



**AGREEMENT BETWEEN THE
ORANGE COUNTY FLOOD CONTROL DISTRICT
AND
LAND ADVISORS ORGANIZATION
FOR REAL ESTATE
DISPOSITION SERVICES**

This Agreement (hereinafter referred to as “Contract”) is made and entered into upon execution of all necessary signatures by and between the Orange County Flood Control District, a body corporate and politic (hereinafter referred to as “District”) and Park Place Partners, Inc. dba Land Advisors Organization, California Division, with a place of business at 100 Spectrum Center Drive, Suite 1400, Irvine, CA 92618 (hereinafter referred to as “Contractor”). District and Contractor may be referred to individually as “Party” or collectively as “Parties.”

RECITALS

WHEREAS, District desires to enter into a contract with Contractor for real property disposition services for a property located in the City of Highland, south of the San Bernardino National Forest; east of the Santa Ana River and Greenspot Road; and north of Mill Creek Road (State Route 38), approximately 1,658 acres in size, and identified as APNs 0297-091-18, 0297-101-33, 0297-101-34, 0297-181-03, 0302-071-06, 0302-082-09, 0302-082-10, 0302-082-11 (“Greenspot Property”); and

WHEREAS, Contractor represents that Contractor is qualified, willing, and able to provide such real property disposition service to District in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties mutually agree as follows:

I. GENERAL TERMS AND CONDITIONS

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire Contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes, or revisions are valid or binding on District unless authorized by District in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any District employee or agent, including but not limited to installers of software, shall not be valid or binding on District unless accepted in writing by District’s Purchasing Agent or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes, or revisions are valid or binding on District unless authorized by District in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and

ATTACHMENT C

sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

- E. **Delivery:** Time of delivery services is of the essence in this Contract. District reserves the right to refuse any services and to cancel all or any part of the services that do not conform to the prescribed statement of work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by District.
- F. **Acceptance Payment:** Unless otherwise agreed to in writing by District, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of District, and 2) payment shall be made from and is contingent upon close of escrow of the Greenspot Property after satisfactory acceptance of the services received from Contractor.
- G. **Warranty:** Contractor expressly warrants that the services covered by this Contract are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold District and its indemnitees as identified in paragraph "HH" below, and as more fully described in paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by District by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of District. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of District shall be invalid and shall constitute a breach of this Contract.
- I. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- J. **Termination:** In addition to any other remedies or rights it may have by law, District has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by District of its right to terminate the Contract shall relieve Parties of all further obligation.
- K. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- L. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of District. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through District.

M. **Performance Warranty:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to District's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of District required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by sub-contractors.

N. **Insurance Requirements:**

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the District that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the District during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by District from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by District representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the District's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the District harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the District at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the District was the insured.

If the Contractor fails to maintain insurance acceptable to the District for the full term of this Contract, the District may terminate this Contract.

Qualified Insurer

ATTACHMENT C

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation Employers Liability Insurance	Statutory \$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***Orange County Flood Control District its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by

the District shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***Orange County Flood Control District, its elected and appointed officials, officers, agents and employees*** or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***

All insurance policies required by this Contract shall waive all rights of subrogation against the District, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

ATTACHMENT C

Contractor shall notify District in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to District. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the District may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a “separation of insureds” clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

District expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by District’s Risk Manager as reasonably appropriate to adequately protect County.

District shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with District incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and District shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- O. **Changes:** Contractor shall make no changes in the work or perform any additional work without the District’s specific written approval.
- P. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the District agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the District. District reserves the right to immediately terminate the Contract in the event the District determines that the assignee is not qualified or is otherwise unacceptable to the District for the provision of services under the Contract.
- Q. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to District within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- R. **Confidentiality:** Contractor agrees to maintain the confidentiality of all District and District-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees.
- S. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor’s expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by District in its governmental capacity and all other laws applicable to the services at the time services

ATTACHMENT C

are provided to and accepted by District. Contractor acknowledges that District is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold District and District Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

- T. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- U. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each Party shall bear their own attorney's fees, costs and expenses.
- V. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.
- W. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by District, and hold harmless, the District, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the District or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- X. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by District in its reasonable discretion, and hold District, its elected and appointed officials, officers, employees, agents and those special districts and agencies which District's Board of Supervisors acts as the governing Board ("District Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and District by a court of competent jurisdiction because of the concurrent active negligence of District or District Indemnitees, Contractor and District agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.
- Y. **Audits/Inspections:** Contractor agrees to permit the District's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the District) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the

ATTACHMENT C

performance of the Contract including, but not limited to, the costs of administering the Contract. The District will provide reasonable notice of such an audit or inspection.

The District reserves the right to audit and verify the Contractor's records before final payment is made. Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the District to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the District's project manager.

Z. Intentionally Omitted.

//
//
//
//
//
//
//

II. ADDITIONAL TERMS AND CONDITIONS

- 1.0 **Scope of Contract:** Contractor shall provide real property disposition service for the Greenspot Property, pursuant to Section III ("Scope of Work") of this Contract.
- 2.0 **Term:** This Contract shall commence upon execution of all authorized signatures and will be in effect through and including January 6, 2022, unless otherwise terminated by District.
- 3.0 **Compensation and Payment:** The Contractor agrees to accept the specified compensation as set forth in Section IV of this Contract, entitled "Compensation for Contract Services and Invoicing," as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.
- 4.0 **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the District. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the District.

The Orange County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any District employee for any purpose.

- 5.0 **EDD Independent Contractor Reporting Requirement:** Effective January 1, 2001, the District is required to file federal Form 1099-Misc for services received from a "Service provider" to whom the District pays \$600 or more or with whom the District enters into a Contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "Service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the Service recipient for California purposes and who received compensation or executes a Contract for services performed for that Service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent Contractor is defined as "an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a Contract for services performed for that government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Payroll_Taxes/FAQ_-_California_Independent_Contractor_Reporting.htm.

To comply with the reporting requirements, District procedures for contracting with independent contractors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

- First name, middle initial, and last name
- Social Security Number
- Address
- Start and expiration dates of Contract
- Amount of Contract

6.0 Contractor Bankruptcy/Insolvency: If the Contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the Contractor's insolvency, the District may terminate this Contract.

7.0 Breach of Contract: The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the District may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

7.1 Terminate the Contract immediately, pursuant to Paragraph K herein;

7.2 Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

7.3 Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and

7.4 Offset against any monies billed by the Contractor but yet unpaid by the District those monies disallowed pursuant to the above.

8.0 Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

9.0 Interpretation of Contract: In the event of a conflict or question involving the provisions of any part of this Contract, interpretation, and clarification, as necessary, shall be determined by the District's assigned deputy purchasing agent. If discrepancies in Contract exist between the Contractor and the District's assigned deputy purchasing agent in interpreting the provision(s), final interpretation and clarification shall be determined by the District's Purchasing Agent or his/her designee.

10.0 Conflict with Existing Law: The Contractor and the District agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either Party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with interests of both Parties to the maximum extent reasonable.

11.0 Covenant Against Contingent Fees: Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, District shall have the right to terminate this Contract in accordance with the termination clause and, in its sole discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee from Contractor.

12.0 Precedence: The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

13.0 Ownership of Documents: District has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports, and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the District and may be used by the District as it may require without additional cost to the District. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the District.

14.0 Disputes – Contract:

14.1 The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s Project Manager and the District’s Project Manager, such matter shall be brought to the attention of the District Deputy Purchasing Agent by way of the following process:

14.1.1 The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the District, on its own initiative, has already rendered such a final decision.

14.1.2 The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the District is liable.

14.2 Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the District shall be expressly identified as such, shall be in writing, and shall be signed by the District Deputy Purchasing Agent or his designee. If the District fails to render a decision within 90 days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the District’s right to terminate the Contract for cause or termination for convenience as stated in section K herein.

15.0 Records Inspection: In addition to any other record inspection obligations in this Contract, at any time during normal business hours and as often as either District, Inspector General acting pursuant to the Inspector General Act of 1978, or the Auditor General of the State of California may deem necessary, Contractor must make available for examination all of its records with respect to all matters covered by this Contract. District, Inspector General, and the Auditor General of the State of California each have the authority to audit, examine and make excerpts or transcripts from records, including all Contractor’s invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract. Contractor shall provide any reports requested by District regarding performance of this Contract.

16.0 Notices: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

District: Orange County Flood Control District
c/o County of Orange
County Executive Office Real Estate
Attn: Thomas A. Miller
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701
Phone: (714) 834-6019
Email: thomas.miller@ocgov.com

County of Orange
County Executive Office/Finance
Attn: Rick Tran, Procurement/Contracts Manager
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701
Phone: (714) 834-7025
Email: rick.tran@ocgov.com

Contractor: Land Advisors Organization
100 Spectrum, Suite 1400
Irvine, CA 92618 Phone: (949) 852-8288
Attn: Doug Jorritsma
Email: djorritsma@landadvisors.com

17.0 Adjustments – Scope of Work: No adjustments made to the Scope of Work will be authorized without the prior written approval of the District assigned Deputy Purchasing Agent.

18.0 Amendments – Changes/Extra Work: The Contractor shall make no changes to this Contract without the District's written consent. In the event that there are new or unforeseen requirements, the District with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If District-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the District written notice no later than seven (7) calendar days from the date the law or regulation went into effect or the date the change was proposed by the District and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract Amendment; said Amendment shall be issued by the District-assigned DPA, shall require the mutual consent of all Parties, and may be prohibit the Contractor from proceeding with the work as set forth in this Contract.

19.0 Contractor's License Requirements: Contracts that include requirements for installation or state "furnish and install" require that the contractors possess a valid California State Contractor's License at the time of contract award. If sub-contractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if total cost, including labor and materials, of the project is \$300.00 or more. Failure to be licensed or to keep the license current and in good standing during the term of the contract with the District shall be grounds for contract revocation.

20.0 Subcontracting: No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the District. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the District shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the District to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The District shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the District.

21.0 Headings: The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

III. SCOPE OF WORK

A. Introduction:

This Contract is established for the Contractor to provide real property disposition services for the Greenspot Property as need to facilitate the District's Request for Offers for the Greenspot Property, including marketing, project development financial analysis and insight, offer analysis input, and transaction management services. Services shall be provided as set forth herein.

B. Purpose of this Contract:

Under the direction of County Executive Office, Contractor shall provide real property disposition services for the Greenspot Property services as part of the District's Request for Offers for the Greenspot Property, and the ultimate sale of the property, including close of escrow for the sale of the Greenspot Property. A copy of the District's Request for Offers is included herein as Exhibit "A" and made a part of this contract by this reference.

C. Contractor's Responsibilities:

1. Contractor shall assist the County Executive Office with providing marketing, project development financial analysis and insight, offers analysis input, and transaction management services for the sale of the Greenspot Property. These real estate disposition services shall include, but may not be limited to, the following:

- a. Pre-Marketing

Land Advisors shall develop a complete understanding of the Greenspot Property, build the most knowledgeable team of consultants and advisors, and prepare for the marketing stage. During the Pre-Marketing Stage, Land Advisors will prepare a disposition strategy, marketing timeline, and offering memorandum with the input of the District. Land Advisors will also create a virtual data room to manage the distribution of due diligence materials during the marketing stage.

- b. Formal Marketing

Land Advisors will create target list of the most qualified potential buyers and personally contact each potential buyer. During the formal marketing stage, Land Advisors will set up or help facilitate District meetings and site tours for interested buyers. Throughout this stage, Land Advisors will provide the District with a weekly marketing reports, which will identify all potential buyers that have been contacted and their interest level and response. This stage will conclude with the solicitation and receipt of offers by the offering deadline consistent with the District's Request for Offers.

- c. Offer Analysis & Buyer Selection

Land Advisors will analyze and evaluate all offers received. In addition, Land Advisors will review and analyze all underwriting and financial assumptions in support of the offers received. Land Advisors will provide the District with a summary of offers booklet, which summarize and organized all offers received. Land Advisors will then meet with the District to discuss the offers and provide recommendations. The District and Land Advisors will then proceed with an in-person auction round to allow buyers the opportunity to increase their final offer before buyer selection, as outlined in the District's Request for Offers. If required, following the "best & final" offering round or bidding process, Land Advisors will again summarize and organize the final offers in a summary of offers booklet. This stage concludes with the selection of a buyer.

d. Transaction Management

Upon selection of a buyer, Land Advisors will manage and oversee the transaction process to ensure the successful close of escrow. During this stage, Land Advisors will identify potential obstacles as early as possible and provide solutions or coordinate with consultants to resolve each issue. Land Advisors will provide the District with updates regarding the status of the transaction until the close of escrow.

2. During the period of this Contract, Contractor shall be responsible for all labor, materials, equipment, and incidentals to provide these real property disposition services.
3. Contractor shall attend meetings as needed to facilitate the Request for Offers and sale of the Greenspot Property.
4. Contractor shall facilitate the Request for Offers, including the offers and bids, both sealed and in person.

D. Days and Hours of Contractor Availability:

1. Contractor shall be available as needed to provide these real property disposition services as required to support the District's Request for Offers for the Greenspot Property.

IV. COMPENSATION FOR CONTRACT SERVICES AND INVOICING

A. **Compensation:** In accordance with the provisions of the General and Additional Terms and Conditions, and Scope of Work herein, the Contractor shall be paid a fixed base amount (Base Amount) as specified below upon the close of escrow of the sale of the Greenspot property as set forth in the District’s Request for Offers as well as a success fee if the Property is sold above the asking price of \$25,000,000. The contract amount shall be no less than \$250,000 under this Contract.

<u>Description of Service</u>
Marketing, project development financial analysis and insight, offers analysis input, and transaction management services in support of the District’s Request for Offers for the Greenspot Property

In exchange for the services described above, Contractor shall be paid a base amount of \$250,000. In addition, Contractor shall receive a success fee equal to three percent (3.0%) of every dollar above the stated asking price (Success Fee).

By way of example only, if the Property is sold for \$30,000,000, then Contractor shall receive a total fee of \$400,000 — which equates to the Base Amount plus a Success Fee of three percent (3.0%) of \$5,000,000 (\$30,000,000 less \$25,000,000).

B. **Invoicing:**

1. Contractor shall send invoices to:
County of Orange
County Executive Office/Finance
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701
2. Contractor shall send invoice with the following information:
 - Contractor’s name and address
 - Contractor’s remittance address, if different from the address above
 - Contractor’s federal taxpayer identification number
 - Date of Services
 - Description of services
3. Payment will be made after receipt of an invoice in a format acceptable to the District and verified and approved by the agency/department and from sales proceeds from the sale of the Greenspot property after the close of escrows. The responsibility for providing an acceptable invoice to the District for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.
4. Payments made by the District shall not preclude the right of the District from thereafter disputing any services invoiced or billed under this Contract and shall not be construed as acceptance of any part of the services.

ATTACHMENT C

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Park Place Partners, Inc. dba Land Advisors Organization, California Division *

Print Name Title

Signature Date

Print Name Title

Signature Date

* If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

Orange County Flood Control District, a body corporate and politic

Rick Tran Deputy Purchasing Agent
Name Title

Signature Date

Approved as to Form, County Counsel:

ATTACHMENT C

EXHIBIT A

ORANGE COUNTY FLOOD CONTROL DISTRICT
BID INSTRUCTIONS