COOPERATIVE AGREEMENT BETWEEN

THE ORANGE COUNTY FLOOD CONTROL DISTRICT

AND THE COUNTY OF ORANGE

FOR A REAL ESTATE JOINT VENTURE

This Cooperative Agreement (“**Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ between the Orange County Flood Control District, a body corporate and politic ("**District**") and the County of Orange, a political subdivision of the State of California (“**County**"). District and County may sometimes be referred to herein collectively as the “**Agencies**,” or individually as an “**Agency**.”

**RECITALS**

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (“**Joint Exercise of Powers Act**”), two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, each of the Agencies is a "public agency" as that term is defined in Section 6500 of the Joint Exercise of Powers Act; and

WHEREAS, each Agency is also empowered by law to acquire and dispose of real property for a public purpose; and

WHEREAS, District is a district established by the Orange County Flood Control Act (West Annotated California Code , Water Code Appendix, Chapter 36) which establishes the powers and purposes of the District; and

WHEREAS, District owns or controls certain real property as described on Exhibit A, attached hereto (“**Property**”), that can be put to additional uses that do interfere with either the current or probably future uses of the Property by the District in furtherance of the purposes of the District; and

WHEREAS, the Agencies have entered into that certain “Master Cooperative Agreement Between the Orange County Flood Control District and the County of Orange for Joint Real Estate Ventures,” dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_ (“**Master Agreement**”); and

WHEREAS, by the terms of the Master Agreement the Agencies agreed to jointly undertake the management, development, financing and/or refinancing of the Property, as more fully set forth on Exhibit B, attached hereto and incorporated herein (“**Project**”); and

WHEREAS, it is the intention of the Agencies that the Project will result in significant public benefits to the inhabitants of the jurisdictions of the Agencies; and

WHEREAS, it is the intention of the Agencies that both Agencies be reimbursed its invested capital and administrative costs arising from the Project; and

WHEREAS, the lease, rental agreement or other agreement that will set forth the rights and obligations of the Agencies concerning the Project will contain terms that ensure that the Project will not impair or diminish existing or probable future uses of the Property by the District in furtherance of the purposes of the District as required by Sections 36-2(13) and 36-2.3 of the Orange County Flood Control Act; and

WHEREAS, it is the intention of the Agencies that the Agencies share the revenue generated from the Project in proportion to their contributions, after deducting the Project’s expenses from its revenue, as more fully set forth below.

**AGREEMENT**

NOW, THEREFORE, the Agencies, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

1. **Incorporation of Recitals**. The Recitals above are incorporated herein by this reference.
2. **Definitions**.
   1. “**Project**” means that certain joint real estate project to be undertaken by the Agencies, as more fully described on Exhibit B.
   2. “**Project Budget**” shall mean that certain budget for the Project developed by the Project Managers for the Agencies that allocate Project Expenses for the Project to either Agency, for which such Agency shall be reimbursed out of Project Revenue, as set forth herein.
   3. “**Project Completion**” shall be as defined in Exhibit B.
   4. “**Project Expenses**” means all regular and customary expenses incurred in relation to the operation of the Project. Said Project Expenses shall include, but not be limited to, invested capital, reasonable property management and administrative fees, staff time, utility charges, taxes, auditing, any improvements constructed, operating and maintenance expenses and Project insurance premiums, if necessary.
   5. “**Project Revenue**” means all revenue generated by the Project including, but not limited to, rent payments, revenue from the sale of property and any other funds generated from the Project.
   6. “**Residual Receipts**” means the Project Revenue less (A) Project Expenses, approved in writing in advance by both Agencies through the Project Budget, and (B) scheduled deposits to reserves approved in writing in advance by both Agencies, if any.
3. **Project Managers**. The Agencies shall each appoint a Project Manager to act as liaison between the Agencies during the term of this Agreement (respectively, the “**District Project Manager**” and the “**County Project Mana**ger”). The County Project manager shall coordinate the activities of the County staff assigned to work on the Project.
4. **Project**

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* 1. The Agencies are entering into this Agreement to jointly complete the Project. Both Agencies will make contributions to the Project with the purpose of generating certain revenues, which will be shared between the Agencies, as set forth below in Sections 5 and 6, below. The Agencies acknowledge that there is no guaranteed timeline for the Project and agree to work cooperatively to achieve completion of the Project within the Project Budget.
  2. The joint real estate venture provided for hereunder shall be limited to the completion of the Project as agreed to by the Project Managers, and shall not be extended except by written agreement of the Agencies. The definition of “**Project Completion**” shall be memorialized in Exhibit B or separately agreed to by the Project Managers.
  3. The Project Managers for the Agencies have developed a Project Budget, attached hereto as Exhibit C, which allocates Project Expenses to the Agencies and shall be updated as needed during the term of the Project by mutual agreement of the Project Managers.
  4. The Agencies respective Project Managers shall meet periodically to review the Project Budget and progress on the Project or as may be requested by the Project Managers and to provide any required status reports.
  5. Any contracts entered into by either Agency in furtherance of the Project shall be the sole responsibility of the Agency entering into that contract and no responsibility for such contact shall be imputed onto the other Agency by reason of this Agreement.

1. **Agency Contributions**.
   1. District Contribution. District’s contribution to the Project is the use of the Property as shown on Exhibit A, as well as all necessary staff time and other costs related to the routine maintenance and upkeep of the Property, which shall be memorialized in the approved Project Budget.
   2. County Contribution. The County’s contribution to the Project is the use of County expert personnel and other resources as necessary to effectuate the goal of generating revenue from the Property and the Project, which shall be memorialized in the approved Project Budget. The County’s contribution and services are more specifically described on Exhibit D, attached hereto and incorporated herein by this reference.
   3. Proportional Value of Agency Contributions to the Project. The Agencies agree that the proportional values of these contributions to the Project are \_\_\_\_\_\_\_\_\_\_ percent (\_\_%) from District and \_\_\_\_\_\_\_\_\_\_\_\_ percent (\_\_%) from the County (“**Proportional Values**”).
2. **Distribution of Project Revenue**.
   1. After Project Expenses have been paid from Project Revenue, any Residual Receipts will be apportioned in accordance with the Proportional Values, as set forth herein.
   2. In addition, net losses attributable to the Project, if any, shall be allocated to the Agencies in accordance with the Proportional Values.
   3. Within sixty (60) days of the end of Project Completion or on a periodic basis as agreed to by the Project Managers and set forth in Exhibit B, the District Project Manager shall prepare an accounting of the Project Expenses, Project Revenue and Residual Receipts (“**Project Accounting**”) and provide such Project Accounting to the County Project Manager.
   4. The County Project Manager shall have thirty (30) days from receipt of such Project Accounting to accept or reject such Project Accounting. If the County Project Manager does not respond within such thirty (30) day period, the Project Accounting shall be deemed approved.
   5. If the County rejects the Project Accounting, the Agencies shall meet and confer and come to a mutual agreement on the Project Accounting.
3. **Shortfall of Project Revenue**. In the event that Project Revenue are not sufficient to completely cover Project Expenses, the Project Revenue shall be distributed in the following order:
   1. To the District based on the District’s unreturned invested capital (*e.g*., land cost, consulting fees and reports) until the District has received an amount equal to its unreturned invested capital; and
   2. Then to the County based on the County’s unreturned invested capital (*e.g*., land cost, consulting fees and reports) until the County has received an amount equal to its unreturned invested capital; and
   3. Then to the District based on the District’s unreturned administrative costs and expenses (*e.g*., employee compensation and overhead) until the District has received an amount equal to its unreturned administrative costs and expenses; and
   4. Then to the County based on the County’s unreturned administrative costs and expenses (*e.g*., employee compensation and overhead) until the County has received an amount equal to its unreturned administrative costs and expenses; and
   5. Then, if any Project Revenue remains, it shall be distributed in accordance with the Proportional Values.
4. **Term**. This Agreement shall continue until such time as the Project has been completed or the Agencies agree that the County’s services as described in Exhibit C are no longer necessary to the Project. Upon completion or termination of the Project, for any reason, the Project Revenues shall be distributed as set forth in Section 6 and 7, above.
5. **Performance**. County shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the County under this Agreement. County shall perform all work diligently, carefully, and in a good and workman-like manner.
6. **Administering Agency**. Pursuant to Section 6509 of the Joint Exercise of Powers Act, the District is the Agency administering the Agreement and as such, its ability to exercise power is only limited to what limitations the District is otherwise subject to in its regular course of business. The County will undertake all duties associated with providing real estate services to generate revenue for the Project.

Except as otherwise expressly and specifically provided in this Agreement, neither Agency shall have any authority to act for, or to assume any obligations or responsibility on behalf of, the other Agency.

1. **Accounting**. The Agencies shall provide strict accountability of all funds and report of all receipts and disbursements made pursuant to the Project and this Agreement. Such accounting shall be completed and administered in the customary method for each Agency. If for some reason an accounting for the Project is not completed by either Agency, such accounting shall be completed pursuant to Section 6505 of the Joint Exercise of Powers Act.
2. **Surplus Funds**. Pursuant to Section 6512 of the Joint Exercise of Powers Act, after the completion of this Agreement, any surplus funds on hand shall be considered Project Revenue and returned in proportion to the Proportional Value, as set forth herein.
3. **Privileges and Immunities**. Pursuant to Section 6513 of the Joint Exercise of Powers Act, all of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of officers, agents or employees of the Agencies when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this article.
4. **Reserve Fund**. The District, pursuant to Section 6516.8 of the Joint Exercise of Powers Act, shall maintain reserve funds to be used to pay losses incurred under this Agreement.
5. **Indemnification**.
   1. County shall defend, indemnify and save harmless District, its officers, agents, and employees, from and against any and all claims, demands, losses, or liabilities of any kind or nature which District, its officers, agents, and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of, or arising out of, the negligence of County, its officers, agents, employees, subtenants, invitees, or licensees, in connection with the Project or this Agreement.
   2. Likewise District shall defend, indemnify and save harmless County, its officers, agents, and employees from and against any and all claims, demands, losses, or liabilities of any kind or nature which County, its officers, agents, and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of, or arising out of, the negligence of District, its officers, agents, employees, invitees, or licensees, in connection with the Property, the Project or this Agreement.
6. **Termination**. In addition to any other remedies or rights it may have by law, District has the right to terminate this Agreement without penalty immediately with cause or after 30 days’ written notice without cause, unless otherwise specified. Cause shall be defined as any breach of contract, any misrepresentation or fraud on the part of the County. Exercise by District of its right to terminate the Agreement shall relieve District of all further obligation hereunder.
7. **Compliance with Laws**. County represents and warrants that services to be provided under this Agreement shall fully comply with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “**laws**”), and all other laws applicable to the services at the time services are provided to the District.
8. **Notices**. All written notices pursuant to this Agreement shall be addressed as set forth below or as either party may hereafter designate by written notice and shall be deemed delivered upon personal delivery, the next business if sent by receipted overnight delivery such as FedEx, or upon receipt or refusal to accept delivery, as indicated on the return receipt, if sent certified, return receipt requested.

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| TO: DISTRICT  Orange County Flood Control District  c/o OC Public Works  300 Flower Street  Santa Ana, CA 92703  Attn: Director | TO: COUNTY  County of Orange  CEO/Corporate Real Estate  333 West Santa Ana Blvd.  3rd Floor  Santa Ana, CA 92701  Attn: Chief Real Estate Officer |

Either Agency hereto may change its address to which notices are to be sent by giving written notice of such change to the other Agency.

1. **Assignment**. County shall not assign this Agreement without the prior written consent of District, which consent shall not unreasonably be withheld.
2. **Amendment**. This Agreement sets forth the entire agreement between District and County and any modification must be in the form of a written amendment.
3. **Circumstances Which Excuse Performance**. If either Agency shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure standard materials, failure of power, restrictive governmental laws, regulations or orders or governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations which is not the result of the action or inaction of the party claiming such delay), riots, civil unrest or insurrection, war, terrorism, bioterrorism, fire, earthquake, flood or other natural disaster, unusual and unforeseeable delay which results from an interruption of any public utilities (e.g., electricity, gas, water, telephone) or other unusual and unforeseeable delay not within the reasonable control of the party delayed in performing work or doing acts required under the provisions of this Agreement (collectively, **“Force Majeure”**), then performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.
4. **Governing Law and Venue**. This Agreement 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 agreement, 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.
5. **Survival**. Notwithstanding anything contained in the Agreement to the contrary, all indemnities of each party set forth in the Agreement will survive the expiration or earlier termination of the Agreement.
6. **Good Faith and Fair Dealing**. Whenever this Agreement grants District or County the right to take action, exercise discretion, or make allocations or other determinations, District and County shall act reasonably and in good faith.
7. **Time**. Time is of the essence of this Agreement.
8. **Waiver and Interpretation**. Titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provisions hereof. No provision in this Agreement is to be interpreted for or against an Agency because that Agency or its legal representative drafted such provision.
9. **Exhibits to Agreement**. This Agreement includes the following, which are attached hereto and made a part hereof:
   1. Exhibit A – Description and Depiction of Property
   2. Exhibit B – Project Description
   3. Exhibit C – Project Budget
   4. Exhibit D - County Services

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

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| APPROVED AS TO FORM:  COUNTY COUNSEL  By  Deputy  Date | DISTRICT ORANGE COUNTY FLOOD CONTROL DISTRICT  \_\_\_  Director, OC Public Works  Orange County, California   COUNTY COUNTY OF ORANGE  \_\_\_  Chief Real Estate Officer  Orange County, California |

EXHIBIT A

Description and Depiction of Property

EXHIBIT B

Project Description

EXHIBIT C

Project Budget

EXHIBIT D

County Services