.
	2. Employee shall work for Borrowing Employer during the hours or pursuant to the schedule described on Exhibit A. The hours or schedule may be modified by mutual written agreement of the parties. The parties recognize that workload requirements involving either Loaning Employer or Borrowing Employer may require temporary adjustments in Employee’s work schedule and the parties agree to mutually cooperate to accommodate such requirements.
	3. Borrowing Employer shall be responsible for providing Employee with office space, support services, materials, supplies, tools and equipment appropriate to perform the Work. All correspondence, other documents, e-mail and other communications made by Employee in connection with the Work under this Agreement shall be the property of Borrowing Employer and subject to its document retention, management and other applicable policies and regulations.
	4. If Employee undertakes any business-related travel or incurs other business-related expenses in connection with the Work for Borrowing Employer, then Borrowing Employer shall be responsible for payment or reimbursement of Employee’s business-related expenses in accordance with Borrowing Employer’s expense reimbursement policy and procedures.
3. **General Employer Responsibilities.** Employee will remain a full-time regular employee of Loaning Employer, will remain on Loaning Employer’s payroll, will remain subject to Loaning Employer’s general personnel administration, and will continue to receive compensation and benefits solely from Loaning Employer. Employee shall remain subject to Loaning Employer’s personnel policies, rules and regulations. Loaning Employer shall be responsible for payment of all Employee salary and related benefits, pension, insurance, taxes and withholdings required under Loaning Employer’s personnel rules, policies and contracts and applicable federal and state law. Loaning Employer shall be responsible for keeping and maintaining the personnel file and payroll and other records of Employee.
4. **Payment.**
	1. Borrowing Employer shall pay to Loaning Employer an hourly fee in the amount described on Exhibit A based on the number of hours actually worked by Employee on behalf of Borrowing Employer. Borrowing Employer shall keep and maintain a daily time report showing the hours worked by Employee pursuant to this Agreement. At the end of each month, Borrowing Employer shall prepare and submit to Loaning Employer a statement showing Employee’s hours worked and the total fee due for the month along with payment for that month.
	2. The fee paid to Loaning Employer is intended to cover all of its costs and expenses related to loaning the Employee to Borrowing Employer, including all payroll, benefits and workers’ compensation related costs. The fee to be paid by Borrowing Employer shall be the sole and exclusive consideration paid to Loaning Employer.
5. **Term.** This Agreement shall commence on the above date and terminate on \_\_\_\_\_\_\_\_, 200\_\_, unless earlier terminated by a party. This Agreement may be terminated at any time by either party upon 30 days advance written notice to the other party. In the event of such termination, Loaning Employer shall be compensated for all hours of Work performed by Employee to the date of termination.
6. **Insurance.**
	1. Workers’ Compensation Insurance. Loaning Employer, at its sole cost and expense, shall procure and maintain for the duration of this Agreement workers’ compensation insurance or self-insurance covering Employee, in accordance with the requirements of California law. In accordance with Labor Code section 3602(d), the parties intend that this obligation constitute a valid and enforceable agreement by which Loaning Employer agrees to obtain, and shall obtain, workers’ compensation coverage for the Employee provided to Borrowing Employer under this Agreement. Borrowing Employer therefore shall not be subject to civil, criminal or other penalties for failure to provide workers’ compensation coverage or tort liability in the event of an injury to or illness of Employee suffered in the course of providing Work under this Agreement. In accordance with Insurance Code section 11663, and because Employee remains on Loaning Employer’s payroll, Loaning Employer acknowledges that its workers’ compensation insurer or self-insurer will be liable for the entire cost of workers’ compensation benefits payable on account of an illness or injury occurring in the course of and arising out of the general and special employment of Employee under this Agreement.
	2. Other Insurance. Each party, at its sole cost and expense, shall procure and maintain for the duration of this Agreement the following types and limits of insurance:

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| --- | --- | --- |
| *Type* | *Limits* | *Scope* |
| Commercial general liability | $1,000,000 per occurrence & $2,000,000 aggregate | at least as broad as ISO CG 0001 |
| Automobile liability | $1,000,000 per accident | at least as broad as ISO CA 0001, code 1 (any auto) |

* 1. Proof of Insurance. Upon request, a party may request, and the other party shall provide a certificate or certificates of insurance evidencing the insurance required by this section.
1. **Indemnification.**
	1. Loaning Employer shall indemnify, defend, protect and hold harmless Borrowing Employer, and its officers, employees, volunteers and agents, from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of a breach of Loaning Employer’s obligations under this Agreement, except where caused by the sole negligence or willful misconduct of Borrowing Employer or as otherwise provided or limited by law.
	2. Borrowing Employer shall indemnify, defend, protect and hold harmless Loaning Employer, and its officers, employees, volunteers and agents, from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of (i) a breach of Borrowing Employer’s obligations under this Agreement or (ii) an act or omission of Employee in performing Work for Borrowing Employer under this Agreement, except (i) where caused by the sole negligence or willful misconduct of Loaning Employer, (ii) as otherwise provided by section 6(a), or (iii) as otherwise provided or limited by law.
	3. The parties’ obligations under these indemnification provisions shall survive the termination of this Agreement.
2. **State Audit.** In accordance with Government Code section 8546.7, the parties acknowledge that this Agreement, and performance and payments under it, may be subject to examination and audit by the State Auditor General for three years following final payment under the Agreement.
3. **Entire Agreement.** This writing represents the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract between the parties concerning Employee’s Work for Borrowing Employer, and supersedes all prior oral and/or written negotiations, representations or contracts. This Agreement may be amended only by a subsequent written contract approved and executed by both parties.
4. **Successors and Assignment.** This Agreement shall bind and inure to the benefit of the successors and assigns of the parties; however, Loaning Employer shall not change the Employee performing the Work under this Agreement without the prior written consent of Borrowing Employer.
5. **No Waiver of Rights.** Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by Borrowing Employer to Loaning Employer shall be considered or construed to be a waiver of any breach or default.
6. **Severability.** If any part of this Agreement is held to be void, invalid, illegal or unenforceable, then the remaining parts will continue in full force and effect and be fully binding, provided that each party still receives the benefits of this Agreement.
7. **No Third Party Beneficiaries.** This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the parties and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.
8. **Notice.** Any notice, invoice or other communication that is required or permitted to be given under this Agreement shall be in writing and either delivered personally or sent by prepaid, first class U.S. mail addressed as follows:

|  |  |
| --- | --- |
| Borrowing Employer:*[insert name and address]* | Loaning Employer:*[insert name and address]* |

Any party may change its address by notifying the other party of the change in the manner provided above.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BORROWING EMPLOYER LOANING EMPLOYER

By: By:

 *[name]* *[name]*

 *[title]* *[title*

**EXHIBIT A**

**Loaned Employee Work, Hours/Schedule, and Hourly Rate**

*[Insert (1) the work, services or tasks to be performed by the loaned employee, (2) the hours, schedule or other arrangement concerning the time to be spent by the loaned employee working for the Borrowing Employer, and (3) the hourly rate to be paid by the Borrowing Employer.]*