



**Endowment Funding Agreement  
For the Long-Term Management of the OC  
Waste & Recycling Trabuco Creek  
Mitigation Site  
An Agency-Advised Endowed Fund  
of the Orange County Community Foundation**

This Agreement, ("Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_ 2021, between the ***County of Orange, a political subdivision of the State of California, through its OC Waste & Recycling Department*** (hereinafter referred to as the "County", "OCWR" or "Founder"), and the Orange County Community Foundation (hereinafter referred to as the "Community Foundation"), a California nonprofit corporation. Community Foundation and County are sometimes referred to individually as "Party" and collectively referred to as "Parties". The Effective Date of this Agreement is as of the date last signed below.

**RECITALS**

- A. The County of Orange owns the 1,530-acre Prima Deshecha Landfill ("landfill") that is operated by OC Waste & Recycling.
- B. The future Zone 4 landfill development at Prima, estimated at approximately 473 acres, contains federal and state jurisdictional waters and wetlands that will need to be removed over time.
- C. The County has obtained a Section 404 Permit from the U.S. Army Corps of Engineers ("Corps"), a Section 1602 Permit from the California Department of Fish and Wildlife ("CDFW") and a Section 401 Permit from the California Regional Water Quality Control Board, San Diego Region ("Regional Board") for the removal of these Prima Zone 4 drainages (collectively referred to as "Resource Agency Approvals"). Resource Agency Approvals require that the County fully implements the approved mitigation in the Trabuco Creek area of O'Neill Regional Park ("Mitigation Site"), as described in the Final Habitat Mitigation and Monitoring Plan ("Final HMMP") and Final Long-Term Protection and Management Plan ("Final LTPMP"), that have been approved and are required by the Corps, CDFW and Regional Board as indicated in the 404, 1602 and 401 permits described above.
- D. To accomplish the mitigation requirements identified in the Final HMMP and Final LTPMP for the Mitigation Site, the County intends to enter into an Agreement ("Mitigation Agreement") with the Irvine Ranch Conservancy ("Conservancy"). (See **Exhibit A**).
- E. The Conservancy was established in 2005 as a non-profit, public benefit organization, created to help landowners manage and restore their wildlands and open space

lands. The Conservancy works to enhance the public's appreciation, understanding and connection to the land, while helping landowners and managers with all aspects of stewardship. The Conservancy has the capacity, technical expertise and experience in planning and implementing restoration projects in the habitat types of interest to the County related to its compensatory mitigation requirements. Under a separate agreement with the County, Conservancy will fully implement the Final HMMP and Final LTPMP for the County.

- F. Under the terms of the Mitigation Agreement, the County will fund the Conservancy directly for completion of Final HMMP responsibilities.
- G. Upon receipt of sign-off from OCWR and Resource Agencies' confirmation of the satisfactory completion of the Final HMMP, Conservancy will implement the Final LTPMP (**Exhibit B**) to manage and implement long-term management responsibilities for the Mitigation Site in perpetuity. Final LTPMP responsibilities will be paid pursuant to this endowment with the Orange County Community Foundation.
- H. The Orange County Community Foundation was founded in 1989 and is home to more than 560 charitable funds benefiting a wide range of causes including human services, education, health and wellness, arts, environment, community development and scholarships. The Community Foundation has awarded more than \$630 million in grants and scholarships in Orange County, the country and the world and works with donor advisors, private and family foundations and professional advisors to meet giving goals. The Community Foundation ranks in the top 2 percent in grantmaking among 780 U.S. community foundations. Investments are managed by an Investment Committee according to guidelines set by the Board of Governors with the support of an independent investment consultant Cambridge Associates.
- I. To ensure that Conservancy has sufficient funds available to perform the required site monitoring, the County seeks to establish an endowment through the Orange County Community Foundation intended to cover the in-perpetuity costs associated with Conservancy's obligations as generally described in this Agreement and more specifically described in **Exhibit A**.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

### 1. Incorporation of Recitals and Definitions

The foregoing RECITALS are hereby incorporated into this Agreement.

### 2. Fund Name

The County is creating an Agency-Advised Endowed Fund known as the "**Endowment Funding Agreement for the Long-Term Management of the OC Waste & Recycling Trabuco Creek Mitigation Site**" (hereinafter referred to as the "Fund").

### 3. Purpose of Fund

In compliance with the Final LTPMP, the County seeks to create an endowment that will cover the in-perpetuity costs associated with Conservancy's commitment to perpetually maintain, monitor and manage the Mitigation Site, in compliance with the Final LTPMP. The total endowment cost is \$2,274,124, with a detailed annual cost estimate shown on **Exhibit C**. Upon receipt of sign-off from OCWR and Resource Agencies' confirmation of the satisfactory completion of the Final HMMP, Community Foundation shall pay Conservancy an annual payment of approximately \$90,965, paid as provided on **Exhibit**

**C.** Endowment payments shall be adjusted annually on July 1 based on the Consumer Price Index ("CPI") up to but not more than 4 percent, to enable Conservancy to perform its obligations implementing the Final LTPMP. It is the intent of the Parties that the Fund provide a stable and consistent investment return resulting in a non-wasting corpus and providing Conservancy a stable, inflation-adjusted annual payment in-perpetuity. Investment returns in excess of 4 percent will be reinvested in the Fund to ensure stable funding in-perpetuity and to cover unanticipated expenditures.

#### **4. Contributions to the Fund**

The County hereby assigns, conveys, transfers and delivers funding (as reflected in **Exhibit C**) acceptable to Community Foundation for charitable purposes. All money transferred to the Fund is an irrevocable gift to Community Foundation to be used to cover the costs associated with Conservancy's implementation of the Final LTPMP. Community Foundation has exclusive legal control over all donated funds. Contributions to the Fund shall be subject to the terms and conditions set forth herein.

#### **5. Fund Management**

The Community Foundation will hold, manage, invest and reinvest the Fund; will collect the income; and will disburse to Conservancy its annual expenses as reflected in **Exhibit C** in accordance with the policies of the Community Foundation and pursuant to the terms of this Agreement. The Fund is intended to be a non-wasting endowment however, the Community Foundation is authorized to make withdrawals from principal to pay Conservancy in the event of low performing investment years. Distributable funds in excess of Conservancy's annual expenses shall be distributed in accordance with the policies of the Community Foundation and the Contingency Fund as described in Section 6.

#### **6. Contingency Fund**

Community Foundation will create a "Contingency Fund" within the Long Term Investment Pool Income Account for unanticipated expenditures wherein amounts in excess of Community Foundation's annual support fee and Conservancy's annual costs (described in Section 3 above and as reflected in **Exhibit C**) will be separately accounted for.

In the event of damage to the Mitigation Site caused by unforeseen or Force Majeure events such as fire, flood, natural disasters or other events, which result in Conservancy's costs in excess of those listed in **Exhibit C**, County may direct the Community Foundation to disburse Contingency funds to Conservancy or another contractor for costs associated with necessary repairs.

#### **7. Fund Recipient**

If Conservancy as a legal entity ceases to exist or is unable or unwilling to implement the Final LTPMP, County reserves the right to terminate its agreement with Conservancy and assign Conservancy's responsibilities (and the associated funding) to an alternate habitat management entity. Should this occur, County will promptly direct the Community Foundation to cease further endowment payments to Conservancy and provide the Community Foundation with an alternative habitat management entity for which endowment payments should be directed.

#### **8. Fund Founders**

The Director of OC Waste & Recycling is authorized to sign as the Founder on behalf of the County of Orange. The Founder can approve and sign any amendments or additional guidelines related to the Fund that do not involve additional financial investment in the Fund.

#### **9. Advisors to the Fund**

The **Habitat Program Manager** at **OCWR** (currently John Arnau) shall be the advisor to the Fund. OCWR may make recommendations to the Community Foundation concerning

grants from the Fund in accordance with the Donor-Advised Fund Policies and Procedures of the Community Foundation (See **Exhibit D**). These policies may be amended from time to time (with Notice to OCWR via email) by the Board of Governors, the terms of which are incorporated herein by reference. All recommendations may be accepted or rejected, in whole or part, by the Board of Governors in its sole discretion. As required by Internal Revenue Service regulations, the Board of Governors must retain final authority and responsibility for determining distributions from the Fund.

## 10. Notices

All notices required or permitted by this Agreement shall be in writing and may be delivered in person (by hand-delivery or professional messenger service) to either Party or may be sent by registered or certified mail, with postage prepaid, return receipt requested or as otherwise mutually agreed to by the Parties, and addressed as follows:

<b><u>If to Community Foundation at:</u></b>	<b><u>If to County at:</u></b>
Orange County Community Foundation 4041 MacArthur Blvd., Suite 510 Newport Beach, CA 92660 Attention: President & CEO	County of Orange OC Waste & Recycling 601 N. Ross Street, 5 <sup>th</sup> Floor Santa Ana, CA 92701 Attention: Director

## 11. Community Foundation Certification

Community Foundation certifies that it meets all legal and regulatory requirements for the creation and maintenance of endowments for conservation purposes. Pursuant to California Government Code section 65968(e), Community Foundation certifies that it meets all of the following requirements:

- a. Community Foundation has the capacity to effectively manage the Fund;
- b. Community Foundation has the capacity to achieve reasonable rates of return on the investment of the Fund similar to those of other prudent investors for endowment funds and shall manage and invest the Fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with UPMIFA;
- c. Community Foundation uses generally accepted accounting practices (GAAP) as promulgated by the Financial Accounting Standards Board or any successor entity;
- d. Community Foundation will be able to ensure that the Fund is accounted for, and tied to the Site; and
- e. Community Foundation has an investment policy that is consistent with UPMIFA.

## 12. Foundation Support Fee

It is understood that the Fund shall share a fair portion of the administrative costs and expenses of the Community Foundation, which shall be determined in accordance with the then-current Community Foundation fees schedule, as applicable to funds of this type.

## 13. Accounting

The Fund shall be accounted for separately and apart from other deposits or conveyances to the Community Foundation.

**14. Fund Distribution**

Annual Fund distributions to the Conservancy will be made as reflected in **Exhibit C** and **Exhibit D** of this Agreement.

**15. Governing Law, Venue and Attorney's Fees**

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. Each Party shall bear its own attorney's fees, costs, and expenses.

I understand that this Fund shall operate in accordance with the Orange County Community Foundation's Donor Advised Fund Policy and Procedures attached hereto as **Exhibit D**.

**EXHIBITS:**

**Exhibit A – County-Conservancy Mitigation Agreement for Mitigation Site**

**Exhibit B - Final LTPMP**

**Exhibit C - Final LTPMP Cost – Endowment Funding Agreement Amount**

**Exhibit D - Donor Advised Fund Policies and Procedures of the Community Foundation**

**County of Orange**

**Orange County Community Foundation**

\_\_\_\_\_  
Thomas Koutroulis, Director OC Waste & Recycling

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form

\_\_\_\_\_  
Paul M. Albarian, Senior Deputy

3/16/2021

Date