

MITIGATION AGREEMENT FOR THE SHORT AND LONG-TERM MANAGEMENT OF
THE TRABUCO CREEK MITIGATION SITE
BETWEEN
THE COUNTY OF ORANGE AND THE IRVINE RANCH CONSERVANCY

This Agreement (“Agreement”) is made and entered into _____, 2021 (the “Effective Date”) by and between Irvine Ranch Conservancy, a California non-profit public benefit corporation (“Conservancy”), and the County of Orange, a political subdivision of the State of California, by and through its OC Waste & Recycling department (“County” or “OCWR”). Conservancy and County are sometimes individually referred to as “Party” and collectively referred to as the “Parties”.

RECITALS

WHEREAS, the Prima Deshecha Landfill is an approximate 1,530-acre solid waste landfill that is owned by the County and operated by OC Waste & Recycling; and

WHEREAS, the future Zone 4 landfill development area at Prima, estimated at approximately 473 acres, contains federal and state-jurisdictional waters and wetlands that will need to be removed over time; and

WHEREAS, 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”), included as **Exhibit A**, and Final Long-term Protection and Management Plan (“Final LTPMP”), included as **Exhibit B**, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the County and the Conservancy desire to enter into a Mitigation Agreement, whereby the Conservancy will implement the Final HMMP and Final LTPMP for the Mitigation Site as compensatory mitigation for the needed removal of natural drainages associated with the future Zone 4 landfill development area at the Prima Deshecha Landfill site;

WHEREAS, the Conservancy agrees to perform such mitigation activities as further provided herein; and

WHEREAS, the County Board of Supervisors authorized the Director of OC Waste & Recycling Department to enter into a Contract with Contractor to provide the Services for a ten-year period, effective April 14, 2021 through April 13, 2031, in an amount not to exceed \$4,508,200; and

WHEREAS, County and Contractor entered into Agreement MA-299-21011501 for implementation of and short and long-term management of a habitat mitigation project in Trabuco Creek as compensatory mitigation for the needed removal of natural drainages associated with the future Zone 4 landfill development area at the Prima Deshecha Landfill site; and

WHEREAS, pursuant to revisions to OC Parks' Integrated Pest Management Policy (IPM) which include the goal of reducing herbicide use in areas legally accessible by the public, OC Parks requested modifications to the project for the reduction of herbicide use in areas that are legally accessible by the public not included in the original Scope of Management Services; and

WHEREAS, County now desires, and Contractor agrees, to revise the Scope of Management Services in the Contract and Exhibit A, effective upon execution of all necessary signatures through April 13, 2031, in an amount not to exceed \$54,900, for a revised cumulative Contract total not to exceed \$4,563,100;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the parties agree as follows:

ARTICLE I CONSERVANCY ENGAGEMENT

1.1 General Terms

(a) County Designee

County hereby designates its Director of OC Waste & Recycling ("Director") to represent County under this Agreement. County may change this designation at any time and from time to time by delivery of written notice to Conservancy. Director may specify a designee for the day to day oversight of the Management Services.

(b) Conservancy Designee

Conservancy hereby designates its President and CEO ("President") to represent Conservancy under this Agreement. Conservancy may change this designation at any time and from time to time by delivery of written notice to County. President may specify a designee for the day to day

oversight of the Management Services. As of the date of execution of this Agreement, this designee is the Conservancy's Vice President and Chief Programs Officer.

1.2 Management Services

This Agreement shall consist of responsibilities associated with the Short-Term Management and Long-Term Management of the Mitigation Site. Conservancy's Short-Term and Long-Term mitigation responsibilities under this Agreement are individually and collectively referred to as "Management Services."

Conservancy may either retain employees or subcontract with others to perform all or a portion of the Management Services. Conservancy shall be solely responsible for hiring, supervising and training all of Conservancy's officers, directors, employees, staff members, consultants, volunteers, agents, suppliers, contractors, subcontractors, representatives, and all other persons acting by or through any of the foregoing (collectively, "Conservancy's Agents") in performing the Management Services pursuant to the terms of this Agreement. Conservancy shall at all times exercise reasonable care and diligence to ensure that Conservancy's Agents perform their respective obligations hereunder or under their respective contracts in a competent and professional manner. The term "Conservancy's Agents" shall not, however, include any member of the general public present on the lands on which the Management Services are provided for any purpose, including without limitation, for the purpose of attending or participating in a land stewardship activity or other open public access program of any kind, unless invited by Conservancy ("Conservancy Invitee"), nor any County employees contributing to or assisting Conservancy in-kind.

Conservancy shall have a full-time, English speaking, project manager assigned to the project and that project manager shall monitor the performance of all tasks described herein. The name, phone number, and contact information of the project manager assigned to the activities described herein shall be provided to the OCWR Biologist prior to the initiation of such activities. The project manager shall have in their possession at all times the name and contact information of the OCWR Biologist.

1.3 Responsible Entity Obligations

"Responsible Entities" shall be those individuals or entities, respectively, responsible for the successful implementation of the maintenance program, for monitoring maintenance procedures and site performance, or for providing interim and final approval of the habitat mitigation program, as set forth and described below and to described in detail in the approved Final HMMP and Final LTPMP, and shall include the:

- a. County generally
- b. OCWR Biologist
- c. Conservancy
- d. Resource Agencies (i.e., Corps, CDFW and Regional Board)
- e. OC Parks

County reserves the right to add Responsible Entities as needed to accomplish the goals of this Agreement.

(a) County Responsibilities Generally

OCWR shall oversee, review and approve the Management Services in this Agreement. The Conservancy will meet as requested, with OCWR to report and discuss the progress of the Mitigation Site and to recommend activities in addition to those regularly scheduled that are determined necessary or required to ensure the success of the Mitigation Site. Recommended activities that involve a change to the Management Services shall be mutually agreed upon and subject to Section 3.3.

(b) OCWR Biologist:

OCWR Biologist shall be responsible for oversight, review, and approval of monitoring and maintenance activities, site conditions, and site performance, identifying appropriate remedial measures within the Management Services in coordination with the Conservancy, and for facilitating compliance with the approved Final HMMP and Final LTPMP. The OCWR Biologist shall also be responsible for coordinating with the Conservancy and the Resource Agencies regarding site status.

(c) Conservancy:

Conservancy shall be responsible for facilitating the successful establishment, management, maintenance, monitoring and reporting of native habitat within the Mitigation Site consistent with the Final HMMP and Final LTPMP and meeting all resource agencies permit conditions. The Conservancy shall be responsible for performing all identified site maintenance procedures (as needed) including weed control, management of irrigation systems and regimes, and replacement plant establishment for the Mitigation Site and for meeting the Performance Standards included in the approved Final HMMP and Final LTPMP. The Conservancy shall also be responsible for coordinating with the OCWR Biologist as the primary contact regarding the Management Services.

(d) Resource Agencies:

Resource Agencies are responsible for determining compliance with the Final HMMP and the Final LTPMP. Resource Agencies include the Corps, CDFW and Regional Board.

(e) OC Parks:

The County of Orange, OC Parks department, is the County landowner of the Mitigation Site and has primary responsibility for ensuring that the Mitigation complies with OC Parks rules, regulations and requirements. OC Parks may also oversee, review, and if necessary, approve monitoring and maintenance activities. Conservancy shall be responsible for coordinating with OC Parks and complying with OC Parks rules, regulations and requirements.

1.4 General Standards of Performance.

Conservancy and County acknowledge that they are entering into this Agreement in good faith. Each Party agrees to use its reasonable efforts, skill and judgment in all matters arising under this Agreement, and to cooperate in good faith with the other Party and other Responsible Entities. Conservancy agrees to perform its duties and obligations in an efficient, expeditious and professional manner, consistent with the terms and provisions of this Agreement.

ARTICLE II TERM OF AGREEMENT

2.1 Initial Term.

The initial term of this Agreement (the “Initial Term”) shall be ten (10) years and shall commence on the Effective Date and shall pertain to the Short-Term Management responsibilities of Conservancy to meet the objectives provided in the Final HMMP as provided in **Exhibit A**.

2.2 In-Perpetuity Term.

Upon receipt of sign-off from OCWR and Resource Agencies’ confirmation of the satisfactory completion of the Final HMMP, Conservancy will manage and implement Long-Term Management responsibilities for the Mitigation Site in-perpetuity and in conformance with the Final LTPMP, approved by the Resource Agencies and included as **Exhibit B**.

ARTICLE III CONSERVANCY COMPENSATION

3.1 Fees.

(a) Short-Term Management of Mitigation Site (Initial Term)

For the purposes of the Conservancy performing the Management Services in **Exhibit C** and described in Section 4.1, the Conservancy shall be paid an annual Management Fee (the “Management Fee”) with respect to each fiscal year commencing on July 1, 2020, (the “Effective Date”), and thereafter during the Term of the Agreement, according to the schedule as shown on **Exhibit C**, for a not-to-exceed total project Management Fee sum equal to ~~four million five hundred eight thousand two hundred dollars (\$4,508,200)~~ **four million five hundred sixty three thousand one hundred dollars (\$4,563,100)**. This Management Fee includes the cost of the Management Services for the full implementation of the Final HMMP.

(b) Long-Term Management of Mitigation Site (In-Perpetuity Term)

Creation of Endowment: Within thirty (30) calendar days of the Effective Date, County shall cause to be created an endowment (“Endowment Fund”) with the Orange County Community Foundation (“OCCF”), a California charitable corporation (the “Endowment Holder”) for payment to Conservancy for annual expenses related to Conservancy’s long-term maintenance, monitoring and management responsibilities for the Mitigation Site.

In order to implement the Final LTPMP, the County will deposit, the sum of two million two hundred seventy four thousand one hundred twenty four dollars (\$2,274,124) with OCCF to establish the Endowment Fund, in exchange for Conservancy's commitment to perpetually maintain, monitor and manage the Mitigation Site, in compliance with the Final LTPMP. The Endowment Fund shall be called the "Endowment Funding Agreement for the Long-Term Management of the OC Waste & Recycling Trabuco Creek Mitigation Site" and shall be governed by the Endowment Fund Agreement attached as **Exhibit D** to this Agreement. The Conservancy's budget and breakdown of costs for the implementation of the Final LTPMP is included as **Attachment A** to **Exhibit B**.

In support of the Endowment Fund, the Endowment Holder is responsible for investing, managing and distributing funds annually to the Conservancy as a non-wasting corpus.

3.2 Payments.

(a) Short-Term Management of Mitigation Site (Initial Term)

County shall pay the annual Management Fee to the Conservancy in four quarterly installments payable on or before July 1, October 1, January 1 and April 1 of each year of the Term. Prior to each installment, the Conservancy will provide the County with an Activities Invoice for the upcoming quarter in accordance with the Terms and Conditions specified in **Exhibit E** and this Section. A representative quarterly Activities Invoice in conformance with the Terms and Conditions specified in **Exhibit E** is included as **Appendix F**. All future quarterly Activities Invoices shall use the same format as **Exhibit F**. For each fiscal year of the Agreement, any unspent fees from the previous year may be applied to the following annual Management Services by the Conservancy. County shall pay the first quarterly installment of the Management Fee to Conservancy within thirty (30) days from the Effective Date. In the event the Initial Term commences on some date other than July 1, 2020, then the first quarterly installment of the Management Fee shall be prorated to reflect the actual period of time for the first quarter of the Initial Term. The Conservancy shall submit quarterly invoices for Management Services up to ninety (90) days in advance to allow sufficient time for County administrative processing of payment. Payments for presented invoices shall be paid no later than thirty (30) days after presentation and on approval of OC Waste & Recycling.

These payments shall constitute full and complete payment for the Management Services performed during the Initial Term in accordance with this Agreement between the Conservancy and the County and identified in **Exhibit C** except as may be adjusted according to Section 3.3 below and at the sole discretion of County.

(b) Long-Term Management of Mitigation Site (In-Perpetuity Term)

Upon receipt of sign-off from OCWR and Resource Agencies' confirmation of the satisfactory completion of the Final HMMP, Endowment Holder shall pay Conservancy an annual payment of approximately \$90,965, paid as provided in the Endowment Fund Agreement (**Exhibit D**). Endowment shall be adjusted annually based on the Consumer Price Index ("CPI") up to but not more than 4 percent, to enable Conservancy to perform its obligations under this Agreement and its Exhibits.

It is the intent of the Parties that the Endowment Fund provide a stable and consistent investment return resulting in a non-wasting corpus and providing Conservancy a steady annual payment in-perpetuity. As provided in the Endowment Fund Agreement, investment returns in excess of 4% will be reinvested in the Endowment fund to ensure stable funding in-perpetuity and to cover unanticipated expenditures. Conservancy will exercise reasonable discretion in prioritizing and timing performance of the tasks identified in the Final LTPMP. Conservancy shall be solely responsible for correcting any issues stemming from Conservancy's exercise of such discretion.

3.3 Adjustments to Management Fee.

Changes or adjustments to the Management Fee are subject to County contracting and purchasing policies as authorized by the Board of Supervisors.

ARTICLE IV SCOPE OF MANAGEMENT SERVICES

4.1 Duties of Conservancy.

The Conservancy shall provide Management Services to fully implement the Final HMMP and Final LTPMP for the Mitigation Site. These Management Services, of the Mitigation Site, are listed in **Exhibits A and B** and are generally described below:

(a) Short-Term Management of Mitigation Site (Initial Term)

1. Conservancy agrees to implement the Final HMMP for the Mitigation Site, which has been approved by the Resource Agencies and is included as **Exhibit A**, summarized as follows:
 - Conservancy shall create a 0.30 ac, 1,070-linear ft, off-site wetland mitigation area at Trabuco Creek to satisfy Regional Board mitigation requirements.
 - Conservancy shall facilitate the successful establishment, management, maintenance, monitoring and reporting of native habitat within the Mitigation Site consistent with the Final HMMP.
 - Conservancy shall eradicate targeted invasive riparian plant species, including the removal of giant reed (*Arundo donax*) and associated root balls, and install native riparian vegetation within a 14.17-acre United States Army Corps of Engineers (Corps) stream rehabilitation polygon as well as a 20.21-acre Regional Board/CDFW stream rehabilitation polygon.
 - Conservancy shall comply with Resource Agency mitigation requirements.
 - Conservancy shall install 307 western sycamore trees throughout the Trabuco Creek mitigation areas.
 - Conservancy shall eradicate invasive riparian plant species in areas directly upstream of and laterally adjacent to the mitigation areas noted above to prevent infestation of the specified mitigation polygons (including areas within existing

utility easements and prior mitigation areas in the immediate project vicinity, as covered in the Final HMMP).

- Conservancy shall meet or exceed all Performance Standards included in the approved Final HMMP.
- Conservancy shall adhere to project modifications as requested by OC Parks to reduce herbicide use in areas that are legally accessible by the public and adjacent to existing public trails through the use of:
 - Non-chemical buffers along trails – manual methods such as mowing, grubbing, tarping of giant reed and root ball extraction within buffer areas;
 - Temporary fencing and signage – temporary fencing and signage shall be placed during application of herbicides adjacent to public trails, buffer areas, and legally accessible areas; and
 - Modified herbicide application timing coupled with additional mowing events to maximize efficacy and reduce need for re-treatments.

2. Phasing of Initial Term

Phase I: Implementation (Years 1-3). Includes, but may not be limited to, completion of detailed implementation, maintenance and monitoring plans, extensive mitigation site preparation, installation of irrigation and other maintenance methods, targeted project-wide weed control, flora and fauna surveys, plant material procurement and grow-out, phased planting and installation of native plants, maintenance and monitoring of pilot/test plantings, site-scale weeding, installation of supplemental and replacement plantings and reporting. Each year includes maintenance and upkeep of previous year's plantings and installation of new plantings on subsequent areas of site.

- Phase II: Maintenance and Short-Term Monitoring (Years 4-5). Includes, but may not be limited to, continued targeted weed control throughout project area, flora and fauna surveys, active monitoring of installed plantings and irrigation, focused local site-scale maintenance and weed control, revisiting previously planted areas to supplement with additional or replacement plantings, irrigation or other maintenance as needed to track success criteria, site and project-scale monitoring in relation to project Performance Standards, and reporting.
- Phase III: Long-Term Monitoring and Maintenance (Years 6-10). Includes, but may not be limited to, continued project and site-scale monitoring and reporting in relation to project Performance Standards. Continued limited targeted weed control, replacement plantings, and irrigation as needed until sign-off. Final flora and fauna surveys as required by Performance Standards. Preparation of comprehensive Final Report.

(b) Long-Term Management of Mitigation Site (In-Perpetuity Term)

Upon receipt of sign-off from OCWR and Resource Agencies' confirmation of the satisfactory completion of the Final HMMP, Conservancy will manage and implement long-term management responsibilities for the Mitigation Site in-perpetuity.

Conservancy's Long-Term Management responsibilities will be funded pursuant to an Endowment Fund as provided in Article III and Exhibit D of this Agreement.

1. Conservancy agrees to implement the Final LTPMP for the Mitigation Site, which has been approved by the Resource Agencies and is included as **Exhibit B** summarized as follows:
 - Conservancy shall meet or exceed all Objectives and Measures included in the approved Final LTPMP;
 - Conservancy shall facilitate the successful establishment, management, maintenance, monitoring and reporting of native habitat within the Mitigation Site consistent with the Final LTPMP.
 - Conservancy shall perform all identified site maintenance procedures (as needed) including weed control, management of irrigation systems and regimes, and replacement plant establishment for the Mitigation Site;
 - Conservancy shall coordinate with the OCWR Biologist as the primary contact regarding the Management Services;
 - Conservancy shall manage of all mitigation areas and immediately-adjacent habitats at the Mitigation Site area which encompasses approximately 51.06 acres, in-perpetuity.

2. Permits and Approvals

Conservancy shall provide Management Services in an efficient and professional manner in accordance with the terms, timelines, conditions and standards set forth in this Agreement. County shall expeditiously provide Conservancy with any additional documentation, permits or other authorizations reasonably necessary to establish Conservancy's authority to perform the Management Services as required hereunder. Conservancy is responsible for obtaining all necessary permissions and permits from OC Parks and other relevant agencies necessary to perform the Management Services. Conservancy shall perform all Management Services in a prompt and diligent manner in accordance with this Agreement and recognized standards of the industry and in compliance with such standards and practices as are prevalent in the geographic area where the Management Services will be performed.

4.2 Performance Standards for Project.

In performing the Management Services, Conservancy shall meet the Performance Standards as set forth in the Final HMMP and Final LTPMP.

4.3 Timeline.

The Conservancy will initiate the duties defined in Section 4.1 within 90 days following Board of Supervisors approval of the Agreement. The Timeline will be in compliance with the Scope of Management Services by Year (**Exhibit C**). Site preparation, installation and maintenance activities are not consistent throughout the year and will primarily occur in the fall and the months following each rainy season respectively. Maintenance and monitoring activities will continue

until the Performance Standards identified in Section 4.2 are met. The Timeline may be modified by the Director in his sole and exclusive discretion, upon written request of Conservancy.

4.4 Progress Reports, Meetings and Audits.

(a) Conservancy shall prepare and submit to County no later than thirty (30) days after each three (3) month period (January–March, April–June, July–September and October–December), in such form as the Director may reasonably require, a written progress report (the “Quarterly Progress Report”) for the preceding three (3) months. The Quarterly Progress Report may be submitted together with the quarterly Activities Invoice or separately. At a minimum, the Quarterly Progress Report shall summarize all services, methodologies, and activities undertaken by Conservancy during the period and describe the activities to be performed in the following three (3) months. An Annual Report, as directed by the Resource Agencies, will consolidate each year’s Progress Reports and will be submitted to County for review thirty (30) days prior to submission to Resource Agencies.

(b) Conservancy shall schedule and attend regular update meetings with County. Update meetings shall be held on a periodic schedule as County and Conservancy reasonably deem necessary. Among other things at the update meetings, the OCWR Biologist will ensure that the activities previously invoiced by the Conservancy were conducted. The OCWR Biologist will regularly inspect and monitor the performance of the Mitigation Site as needed and will provide recommendations to the Conservancy as appropriate for improved performance in relation to the Performance Standards referenced in Section 4.2.

(c) Conservancy agrees to permit County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to those books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of the Conservancy related to the performance of this Agreement for the purpose of auditing or inspecting any aspect of performance under this Agreement, including but not limited to the costs of administering this Agreement. County will provide reasonable notice of such audit or inspection. County’s right to audit the Conservancy for this Agreement shall extend for 3 years beyond the Termination Date.

4.5 Compliance with Laws, Permits and Agreements.

(a) Conservancy shall comply with all federal, state and local laws, ordinances, regulations, permits and orders now in force or enacted or promulgated hereafter (individually, a “Law”; collectively, “Laws”) that are related to the performance of the Management Services as set forth in **Exhibit A** and **Exhibit B**, including but not limited to, (i) the approved Final HMMP and Final LTPMP, (ii) the NCCP implemented among County and local governments and various natural resource agencies and landowners to protect various plant and wildlife communities and to which the County is a signatory, (iii) the Federal Endangered Species Act, (iv) the California Endangered Species Act, (v) any applicable conservation

easements, (v) any Law (in each case, a “Hazardous Materials Law”) concerning wastes, materials, chemicals or other substances (whether in the form of liquids, solids or gases, and whether or not airborne) that are ignitable, reactive, corrosive, toxic or radioactive, or that are deemed to be pollutants, contaminants or hazardous or toxic substances under or pursuant to any law, or that are to any extent regulated by, form the basis of liability under or are otherwise under the authority of any Law (in each case, a “Hazardous Material”), and (vi) any existing or future ordinance promulgated by County relating to its ownership of lands in which the Management Services are performed.

(b) Conservancy shall not take any action or fail to act that may cause any portion of the lands in which the Management Services are performed to be in violation of any Law, including but not limited to any Hazardous Materials Law. Conservancy shall use its best efforts to notify County promptly, in writing of any suspected violation of any Law or Hazardous Materials Law with respect to the land owned by County of which it becomes aware, it being understood that Conservancy has no obligation to research any such matters or investigate to discover any such suspected violations, or to provide County with any form of legal advice, and that the intent of this provision is to ensure that Conservancy informs County in writing, in a timely manner of suspected violations of Laws with respect to the lands owned by County of which Conservancy actually becomes aware.

(c) Nothing in this Agreement shall be construed to create in or give to Conservancy: (1) the obligations or liabilities of an “owner” or “operator” as those words are defined and used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 US Code Sections 9601 et seq.) or any other Hazardous Materials Law, including (but not limited to) the Hazardous Materials Transportation Act (49 US Code Sections 6901 et seq.); the Hazardous Waste Control Law (California Health & Safety Code Sections 25100 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Sections 25300 et seq.); and any rule regulation or other promulgation adopted under any of the foregoing; (2) the obligations and liabilities of a person described in 42 USC §9607(a)(3); (3) the obligations of a responsible person under any applicable Hazardous Materials Law; (4) any obligation, right or permission to investigate, remove, remediate, abate or otherwise clean up any Hazardous Materials located at or associated with the land; or (5) control over, or any obligation to participate in, the investigation, removal, remediation, abatement or other clean-up of Hazardous Materials in compliance with any Hazardous Materials Law, except to the extent that the condition was actually caused by Conservancy.

4.6 Employees.

(a) The Conservancy is an independent contractor. All matters pertaining to the employment, supervision, compensation, promotion and discharge of Conservancy’s employees shall be the sole responsibility of Conservancy. Conservancy shall comply with all applicable governmental requirements relating to workers’ compensation, social security, unemployment insurance, hours of labor, wages, working conditions and other employer-employee matters, and County shall have no responsibility for such issues for Conservancy or Conservancy’s employees.

(b) Conservancy warrants that it fully complies with all Laws regarding the employment of aliens and others, and that all its employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal Laws. Conservancy shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Laws, including but not limited to the Immigration and Control Act of 1986, 8 U.S.C. § 1324 et seq., as they currently exist and as they may be hereinafter amended. Conservancy shall retain all such documentation for all covered employees for the period prescribed by Law.

4.7 Data Sharing and Ownership of Intellectual Property.

(a) County shall retain permanent ownership of all intellectual information and Work Product directly connected and derivative materials produced under this Agreement by Conservancy. All documents, GIS Information, data files, reports and other incidental or derivative work or materials produced hereunder (collectively, "Work Product") shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County.

(b) County hereby grants Conservancy non-exclusive license to use GIS information, field and monitoring data and other related Work Product for publication in scientific peer-reviewed journals and professional presentations with appropriate acknowledgement of County. No Work Product shall be used by Conservancy for any other purpose without the express written consent of the County. All work generated by or on behalf of Conservancy as part of its unrelated or previous duties on the lands in which the Management Services are performed shall remain the exclusive property of Conservancy.

(c) At termination of this Agreement, Conservancy agrees to furnish the County all Work Product produced under this Agreement by the Conservancy within a period of not more than 60 calendar days.

ARTICLE V INSURANCE

5.1 Insurance Requirements.

Prior to the provision of Management Services under this contract, the Conservancy agrees to purchase all required insurance or maintain a program of self-insurance at Conservancy's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. In addition, all subcontractors performing work on behalf of Conservancy pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for Conservancy.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. If Conservancy is self-insured, 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 County harmless against any and all liability, claim, demand or suit resulting from Conservancy's, its agents, employee's or subcontractor's performance of this Contract, Conservancy shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Conservancy'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 Conservancy's SIR provision shall be interpreted as though the Conservancy was an insurer and the County was the insured.

If the Conservancy fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

Qualified Insurer

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 Conservancy 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	Statutory
Employers' Liability Insurance	\$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 County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the Conservancy's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees.

Conservancy shall notify County 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 County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County 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 Conservancy fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Conservancy 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 County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Conservancy in writing of changes in the insurance requirements. If Conservancy does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Conservancy, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Conservancy'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.

ARTICLE VI INDEMNIFICATION

6.1 Indemnification by Conservancy. Conservancy agrees to indemnify, defend and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from and against any and all of the following: claims, costs, liabilities, penalties, damages or expenses of any kind or nature whatsoever, to any person or property, and whether based on negligence, strict liability or other claim (including, but not limited to, court costs and reasonable attorneys' fees and expenses, whether incurred at the trial, appellate or administrative level, or in connection with any required arbitration) (collectively, "Claims") that County Indemnitees may suffer or incur, or to which any of the County Indemnitees may be subjected, to the extent such Claims are the result of or arise out of (i) Conservancy's Management Services pursuant to this Agreement (ii) any breach or violation of the terms of this Agreement by Conservancy or by anyone acting for or under the authority of Conservancy, or (iii) the negligence or willful misconduct of Conservancy or any of Conservancy's Agents in the performance of the Management Services.

6.2 Indemnification by County. County agrees to indemnify, hold harmless and defend Conservancy, each of Conservancy's directors, officers, employees and agents, and each of the successors and assigns of such parties (collectively, the "Conservancy Parties"), from and against any and all Claims that any of the Conservancy Parties may suffer or incur, or to which any of the Conservancy Parties may be subjected, to the extent such Claims are the result of or arise out of (i) any breach or violation of the terms of this Agreement by County or by anyone acting for or under the authority of County, or (ii) the negligence or willful misconduct of County or any of County's Parties relating to the land upon which the Management Services are performed.

6.3 General. The foregoing indemnities and obligations to hold harmless and defend are intended to apply with respect to all Claims made or incurred directly by the indemnified Party or Parties, or their property, as well as Claims made by third parties. The foregoing obligation to defend Conservancy and the Conservancy Parties shall mean the obligation to defend with counsel reasonably approved in writing by Conservancy. Likewise, the foregoing obligation to defend County Indemnitees shall mean the obligation to defend with counsel reasonably approved in writing by County. Neither payment nor a finding of liability or of an

obligation to defend shall be a condition precedent to the enforcement of any indemnity or duty to defend provision herein.

ARTICLE VII TERMINATION

7.1 Termination Without Cause.

Either Party may, for any reason and without cause, terminate this Agreement effective by giving written notice of such termination to the other Party at least one hundred and eighty (180) days prior to such effective date.

7.2 Termination for Cause.

(a) Either Party may terminate this Agreement for cause by written notice to the other Party (the "Termination Notice"). Failure of either Party to meet the terms and conditions of this Agreement shall constitute cause for termination.

If Conservancy as a legal entity ceases to exist or is unable or unwilling to meet the Management Services objectives found in the Final HMMP and Final LTPMP, County reserves the right to terminate this Agreement and assign Management Services responsibilities (and the associated funding) to an alternate habitat management entity.

(b) Termination shall be effective upon the expiration of thirty (30) days following the giving of the Termination Notice, unless the Party allegedly in default cures the same within such thirty (30) day period of said Termination Notice. In the alternative, if the default is not capable of cure within thirty (30) days of the mailing date of the Notice of Termination, the defaulting Party shall have the right to cure within sixty (60) days providing the defaulting Party gives written notice to the other Party within thirty (30) days of the mailing of the Notice of Termination of a plan of action to cure said default. The defaulting Party must initiate all necessary action to cure the default within sixty (60) days of the Termination Notice and shall have completed all such action and cured the default within sixty (60) days.

(c) Prior to delivery of a Termination Notice, the non-defaulting Party agrees to (i) notify the defaulting Party as to the non-defaulting Party's concerns with the other Party's performance and (ii) meet with the other Party to confer regarding resolution of those concerns. If the Parties are unable to resolve the non-defaulting Party's concerns within thirty (30) days, then the non-defaulting Party may proceed with its Termination Notice.

7.3 Obligations Upon Termination.

Upon termination of this Agreement for any reason, each Party shall continue to be fully liable for its respective obligations that have accrued up to and including the termination date. In addition, the parties shall have the following obligations:

(a) County Obligations. To the extent of available appropriations, County shall remain obligated to pay Conservancy for the portion of the Management Services performed by Conservancy up to the date of termination.

(b) Conservancy Obligations. Conservancy shall perform any services under this Contract reasonably requested by County until the termination date. In addition, within thirty (30) days after the termination date of this Agreement, whether by expiration of the Term, by early termination notice under this Article or by mutual agreement, Conservancy shall deliver to County the following:

(1) Complete and legible copies of all Work Product generated by Conservancy and pursuant to this Agreement not previously delivered by Conservancy to County;

(2) All records, contracts, agreements, keys, correspondence files and other papers or documents that pertain to the Management Services; and

(3) A Progress Report (whether or not then due), covering the period from the end of the previous Progress Report to the termination date.

(4) Return of all unused expenditures to County within 30 days.

7.4 Remedies Cumulative.

No remedy herein reserved to either Party is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given in this Agreement as now or hereafter existing or at law, in equity or by statute.

7.5 Nonwaiver.

The failure of a Party to notify the other Party of any default under this Agreement shall not be deemed to be a waiver by such non-defaulting Party of any continuing default by the defaulting Party of any term, covenant or condition set forth in this Agreement, nor of the non-defaulting Party's right to declare a default for any such continuing breach. The failure of a non-defaulting Party to insist upon strict performance of any of the terms, covenants or conditions of this Agreement, or to exercise any option in this Agreement in any one or more instances, shall not be construed as a waiver or relinquishment of any such terms, covenants, conditions or options, but the same shall be and remain in full force and effect.

ARTICLE VIII GENERAL PROVISIONS

8.1 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 delivered by Federal Express or other courier service guaranteeing overnight delivery, charges prepaid, and addressed as follows:

If to Conservancy at:

Irvine Ranch Conservancy
4727 Portola Parkway
Irvine, CA 92620
Attention: President and CEO

If to County at:

County of Orange
OC Waste & Recycling
601 N. Ross Street, 5th Floor
Santa Ana, CA 92701
Attention: Director

Any such notice sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed in the State of California with postage prepaid. Notices delivered by overnight service shall be deemed to have been given twenty-four (24) hours after delivery of the same, charges prepaid, to the courier. Any notice or other document sent by any other manner shall be effective only upon actual receipt thereof. Any Party may change its address for purposes of this Section by giving notice to the other Party as herein provided.

8.2 Independent Contractor.

Conservancy shall act as an independent contractor in the performance of its duties and responsibilities set forth in this Agreement including but not limited to those duties and responsibilities set forth in Article IV. Conservancy and Conservancy Agents are not and shall not be considered agents of County for any purpose. No provisions hereunder are intended or shall be construed to create a partnership or a joint venture between County and Conservancy or Conservancy Agents with respect to this Agreement or the Management Services, and neither Party shall have the power to bind or obligate the other Party, except as expressly set forth in this Agreement.

8.3 Assignment.

Neither Party shall voluntarily or involuntarily, directly or indirectly, sell, assign, hypothecate, pledge or otherwise transfer or dispose of all or any portion of its interest in this Agreement to any third party without the prior written consent of the other Party, which consent may be withheld in such other Party's sole and absolute discretion. Any such attempted sale, assignment,

hypothecation, pledge or other transfer without such consent shall be void and of no effect. The burdens and benefits of this Agreement are binding upon and inure to the benefit to all successors in interest of the Parties to this Agreement. However, no assignment approved by one Party pursuant to the terms of this Section shall be deemed to relieve the other Party from any liability, responsibility or obligation hereunder. County acknowledges that the foregoing restrictions on assignment are not intended to preclude Conservancy from retaining consultants or contractors to perform all or a portion of the Services under this Agreement.

8.4 Change of Ownership.

Conservancy agrees that if there is a change or transfer in ownership of Conservancy's business prior to completion of this Agreement, the new owners shall be required under terms of sale or other transfer to assume Conservancy's duties and obligations contained in this Agreement and complete them to the satisfaction of County.

8.5 Mediation.

If a dispute arises from or relates to the terms and provisions of this Agreement or any other matter referred to herein, which cannot be settled by direct discussions or negotiation, County and Conservancy agree first to try in good faith to settle the dispute by non-binding mediation administered by the American Arbitration Association under its Commercial Mediation Rules, or by such other organization or individual and under such rules as the parties may agree, before resorting to litigation or some other dispute resolution procedure. Each Party shall pay its own costs of mediation.

8.6 Attorneys' Fees.

In any action or proceeding to enforce or interpret any provision of this Agreement, or any action for damages by reason of any alleged breach of any of the provisions hereof, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

8.7 Governing Law.

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, without reference to conflict of laws and provisions. 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 and 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 venue.

8.8 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.

8.9 No Third-Party Beneficiaries.

This Agreement is not intended and shall not be deemed or construed to confer any rights, powers or privileges on any person, firm, partnership, corporation or other entity not a party hereto, except as may be expressly provided herein to the contrary.

8.10 Entire Agreement.

This Agreement, including the Exhibits attached hereto and incorporated herein by this reference, contains the entire contract between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.

8.11 Amendments and Written Consents.

All amendments to this Agreement shall be in writing and executed by County and Conservancy. For day-to-day communication and decisions, an e-mail request and approving e-mail reply will satisfy the written request requirement.

8.12 Headings.

The various headings and numbers herein, the grouping of provisions of this Agreement 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.

8.13 Oral Agreements.

No oral order, objection, claim or notice by any Party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing, and no evidence shall be introduced in any proceeding of any other waiver or modification.

8.14 Approvals.

Except as otherwise provided herein, all approvals required under this Agreement shall be in writing and shall be within the approving Party's reasonable discretion.

8.15 Press Releases and Press Relations.

Any feature stories and/or “soft coverage” concerning this Agreement, the subject matter hereof and the Management Services provided shall not be initiated or solicited by either Conservancy or County without the consent of the other Party, which shall not be unreasonably withheld. In the case of inquiries by the press, the Party to whom an inquiry has been made shall use reasonable efforts to contact the other Party. If a Party initiates a telephone call or email to the other Party advising them of a press inquiry, and such Party does not respond within one (1) business day after the telephone call has been placed or the emailed message sent, the Party to whom the inquiry has been made may answer questions asked by the press to the best of its knowledge. Notwithstanding the foregoing, prior consent of the other Party shall not be required to respond to any routine inquiries by the press.

8.16 Time.

Time is of the essence of this Agreement and each provision hereof of which time is an element.

8.17 Non-liability of Officials and Employees.

No member, official, employee, or consultant of County shall be personally liable to Conservancy, or any successor interest of Conservancy, in the event of any default or breach by County or for any amount which may become due to Conservancy or to its successor, or on any obligations under the terms of this Agreement. No member, director, officer, employee, or consultant of Conservancy shall be personally liable to County, or any successor interest of County, in the event of any default or breach by Conservancy or for any amount which may become due to County or to its successor, or on any obligations under the terms of this Agreement.

8.18 Child Support Enforcement Requirements.

In order to comply with child support enforcement requirements of the County of Orange, Conservancy agrees to furnish Director, County’s standard form District Attorney Child Support Enforcement Certification Requirements, which includes the following information.

- a) A certification that the Conservancy has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- b) A certification that the Conservancy has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of Conservancy to timely submit data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement. Failure to cure such breach within sixty (60) days of notice from the Director shall constitute grounds for termination of this Agreement.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and will not be used for any other purpose.

8.19 Force Majeure.

The Conservancy shall not be responsible for damages during any delay beyond the time named for the performance of this Agreement for damages or delays in performance caused by an act of God, wildfire, war, civil disturbance, labor dispute, strike, lockout, accident, or other cause or event beyond the reasonable control of the Conservancy, provided the Conservancy gives written notice of the cause of the delay to the County as soon as possible, however, not later than seven (7) calendar days of the start of the delay.

8.20 Captions.

The captions of the various Sections in this Agreement are for convenience and organization only and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.

8.21 Interpretation.

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has 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 Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the parties and this Agreement.

8.22 Authorization.

By the execution of this Agreement, the undersigned each represent and warrant, in each case as to the Party on behalf of whom they are signing, that the execution, delivery and performance of this Agreement by such Party has been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of such Party in order to perform its obligations hereunder.

8.23 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

8.24 Prevailing Wage.

The Conservancy shall ensure that it complies with all applicable registration and prevailing wage requirements found in the California Labor Code. Current prevailing wage considerations and costs are included in the Management Fee. If prevailing wage requirements or rates change during the term of this Agreement such that the Management Fee is no longer sufficient to perform the Management Services, Conservancy may request an increase in the Management Fee subject to County purchasing and contracting policies and required County approvals.

Prevailing wage rates are available from the Director of the Department of Industrial Relations at: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>

LIST OF EXHIBITS

Exhibit A, Habitat Mitigation and Monitoring Plan for Trabuco Creek Mitigation Site (“HMMP”)

Exhibit B, Long-Term Protection and Management Plan for Trabuco Creek Mitigation Site (“LTPMP”)

Exhibit C, Short-Term Management of Mitigation Site – Scope of Management Services and Costs by Year

Exhibit D, Endowment Funding Agreement for the Long-Term Management of the OC Waste & Recycling Trabuco Creek Mitigation Site

Exhibit E, Compensation and Terms of Payment

Exhibit F, Representative Conservancy Invoice

Signature Page to Follow

DRAFT -SUBJECT TO CHANGE BASED ON FINAL HMMP TERMS

EXHIBIT A - SCOPE OF MANAGEMENT SERVICES BY YEAR	Not-To-Exceed Cost By Fiscal Year
Year 1 (January 2021 – June 2021): Baseline Monitoring and Site Preparation <ul style="list-style-type: none"> - Mow site - Grow and kill weeds - JD and CRAM baseline surveys - Reference site selection - Target invasive weed surveys - Infrastructure setup - Plant material and seed procurement - Qualitative monitoring - Pre-disturbance surveys - Reporting 	<p>\$347,600</p>
Year 2 (July 2021 – June 2022): Site Preparation <ul style="list-style-type: none"> - Remove arundo and root balls - Arundo disposal costs - Grow and kill weeds - Target invasive weed control - Plant material and seed procurement - Qualitative monitoring - Additional mowing of arundo re-growth - Mechanical removal of weeds in 10-foot buffers along trails - Pre-disturbance surveys - Reporting 	<p>\$1,462,800 \$1,492,175</p>
Year 3 (July 2022 – June 2023): Site Preparation <ul style="list-style-type: none"> - Grow and kill weeds - Target invasive weed control - Plant material and seed procurement - Excavate wetland swale - Qualitative monitoring - Additional mowing of arundo re-growth - Mechanical removal of weeds in 10-foot buffers along trails - Pre-disturbance surveys - Reporting 	<p>\$167,300 \$184,075</p>
Year 4 (July 2023 – June 2024): Implementation <ul style="list-style-type: none"> - Planting and seeding - Weed removal - Erosion control - Irrigation - Qualitative monitoring - Mechanical removal of weeds in 10-foot buffers along trails - Pre-disturbance surveys - As-built report 	<p>\$991,600 \$995,975</p>
Year 5 (July 2024 – June 2025): Maintenance year 1 <ul style="list-style-type: none"> - Ongoing weed removal - Begin targeted invasive removal in LTPM area - Replacement planting - Performance monitoring and CRAM - Mechanical removal of weeds in 10-foot buffers along trails - Pre-disturbance surveys - Reporting 	<p>\$460,500 \$464,875</p>

Year 6 (July 2025 – June 2026): Maintenance year 2 - Ongoing weed removal - Targeted invasive removal in LTPM area - Replacement planting - Qualitative monitoring - Pre-disturbance surveys - Reporting	\$326,700
Years 7 (July 2026 – June 2027): Maintenance year 3 - Ongoing weed removal - Targeted invasive removal in LTPM area - Replacement planting - Performance monitoring and CRAM - Pre-disturbance surveys - Reporting	\$221,900
Year 8 (July 2027 – June 2028): Maintenance year 4 - Ongoing weed removal - Targeted invasive removal in LTPM area - Replacement planting - Qualitative monitoring - Pre-disturbance surveys - Reporting	\$205,300
Year 9 (July 2028 – June 2029): Maintenance year 5 - Ongoing weed removal - Targeted invasive removal in LTPM area - Performance monitoring and CRAM - Pre-disturbance surveys - Reporting	\$133,100
Year 10 (July 2029 – June 2030): Maintenance year 6 - Ongoing weed removal - Targeted invasive removal in LTPM area - Additional monitoring - Pre-disturbance surveys - JD and CRAM (if needed) - Final reporting - Regulatory agency coordination	\$191,400
Total Fixed Fee	\$ 4,508,200
	\$4,563,100

EXHIBIT E

COMPENSATION AND TERMS OF PAYMENT

Compensation:

Irvine Ranch Conservancy (“Conservancy”) shall perform the Management Services as set forth in **Exhibit C**, Scope of Management Services by Year, in a cost-effective manner. Compensation shall be fixed-fee in accordance with the annual amounts in **Exhibit C** and payable quarterly in advance upon invoice.

Invoicing and Payment:

The Conservancy shall invoice the County in accordance with the terms and conditions provided herein and in Section 3.2.

Management Fees shall be invoiced quarterly by the Conservancy to the County in congruence with the Management Services listed in **Exhibit C** and as described in Section 3.2. The following information must be clearly referenced on the invoice:

- the Grantee’s vendor code,
- the Contract Number (MA #)

The responsibility for providing an acceptable invoice rests with the Conservancy. An example of an acceptable invoice is attached in **Exhibit F**. Invoices must first be verified and approved by the OCWR Biologist and are subject to routine standard processing requirements of the County. The Grantee's invoice shall be paid after verification and approval and in a timely manner, in any event not longer than 30 days after first presented.

Payments made by the County under this Agreement shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract, and shall not be construed as acceptance of any part of the Management Services.

In the event of a lost or misdirected invoice, the Conservancy shall re-issue at no additional charge and the OCWR Biologist will certify it as an original. No billing shall cover Management Services previously invoiced and paid.

The Conservancy shall use the Conservancy’s letterhead to submit all invoices for Management Services rendered. Proper references must be made to Scope of Management Services in **Exhibit C** and the Vendor Code will be used to identify the Conservancy. Each invoice will have a unique invoice number and will include the following information:

- a. Conservancy’s name and address including email address
- b. Conservancy’s remittance address, if different from a. above
- c. Delivery/Service address
- d. Services description that matches the description in **Exhibit C**.
- e. Sales tax, if applicable

- f. Freight/delivery charges, if applicable
- g. Total amount

Grantee: Name and Agreement (____) Number

Invoices shall be submitted electronically, via email to ocwrinvoice@ocwr.ocgov.com. Payment and invoice related questions shall be directed to OCWR Accounts Payable at ocwrinvoice@ocwr.ocgov.com.

**Exhibit F**

**OC Waste & Recycling Management Agreement
Contract #MA(.....) Vendor #(.....)**

SAMPLE**INVOICE #(.....)**

<i>Summary Activities Invoice For Period January 1 – March 31, 20__</i>		
	Expenses	Description
Planning and Delineations	\$ 60,000	Developing delineations, soil moisture mapping, verification and adjustment of weed and habitat polygons, initiation of detailed implementation, maintenance and monitoring plans, field staffing, labor, project management, and reporting.
Preparation and Data Collection	\$ 40,000	Baseline data collection, establishment of vegetation sampling and photo points, pre-growing and collection of plant material and seeds, establishment of pilot/test plantings, labor, project management and reporting.
TOTAL	\$ 100,000	