

**ADAPTIVE RECREATION MANAGEMENT AND CORE HABITAT EVALUATION STUDY
FUNDING AGREEMENT**

This IRVINE RANCH OPEN SPACE ADAPTIVE RECREATION MANAGEMENT AND CORE HABITAT EVALUATION STUDY FUNDING AGREEMENT (hereinafter “Agreement”), dated this ____ day of _____, 20____, is made by and between the COUNTY OF ORANGE, a political subdivision of the State of California, (hereinafter referred to as “County”) and THE NATURE RESERVE OF ORANGE COUNTY, a California non-profit corporation (hereinafter referred to as “NROC”)

RECITALS

WHEREAS, the Nature Reserve of Orange County (NROC) is a 501c3 nonprofit corporation that manages the Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) for the Central and Coastal Subregion of Orange County, in which much of the County’s open space properties are enrolled; and

WHEREAS, NROC desires to conduct a study for the NCCP/HCP areas of the Central and Coastal Subregion of Orange County (Attachment A – Aerial Map), which includes the County’s open space properties, that will analyze wildlife location data and identify core habitat areas to provide valuable information which can be used in future recreational management strategies (“Adaptive Recreation Management and Core Habitat Evaluation Study” or “Study”); and

WHEREAS, the County is obligated by the Recreation and Resource Management Plan (RRMP) for the Irvine Ranch Open Space to practice “Adaptive Management” which includes periodic evaluation of County strategies used to balance the long-term management of biotic resources with recreation; and

WHEREAS, NROC estimates the total cost of the Adaptive Recreation Management and Core Habitat Evaluation Study to be \$175,000; and

WHEREAS, OC Parks would benefit from the Study by using the information contained in it as a valuable resource to assist with operation and maintenance of park properties; and

WHEREAS, the Study will serve the County’s contribution toward a large-scale study to satisfy Adaptive Management criteria established in the RRMP for the Irvine Ranch Open Space; and

WHEREAS, NROC has committed \$60,000 in funding, which will be utilized for the Adaptive Recreation Management and Core Habitat Evaluation Study; and

WHEREAS, NROC has secured an additional \$75,000 in funding from the California Department of Fish and Wildlife, which will be utilized for the Adaptive Recreation Management and Core Habitat Evaluation Study; and

WHEREAS, as the largest landowner of properties enrolled in the NCCP/HCP for the Central and Coastal Subregion, the County desires to partner with NROC for a cost-effective means of funding the Adaptive Recreation Management and Core Habitat Evaluation Study.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, the parties agree as follows:

1. PARTIES REPRESENTATIVES

a. NROC shall designate its Executive Director or designee (hereinafter referred to as “Executive”) to be the NROC liaison for performing under this Agreement.

b. The County shall designate the County’s Director of OC Parks or designee (hereinafter referred to as “Director”) to be the County liaison for performing under this Agreement.

2. EFFECTIVE PERIOD – TERMINATION DATE

The effective period of this Agreement shall be from the date of execution through March 31, 2018 subject to the provisions of this Agreement. No expense of NROC will be reimbursed by the County if incurred after March 31, 2018. The term of this Agreement may be extended at six-month intervals by written approval of the Director, provided that the extensions, cumulatively, do not extend the Agreement greater than 18 months beyond the initial termination date (March 31, 2018) and does not result in any additional funding by the County.

3. PROJECT PROPOSAL AND SERVICES

a. NROC seeks to manage the contractual services for subject matter experts and the equipment and software acquisition and inventory necessary to conduct the Adaptive Recreation Management and Core Habitat Evaluation Study. Prior to the start of the study, NROC shall submit final plans and cost estimates to the Director for approval; such approval shall not be unreasonably withheld.

b. NROC agrees to comply with all provisions, to perform all work, and provide all services set forth in this Agreement in a professional, timely and diligent manner. The County has no other obligation under this Agreement than to (1) provide payment in an amount not to exceed \$40,000; (2) to review and approve final plans and cost estimates as stated in paragraph 3(a); and (3) reviewing and approving any permits required for NROC to perform its obligations under this Agreement.

c. NROC further agrees that lack of compliance with its obligations under this Agreement, in addition to those remedies set forth in Section 15 of this Agreement, constitute grounds for the County to terminate the Agreement and relieve the County of any future performance under this Agreement. Any changes to the Study’s Scope of Work (attached hereto as Exhibit B and incorporated herein) that may

result in additional costs shall not impact the County's obligations. Any changes to the Study's Scope of Work that may result in lower costs shall reduce the County's financial obligations under this Agreement by a proportionate amount agreed upon by NROC and the Director and refunded to the County. Any refunds due to the County shall be paid by NROC within 30 days of any event (including but not limited to termination of the Agreement or changes to the Scope of Work) that results in a decrease in the County's financial obligation under this Agreement.

4. AUDIT/EVALUATION

NROC understands and agrees that an audit or evaluation is an essential condition to this Agreement and that the County may audit or evaluate NROC in accordance with the terms of this Agreement. The parties hereto agree that at any time, and for any purpose, the Director may call for an audit or evaluation to be conducted.

5. PAYMENTS BY COUNTY

a. The total funding from the County pursuant to this Agreement shall be limited to an amount not to exceed forty thousand dollars (\$40,000). The County shall issue payment upon receiving an invoice pursuant to Section 5.b., below; however, the County is only obligated to pay for work actually completed consistent with the terms of Exhibit B and Section 3, above, and shall not be responsible for funding incomplete work. If this Agreement is terminated prior to NROC completing the Study, the County is only responsible for funding those portions of the Study that are completed. Any excessive funding, as mutually determined by the Director and NROC, paid for by the County and received by NROC shall be refunded to the County consistent with the terms of Section 3.C., above.

b. NROC shall submit an invoice to the County at any time after this Agreement is in effect to the address identified in Section 13 of this Agreement for payment toward the Adaptive Recreation Management and Core Habitat Evaluation Study expenses, which shall be paid by the County within thirty (30) days of receipt in one lump sum.

c. The County shall pay NROC solely for the contractual services for subject matter experts and the equipment and software acquisition and inventory necessary for the Adaptive Recreation Management and Core Habitat Evaluation Study.

6. CONFLICT OF INTEREST

NROC understands and agrees that the County's funds shall not be used by NROC to pay or reimburse any staff person or consultant who is a member or officer of the Board of Directors, or other official governing body, of NROC.

7. ACCESS AND RECORDS

Unless otherwise agreed in writing by the Director, NROC shall maintain separate accounting records for all funds received from the County under this Agreement. All accounting records and evidence pertaining to all costs of NROC shall be kept available at NROC office or place of business during the duration of this Agreement and thereafter for a period not less than five (5) years. NROC shall make all of its records available to the County upon request during regular business hours for the purpose of an audit or evaluation and shall furnish clerical assistance for these purposes to the County as required. NROC agrees to implement all recommendations made by the County. In the event NROC does not make their books and financial records available to the County, NROC agrees to pay all necessary and reasonable expenses, including attorney's fees, incurred by the County in obtaining the records and conducting an audit or evaluation.

8. ACCOUNTING REPORTS

A final accounting report of all financial records pertaining to the costs expended for the Adaptive Recreation Management and Core Habitat Evaluation Study shall be submitted to the Director within ninety (90) days of expiration or termination of this Agreement. The final accounting report shall include a reconciliation of all expenditures and payments for the entire term this Agreement is in effect.

9. INDEMNIFICATION

NROC agrees to indemnify, defend with counsel approved in writing by the County, and hold the County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which the County's Board of Supervisors acts as the governing Board ("County 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 performance provided by NROC pursuant to this Agreement. If judgment is entered against NROC and the County by a court of competent jurisdiction because of the concurrent active negligence of the County or County Indemnitees, NROC and the County agree that liability will be apportioned as determined by the court or jury.

10. INDEPENDENT CONTRACTOR

NROC shall be considered an independent contractor and neither NROC, its employees, nor anyone working under NROC shall be considered an agent or an employee of the County. Neither NROC, its employees, nor anyone working under NROC shall qualify for workers' compensation or other fringe benefits of any kind through the County.

11. NON-DISCRIMINATION

In the performance of this Agreement, NROC agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractor 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. NROC acknowledges that a violation of this provision shall subject NROC to all the penalties imposed for a violation of anti-discrimination law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.

12. PERMITS, LICENSES AND LAWS

NROC shall be required to obtain any and all permits and/or licenses which may be required by law, in connection with the operation of the activities as set forth herein. NROC agrees to maintain these licenses and permits in effect for the duration of this Agreement. Further, NROC shall comply with any and all applicable laws, rules or regulations with respect to the work to be done pursuant to this Agreement.

13. NOTICES

Notices or other communications which may be required or provided under the terms of this Agreement shall be given as follows:

COUNTY:	Director, OC Parks 13042 Old Myford Road Irvine, California 92602-2304 Fax No. (714) 667-6512
NROC:	Executive Director Nature Reserve of Orange County 15600 Sand Canyon Avenue Irvine, CA 92618 Fax No. (949) 453-3325

14. PROHIBITION AGAINST LOBBYING

NROC shall not use any part of the funds received under this Agreement for the purpose of lobbying or for other activities intended to influence any legislation or the outcome of any election.

15. BREACH-SANCTIONS

If, through any cause, NROC fails to fulfill in a timely and proper manner any of its obligations under this Agreement, or if NROC violates any of the terms and conditions of this Agreement whereby County funds were received by NROC, or if NROC reports inaccurately, or if an audit report makes disallowances, NROC shall promptly remedy its acts or omissions or repay the County all amounts spent in violation thereof. For any such failures or violations, the County shall have the right to:

- a. Discontinue program support until such time as NROC fulfills its obligation under this Agreement;
- b. Collect such outstanding amounts as are determined by the County to be due to the County from NROC;
- c. Terminate this Agreement immediately by giving written notice to NROC of such termination and specifying the effective date thereof.

16. OWNERSHIP OF STUDY

The final reports and recommendations resulting from the Adaptive Recreation Management and Core Habitat Evaluation Study shall, immediately upon completion of the study, be shared with the County, but will not be exclusive property of the County. Nevertheless, the County may use the contents of the Study for its purposes, including but not limited to sharing the information with governmental agencies, contractors, agents, etc.

17. DELEGATION and ASSIGNMENT

NROC may not delegate the obligations or assign the rights hereunder, either in whole or in part unless specifically approved in writing in advance by the Director.

18. ENTIRE AGREEMENT

This Agreement expresses all the understandings of the parties concerning all matters covered herein. No addition to or alteration of the terms of this Agreement shall be valid unless made in the form of a written Amendment to this Agreement formally approved by the parties hereto. Any addition or alteration of this Agreement shall be subject to approval by the County's Board of Supervisors.

19. 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. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand all the terms and conditions contained herein and have duly authorized and caused this Agreement to be executed as of the date first above written.

COUNTY

County of Orange, a subdivision of the State of California

DATE: _____

BY: _____
Chair, Board of Supervisors

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE CHAIRMAN
OF THE BOARD PER G.C. Sec 25103,
RESO 79-1535

ATTEST:

Clerk of the Board of Supervisors
Orange County, California

APPROVED AS TO FORM:
County Counsel

DATE: 4/16/15

BY:  FER MAH
Deputy

NROC

The Nature Reserve of Orange County,
a California non-profit corporation

DATE: 04.16.2015

BY: 

TITLE: EXECUTIVE DIRECTOR