

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

Recording Requested by and When Recorded Return to:

City Clerk
City of Fountain Valley
10200 Slater Avenue
Fountain Valley, CA 92653
Attn: City Clerk

With Copy to:
Clerk of the Board
Orange County Sanitation OCSD
10844 Ellis Ave.
Fountain Valley, CA 92708

[Exempt from Recording Fee Per Gov. Code § 27383]]

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into by and between the ORANGE COUNTY SANITATION DISTRICT, a county sanitation district (OCSD), and the CITY OF FOUNTAIN VALLEY, a California general law city and municipal corporation (CITY). OCSD and the CITY are sometimes collectively referred to herein as the “Parties” and individually referred to as each “Party.”

RECITALS AND INTENT OF PARTIES

This Agreement is made with respect to the following facts:

A. OCSD owns the following parcels of real property in the CITY:

Street Address(es)	Parcel Number(s)
18475 Pacific Street & 18484 Bandilier Circle	156-163-06; 156-163-08
18410, 18430 & 18436 Bandilier Circle	156-163-10
18429 Pacific Street	156-163-09
18368, 18375, 18381 & 18384 Bandilier Circle	156-163-11
18350 Mt. Langley	156-163-17; 156-154-08

Collectively, these properties are referred to herein as the “OCSD Properties.” The OCSD Properties are described more specifically in the legal descriptions attached hereto as Exhibit “A.”

Notwithstanding the defined term of OCSD Properties, or any other term of this Agreement, the Mt. Langley property will, at the time of development or redevelopment, be required to pay, in full, all then applicable City or third party fees for development, including but not limited to permit processing fees, plan check fees, business license fees, traffic impact and/or mitigation fees, park fees, subdivision fees, water/sewer connection fees, WQMP fees or inspection fees.

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

B. OCSD applied to the CITY for permits to develop (i) an administration headquarters building and surface parking lot on the OCSD Properties, and (ii) a pedestrian bridge across Ellis Avenue connecting the new administration headquarters building with the OCSD's Reclamation Plant No. 1. In addition, the OCSD may in the future redevelop the property located at 18350 Mt. Langley for office and/or laboratory uses. Collectively, these improvements are referred to herein as the "Project."

C. The OCSD Properties are within the Fountain Valley Crossings Specific Plan (FVCSP) area. On January 23, 2018, the CITY adopted the FVCSP and certified the Revised Final Environmental Impact Report, SCH No. 2015101042 for the FVCSP (FVCSP EIR). OCSD later prepared an Addendum to evaluate any Project impacts not analyzed in the FVCSP EIR. OCSD's governing board considered the Addendum when it approved the Project. This FVCSP area is intended to maximize the economic benefit from land use to the CITY and the Parties hereto desire to mutually ensure and protect the economic benefit of the FVCSP area.

D. Government Code Section 65865 and Chapter 21.38 of the Fountain Valley Municipal Code authorize the CITY to enter into development agreements with property owners. By providing certainty to property owners, development agreements strengthen the public planning process, encourage private participation in comprehensive planning, provide needed public facilities, ensure community economic health, make maximum efficient utilization of resources at the least economic cost to the public, and reduce the economic costs of development.

E. Without this Agreement, the CITY could change the policies, ordinances, rules, and regulations applicable to the Project after the Project is approved but before OCSD obtains a common law vested right to construct the Project as approved. Any such change could increase OCSD's costs of development and/or delay construction of the Project. OCSD desires to eliminate this risk. To that end, this Agreement includes the CITY's binding assurance that the OCSD may develop the Project in accordance with the CITY policies, ordinances, rules, and regulations in effect as of the date the City Council adopts an ordinance approving this Agreement, all as subject to the specific terms and conditions in this Agreement.

F. The CITY provides a variety of services to existing land uses within the CITY, including but not limited to police, fire protection, water, and sewer collection services. New development in the CITY often increases the need for, and the cost of, these services. Without this Agreement, the Project would not contribute to any costs associated with the services provided to the OCSD Properties, including police, fire protection, water, and sewer collection services.

G. This Agreement will further the comprehensive planning objectives in the CITY's General Plan and the FVCSP and result in substantial public benefits including, among others, the following: (i) as the first site in the Specific Plan area to redevelop under the FVCSCP, the Project will help stimulate the revitalization envisioned in the Specific Plan and thereby further all of the Community Objectives identified in Section 1.1 of the Specific Plan; (ii) by relocating OCSD's administrative offices from Reclamation Plant No. 1 to the Project site, the Project will allow the OCSD to use additional acreage at the Plant 1 site for development of wastewater treatment facilities;

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

and (iii) OCSD's payment of the monetary contribution pursuant to Section 5 below will help the CITY maintain and enhance existing levels of service for police, fire protection, water, and collection of sewage throughout the CITY that might otherwise be lost as a result of the public agency ownership of the Project, the land and the improvements, thereon, whether current or in the future. The Parties agree that the payment to the CITY of Two Million Nine Hundred Thousand Dollars (\$2.9 million) makes the CITY whole for all community impacts arising from the Project.

H. The City Council concurrently approved the Project and this Agreement in accordance with all applicable legal requirements including, but not limited to, requirements for notice, public hearings, findings, votes, and other procedural matters. The CITY took the following actions on the specified dates:

- i. On September 12, 2019, the City of Fountain Valley Subdivision Review Committee approved Lot Line Adjustment No. 19-01 pursuant to FVMC 21.76.040.
- ii. On November 21, 2019, the City of Fountain Valley Subdivision Review Committee approved Lot Line Adjustment No. 19-02 – Per FVMC 21.76.040.
- iii. On October 14, 2020, the Planning Director conducted a duly noticed public hearing and approved Development Plan Review No. 20-1 and Deviations for the maximum building length, street façade composition, parking requirements, and an Addendum to the FVCSP EIR covering the Project. These actions were contingent upon Planning Commission and City Council approval of the Project and Entitlements.
- iv. On October 28, 2020, the Fountain Valley Planning Commission conducted a duly noticed public hearing and approved Resolution NO. 20-___ approving Variance 332 and recommending that the City Council approve Code Amendment No. 20-09, the vacation of an easement, a Development Agreement, a pedestrian bridge, and the Addendum to the FVCSP EIR covering the Project. The Planning Commission actions are contingent upon City Council actions on Code Amendment No. 20-09, the vacation of an easement, and a Development Agreement and pedestrian bridge.
- v. On October 28, 2020, the Planning Commission considered this Agreement and the pedestrian bridge at its public hearing, and approved Resolution No. ___ recommending the City Council approve the Development Agreement, pedestrian bridge, and the Addendum.
- vi. On November 17, 2020, after a duly noticed public hearing, the City Council introduced Ordinance No. _____ approving and authorizing the execution of this Agreement.
- vii. On December 1, 2020, after a duly noticed public hearing, the City Council determined that the provisions of this Agreement are consistent with the General Plan of the CITY, adopted Ordinance No. _____ and made findings of fact set forth therein, and approving the Addendum to the FVCSP EIR; and

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

viii. On December 1, 2020, the City Council adopted Ordinance No. ____, a copy of which is on file with the City Clerk of the CITY, and the findings and conditions pertaining thereto.

I. The CITY hereby gives OCSD the assurance that OCSD can proceed with the development of the Project for the term of this Agreement pursuant to the terms and conditions of this Agreement and in accordance with the Existing Regulations. The CITY's assurance is made in consideration of the economic payment to pay in full the impacts to the CITY and substantial public improvements and benefits that will arise from the Project, the reduced costs of development, and the benefits to the CITY planning process. In reliance on the CITY's covenants set forth in this Agreement, OCSD (i) has made the covenants set forth herein and (ii) will continue to incur costs in planning, designing, and constructing the Project.

K. Upon execution, this Agreement shall bind future City Councils to the obligations set forth herein and thereby limit the CITY's ability to exercise certain governmental powers to the extent specified herein. Likewise, OCSD shall be bound by the terms of this Agreement as to the use and improvement of the OCSD properties.

M. The Parties agree that the consideration to be exchanged in this Agreement is fair, just, and reasonable.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, and the intent of the Parties as set forth above, the Parties hereto agree as follows:

Section 1 Definitions.

Unless the context requires a different meaning, any term or phrase used in this Agreement that has its first letter capitalized shall have the meaning given to it by this Agreement. Certain terms and phrases are referenced below; others are defined where they appear in the text of this Agreement, including the Exhibits.

(a) "Agreement" means this Development Agreement, including the exhibits hereto, as the same may be amended from time to time.

(b) "City Council" means the CITY's city council.

(c) "Development," "development," and "develop" mean the improvement, maintenance, and use of the OCSD Properties for the purposes of completing and occupying the structures, improvements, and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction, demolition, reconstruction, and redevelopment of buildings and structures; the installation of landscaping, and the use and maintenance of such buildings, structures, and landscaping.

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

(d) “Development Approvals” means all land use and building permits and entitlements subject to approval or issuance by CITY in connection with development of the Project including, but not limited to:

- i. Parcel maps and/or lot line adjustments.
- ii. Development review permits and variances.
- iii. Specific Plan approvals or amendments.
- iv. Grading and building permits; and
- v. Occupancy permits.

(e) “Development Exaction” means any requirement of CITY in connection with or pursuant to any land use regulation or Development Approval for the dedication of land, the construction of public improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

(f) “Effective Date” means the date the CITY Ordinance approving this Agreement becomes effective, or the date upon which this Agreement is executed by OCSD and the CITY, whichever is later.

(g) “Existing Regulations” means:

- i. The CITY’s General Plan and the Specific Plan as they exist on the Vesting Date.
- ii. The CITY’s Municipal Code, including those sections of the Zoning Code which are applicable to the development of the Property, as the Municipal Code exists on the Vesting Date; and
- iii. Such other laws, ordinances, rules, regulations, and official policies governing permitted uses of the Property, density, design, improvement, and construction standards and specifications applicable to the development of the Property in force at the time of the Vesting Date.

(h) “OCSD” means the Orange County Sanitation District, a county sanitation district organized and existing under the laws of the State of California.

(i) “OCSD Properties or Property” means the real property described above in Recital A and more particularly described in Exhibit A attached hereto.

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

(j) “Project Approvals” means all CITY approvals that OCSD has obtained, and must obtain in the future, in order to construct the Project, including approval required for plans, permits, and other entitlements for use of every kind and nature, whether discretionary or ministerial.

(k) “Subsequent Land Use Regulations” means any land use regulations adopted and effective after the Effective Date of this Agreement

(l) “Vesting Date” means the date that the City Council approves the ordinance enacting this Agreement.

Section 2 Duration.

The term of this Agreement (Term) shall commence upon the Effective Date and continue for a period of thirty (30) years unless terminated earlier pursuant to the terms of this Agreement.

Section 3 Vesting -General.

(a) Project. CITY covenants that OCSD has, and OCSD shall have, the right to implement the Development pursuant to the Development Plan Approvals and the Existing Regulations, including, without limitation, specific uses, the intensities identified in Attachment _____, building heights, building sizes, lot sizes, infrastructure standards and specifications, densities and types of development provided for in the Specific Plan, and the CITY shall have the right to control the Development in accordance with the Existing Regulations and the Development Plan Approval(s) (“vested right”). By way of enumeration, and not limitation, the vested rights afforded by this Agreement include those identified in this Agreement. Except as otherwise expressly specified in this Agreement, the Development Approval(s) shall control the design and development, and review and approval of all Future Development Approvals and all Off-Site Improvements and appurtenances in connection therewith. Except to the extent it has been amended, canceled, modified, or suspended in accordance with the terms of this Agreement, this Agreement shall be enforceable by OCSD or its assignees notwithstanding any change in any Existing Regulation.

(b) Development Exactions. The CITY shall impose no Development Exactions on the Project or the OCSD Properties other than those established by the Existing Regulations, the Project Approvals, and this Agreement.

(c) Conditions. The conditions set forth in Exhibit D shall apply to Development of the Project. No other conditions shall apply to Development of the Project.

(d) Limits on Development. The California Supreme Court held in Pardee Construction Company v. City of Camarillo, 37 Cal.3d 465 (1984), that the failure of the Parties to address certain limits on a CITY’s ability to condition, restrict or regulate a development allowed a later adopted initiative to restrict the development. This Agreement cures that deficiency by expressly addressing the timing for the Development, the vested rights afforded by this Agreement and the scope of the CITY’s Reserved Authority. Except as expressly set forth in the Development Plan Approval(s), regardless of any future enactment, by initiative, or otherwise, OCSD shall have

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

the discretion to develop the Development in such order, and at such rate, in one phase or in multiple phases, at such times as OCSD deems appropriate within the exercise of its subjective business judgment. Specifically, the CITY agrees that OCSD shall be entitled to apply for and receive necessary entitlements and to develop and use the Property at any time, provided that such application is made and such development occurs in accordance with this Agreement, the other Development Plan Approval(s) and the Existing Regulations. The CITY covenants that no Existing Regulation purports to limit the scope, rate or timing of Development or alter the sequencing of Development in a manner inconsistent with the Development Plan Approval(s). No future amendment of any CITY law, or future adoption of any CITY law or other action, that purports to limit the scope, rate or timing of Development on the Property or alter the sequencing of the Development, in a manner inconsistent with the Development Plan Approval(s), whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to tie Property. In particular, but without limiting any of the foregoing, no numerical restriction shall be placed by CITY on the amount of compliant development that may be built in any particular year on any portion of the Property other than as expressly permitted by this Agreement.

Section 4 Reserved Authority.

(a) Uniform Codes. This Agreement and especially Section 3 shall not prevent the CITY from applying new uniform construction standards adopted by the State of California as State Codes, such as the Uniform Building Code, National Electrical Code, Uniform Mechanical Code or Uniform Fire Code, as modified by CITY, to the Development, provided those same standards are applied to all other development within the CITY.

(b) State and Federal Laws and Regulations. Subject to compliance with the requirements of this Section 4, the Property may be subject to subsequently enacted state or federal laws or regulations which preempt local regulations, or mandate the adoption of local regulations and are in conflict with the Development Plan Approval(s). Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, CITY or OCSD shall provide the other Parties with written notice of the state or federal law or regulation, provide a copy of the law or regulation, and a written statement of conflicts with the provisions of this Agreement. Promptly thereafter CITY and OCSD shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such federal or state law or regulation. In such negotiations, CITY and OCSD agree to preserve the terms of this Agreement and the rights of OCSD as derived from this Agreement to the maximum feasible extent while resolving the conflict. CITY agrees to cooperate with OCSD in resolving the conflict in a manner which minimizes any financial impact of the conflict upon OCSD without materially increasing the financial obligations of CITY (from staff, consultants, or any reason) under this Agreement. CITY also agrees to process in a prompt manner OCSD's proposed changes to the Project as may be necessary to comply with such Federal or State law; provided, however, that the approval of such changes by CITY shall be subject to the discretion of CITY, consistent with this Agreement.

Section 5. Consistent and Inconsistent Enactments.

5.1 Assurances to OCSD. The Parties further acknowledge that the public benefits to be

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

provided by OCSD to the CITY pursuant to this Agreement are in consideration for and reliance upon assurances that the Property can be developed in accordance with the Development Plan Approval(s) and the Existing Regulations. Accordingly, while recognizing that the Development of the Property may be affected by the exercise of the authority and rights reserved and excepted as provided in Sections 3 (“Vesting”) and 4 (“Reserved Authority”), OCSD is concerned that normally the judiciary extends to local agencies significant deference in the adoption of rules, regulations and policies which might otherwise permit the CITY, in violation of the Reserved Authority, to attempt to apply rules, regulations and policies that are inconsistent with the Development Plan Approval(s). Accordingly, OCSD desires assurances that the CITY shall not, and the CITY agrees that it shall not, further restrict or limit the development of the Property in violation of this Agreement except in strict accordance with the Reserved Authority, which exercising of the Reserved Authority as defined herein shall not be considered to be a violation of this Agreement. CITY agrees that CITY will issue grading, building and occupancy permits if the Development contemplated in the requested permit substantially conforms to the Developing Plan Approval(s), including all relevant conditions of approval, and the Existing Regulations.

5.2 Inconsistent Enactment. By way of enumeration and not limitation, the following types of enactments shall be considered inconsistent with this Agreement and Existing Regulations and in conflict:

- a. Restricts the vested rights described in the Agreement or in any way limits or reduces the rate, timing, scope, intensity, use, density, manner, or sequencing of the Development or otherwise requires any reduction or increase in the number, size, height or square footage of lot(s), structures, buildings or other improvements, modifies the standards and specifications applicable to the infrastructure required for the Development or requires additional dedications, exactions, fees or mitigation other than that provided for in the Agreement;
- b. Is consistent with Section 3.2 hereof, but is not uniformly applied by the CITY to all substantially similar development within the CITY; or
- c. Imposes a new permit requirement or procedure not already part of the Existing Regulations.

5.3 Consistent Enactments. By way of enumeration and not limitation, the following types of enactments shall be considered consistent with this Agreement and Existing Regulations and not in conflict:

- a. Transfers of permitted uses within the Property;
- b. Changes in the phasing of the Development pursuant to an application from OCSD and as approved by the CITY; and
- c. Any enactment authorized by this Agreement.

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

Section 6. Consistency Between This Agreement, the Development Approval(s), and Existing Regulations. To the extent a conflict exists or develops between the Existing Regulations and the Development Approval(s), the Development Approval(s) shall be controlling. To the extent a conflict exists or develops between the combination of this Agreement and the Existing Regulations and any other Development Approval(s), this Agreement shall be controlling. Notwithstanding anything to the contrary in this Agreement, current health, safety, and welfare provisions of the Fire safety laws shall be required for all activity under this Agreement.

Section 7. Procedure. Except as set forth in Section 8 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance.

Section 8. OCSD's Written Consent. It is contemplated by the Parties that mutually agreed upon amendments to the Development Plan Approval(s) may be necessary. Any amendments to the Development Plan Approval(s) to which OCSD does not agree in writing shall not apply to the Property or the Project while this Agreement is in effect.

Section 9. Concurrent Development Agreement Amendment. Any other Development Plan amendment requiring amendment of this Agreement, as provided for in Section 10 hereof, shall be processed concurrently with an amendment to this Agreement in the manner required by law.

Section 10. Effect of Amendment. Except as expressly set forth within this Agreement, an amendment of the other Development Plan Approval(s) will not alter, affect, impair, or otherwise impact the rights, duties, and obligations of the Parties under this Agreement. To the extent an amendment to the Development Plan Approval(s) is approved in accordance with Section 9, the amendment shall constitute for all purposes a Development Plan Approval and shall be treated as if it were in existence on the Agreement Date.

Section 11. Future Development Approvals.

a. **Exercise of CITY Discretion.** In connection with Future Development Approval or any other actions which the CITY is expressly permitted to make under this Agreement relating to the Project, the CITY shall exercise its discretion or take action in a manner which complies and is consistent with the Development Plan Approval(s) and the Existing Regulations.

b. **Concurrent Development Agreement Amendment.** Any Future Development Approval requiring amendment of this Agreement, as provided for in Section 9 hereof, shall be processed concurrently with an amendment to this Agreement.

c. **Effect of Future Development Approvals.** Except as expressly set forth within this Section 11c, a Future Development Approval will not alter, affect, impair, or otherwise impact the rights, duties, and obligations of the Parties under this Agreement. To the extent a Future Development Approval is approved in accordance with Sections 9 and 11, the Future Development

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

Approval shall constitute for all purposes a Development Plan Approval and shall be treated as if it were in existence on the Agreement Date.

Section 12. Failure to Conduct Annual Review. The failure of the CITY to conduct the annual review shall not constitute or be asserted by OCSD or CITY as a breach of this Agreement.

Section 13. Initiation of Review by City Council. In addition to the annual review, the City Council may at any time initiate a review of this Agreement by giving written notice to OCSD. The Notice must describe in detail the specific issues which caused the CITY to question OCSD'S good faith compliance and the evidence the CITY believes is necessary for the review. Within thirty (30) days following receipt of such notice, OCSD shall submit evidence to the CITY Council of OCSD'S good faith compliance with this Agreement and such review and determination shall proceed in the same manner as provided for the annual review. The City Council shall initiate its review pursuant to this Section 13 only if it has probable cause to believe the CITY'S general health, safety or welfare is at risk as a result of specific acts or failures to act by OCSD in violation of this Agreement.

Section 14. Administration of Agreement. Any final decision by the CITY staff concerning the interpretation and administration of this Agreement and Development of the Property in accordance herewith may be appealed by OCSD first to the Planning Commission and thereafter to the City Council, provided that any such appeal shall be filed with the City Clerk within thirty (30) days after OCSD receives written notice that the staff decision is final all as pursuant to routine planning appeal procedures. The City Council shall render, at a noticed public hearing, its decision to affirm, reverse or modify the staff decision within thirty (30) days after the appeal was filed.

Section 15. Availability of Documents. If requested and reimbursed for all costs, by OCSD, the CITY agrees to provide to OCSD copies of any documents, reports or other items reviewed, accumulated or prepared by or for the CITY in connection with any periodic compliance review by the CITY, provided OCSD reimburses the CITY for all reasonable and direct costs and fees incurred by the CITY in copying the same. The CITY shall respond to OCSD'S request on or before ten (10) business days have elapsed from the CITY'S receipt of such request.

Section 16. Effect of Noncompliance. Notwithstanding the foregoing, to the extent the Development Approval(s) expressly provide(s) that Development of the Project or a portion thereof is directly dependent upon the performance of material obligations assumed by a and/or OCSD, which material obligations have not been performed, the CITY may, in its reasonable discretion, withhold any approvals, including, without limitation, certificates of occupancy, with respect to those directly dependent portions of the Project from OCSD until such obligations have been substantially performed. CITY agrees that CITY will not withhold approvals if the OCSD provides security for the OCSD request.

Section 17. Estoppel Certificates. A party may at any time deliver written notice to the other party requesting an estoppel certificate (the "Estoppel Certificate"). A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within thirty (30) days after receipt of the request. The City Manager or any person designated by the City Manager

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

may sign Estoppel Certificates on behalf of the CITY. Any officer or member of OCSD may sign on behalf of that Party. An Estoppel Certificate is intended to be relied on by assignees and mortgagees. If that one party requests an Estoppel Certificate from the other, the requesting party shall reimburse the other party for all reasonable and direct costs and fees incurred by such party with respect thereto.

Section 18. Force Majeure. A Party shall not be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by pandemics, floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond that Party's control, action or inaction by the CITY, other governmental bodies or public utilities other than those related to the normal and customary processing of Future Development Approvals or any modifications to the Development Approval(s), judicial decisions, litigation regarding the Development Approval(s) or Future Development Approvals or other similar events. To the extent applicable to the Project and Property pursuant to Section 3 hereof, government regulations (including, without limitation, local, state and federal environmental and natural resource regulations), voter initiative or referenda or moratoria (including, without limitation, any "development moratorium" as that term is applied in Government Code Section 66452.6) constitute force majeure events.

Section 19. Interpretation and Governing Law. The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. The Parties understand and agree that this Agreement is not intended to constitute, nor shall be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of the CITY, and in particular, the CITY's police powers. In this regard, the Parties understand and agree that this Agreement shall not be deemed to constitute the impermissible surrender or abnegation of the CITY's governmental powers over the Property or any decision arising from the Agreement, directly or indirectly.

Section 20. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Section 21. Gender. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.

Section 22. No Joint and Several Liability. No breach hereof by a Party shall constitute a breach by the non-breaching party. Any remedy, obligation, or liability, including but not limited to the obligations to defend and indemnify the CITY, arising by reason of such breach shall be applicable solely to the party that committed the breach. However, the CITY shall send a copy of any notice of violation to all OCSD, including those not in breach.

Section 23. The intent of the Parties: The intent of the Parties Section is incorporated in this Agreement as though fully set forth herein.

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

Section 24. Not for Benefit of Third Parties. This Agreement and all provisions hereof are for the exclusive benefit of the CITY and OCSD and its assignees pursuant to this Section 24 and shall not be construed to benefit or be enforceable by any third party.

Section 25. Permitted Uses of the Property.

a. Permitted Uses. The Project's permitted uses include an administrative headquarters building, surface parking, and a pedestrian bridge across Ellis Avenue connecting the headquarters building to the OCSD's Reclamation Plant No. 1, as approved by the Planning Director (October 14, 2020), the Planning Commission (October 28, 2020), and the City Council (December 1, 2020).

b. Building Height and Size. The maximum height of the administrative headquarters building is three (3) stories. The building will be approximately 110,000 square feet in size, as approved by the Planning Director (October 14, 2020), the Planning Commission (October 28, 2020), and the City Council (December 1, 2020).

Section 26.

Notwithstanding this Section 26 the Mt. Langley property is obligated to submit to all then applicable development processes and fees which are then applicable to all properties in CITY.

Section 27. Monetary Contribution to the City.

Payment. Within ten (10) business days after the Effective Date, OCSD shall pay the CITY a monetary contribution of two million nine hundred thousand dollars (\$2,900,000) as identified in this Agreement as the monies necessary to make the CITY whole as a result of this Agreement.

Section 28. Subsequent Discretionary Actions.

a. Expedited Processing. The CITY shall expedite the processing of all permits and approvals needed for the Project at OCSD's expense including, but not limited to, excavation, grading, building, encroachment and street improvement permits, certificates of occupancy, utility connection authorizations, plan check approval, and other permits or approvals necessary, convenient or appropriate for the grading, excavation, construction, development, improvement, use, and occupancy of the Project. Without limiting the foregoing, if requested by OCSD, the CITY agrees to utilize contract planners and plan checkers (at OCSD's sole cost to be paid to CITY prior to the commencement of the contract employees) and any other reasonably available means, to reasonably expedite the processing of Project applications and approvals, including concurrent processing applications by various CITY departments, all as subject to all legal requirements.

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

b. Plan Review. The CITY's Planning and Building Director may review and approve plans binding for signage, trash enclosures, screening, and landscaping prior to issuance of a building permit; provided, however, that the sole purpose of such review shall be to verify consistency with the Existing Regulations and the Project Approvals.

c. Issuance of Ministerial Permits. The CITY shall not unreasonably withhold or condition any building permits or other ministerial permits provided the OCSD has satisfied all requirements for such permits.

Section 29. Termination.

This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- i. Expiration of the stated term of this Agreement.
- ii. Entry of a final judgment after appeals are concluded setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.
- iii. The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement and the conclusion of any litigation, including appeal, upholding the measure overriding or repealing the ordinance that approved this Agreement.
- iv. Acts by either Party that are in violation of the terms of this Agreement and which are a non-cured default.

Section 30. Default and Remedies.

a. Default. If either Party fails to perform any obligation under this Agreement, the aggrieved Party may send the defaulting Party a Notice of Default.

b. Right to Cure. A Party who receives a Notice of Default has thirty (30) days from the date of receipt to cure the default. If the default is not cured by expiration of the thirty (30) day period, the defaulting Party will be deemed in breach of the Agreement.

c. Specific Performance. The Parties acknowledge that this Agreement involves the development of the OCSD Properties, which are unique. If the CITY breaches this Agreement, the OCSD shall have the right, in addition to any other remedy available, to specific performance of the CITY's obligations set forth herein.

Section 31. Indemnity.

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

OCS D agrees to defend the CITY from and against any claims or proceedings against the CITY to set aside, void, or annul the approval of this Agreement, except for claims or proceedings arising out of the negligence or willful misconduct of the CITY, its agents, officers, contractors, and/or employees.

Section 32 Miscellaneous.

- a. Timing of Development. The OCS D shall have the right to develop the Property in such order and such rate and times as the OCS D deems appropriate solely within the exercise of its subjective business judgment. Without limiting the foregoing, but OCS D shall have no obligation to develop the Project or the OCS D Properties.
- b. Appeals. OCS D may appeal any final decision by the CITY staff concerning the interpretation and administration of this Agreement and development of the Project first to the Planning Commission and thereafter to the City Council. Any such appeal shall be filed with the City Clerk within thirty (30) days after OCS D receives written notice that the staff decision is final. The City Council shall render, at a noticed public hearing, its decision to affirm, reverse or modify the staff decision within thirty (30) days after the appeal is filed.
- c. Covenants Run with the Land. Except as otherwise provided for in this Agreement, the provisions of this Agreement, to the extent permitted by law, constitute covenants which shall run with the Property for the benefit thereof, and the benefits and burdens of this Agreement shall bind and inure to the benefit of the Parties, all successors in interest to the Parties hereto to the extent provided for in this Agreement.
- d. No Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a default by the other Party hereto, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future.
- e. Recording. This Agreement shall be recorded, at no cost to the CITY, in the Official Records of Orange County by the City Clerk within the period required by Section 65868.5 of the Government Code.
- f. Severability of Terms. If any term, provision, covenant, or condition of this Agreement shall be determined invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby.
- g. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and the Agreement supersedes all previous negotiations, discussion and agreements between the Parties, and no

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

h. Notices. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder. All notices shall be in writing and shall be given by personal delivery, by deposit in the U.S. mail first class with postage prepaid, or by sending the same by overnight delivery service, or, registered or certified mail with return receipt requested, with postage. and postal charges prepaid, or by facsimile, as follows:

If to the CITY:

City Clerk
City of Fountain Valley
10200 Slater Avenue
Fountain Valley, California 92708

with a copy to the Attorney for the City:

Colin R. Burns, Esq.
Harper & Burns
453 S. Glassell Street
Orange, California 92866
If to the OCSD:

Clerk of the Board
Orange County Sanitation OCSD
10844 Ellis Avenue
Fountain Valley, California 92708

with a copy to the OCSD's General Counsel:

Bradley R. Hogin, Esq.
Woodruff, Spradlin & Smart
555 Anton Blvd.
Suite 1200
Costa Mesa, CA 92626

Section 33. Exhibits.

The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" - Legal Description of the OCSD Properties

EXHIBIT A DRAFT DEVELOPMENT AGREEMENT

Exhibit "B" - Map showing Property and its location

Exhibit "C" - Existing Development Approvals

Exhibit "D" - Project Conditions

Exhibit "E" - Future Development Approvals

IN WITNESS WHEREOF, the Parties have executed this Development Agreement on this ____ day of _____, ____.

ORANGE COUNTY SANITATION DISTRICT
a county sanitation district

By _____

David Shawver
Chair, Board of Directors

APPROVED AS TO FORM:

Bradley R. Hogin
OCSD General Counsel

CITY OF FOUNTAIN VALLEY
A municipal corporation

By _____

Cheryl Brothers
Mayor

APPROVED AS TO FORM:

Colin R. Burns
Attorney for the City