

ACQUISITION AND MITIGATION AGREEMENT
BETWEEN
COUNTY SANITATION DISTRICT NO. 20 OF LOS ANGELES COUNTY
AND
TRANSITION HABITAT CONSERVANCY

This Acquisition and Mitigation Agreement (“Agreement”) is entered into as of June 8, 2023, by and between **COUNTY SANITATION DISTRICT NO. 20 OF LOS ANGELES COUNTY**, a county sanitation district organized and existing under the provisions of the County Sanitation District Act, California Health and Safety Code Section 4700 *et seq.* (“Project Proponent”), and **TRANSITION HABITAT CONSERVANCY**, a California nonprofit public benefit corporation (“THC”), with reference to the following facts:

A. THC is the sole owner in fee simple of Los Angeles County Assessor’s Parcel Numbers 3064-012-095, -096, -097, -098, -099, -100, -101, and -102, totaling approximately 40 acres, located within an area of unincorporated Los Angeles County, southeast of the City of Palmdale, County of Los Angeles, State of California, as legally described on Exhibit A and depicted on Exhibit B (the “Property”).

B. Project Proponent, by and through its Palmdale Water Reclamation Plant 2025 Facilities Plan Environmental Impact Report (the “EIR”) Mitigation Measure 12-18 (the “MM”), is required to provide for the long-term protection of Joshua tree woodland (“Joshua tree”), considered a threatened community by the California Natural Diversity Database with a State ranking of S3.2, by acquiring and protecting replacement habitat in perpetuity (the “Mitigation Requirement”).

C. Pursuant to the Mitigation Requirement, Project Proponent must provide replacement Joshua tree habitat at a ratio of 1:1 for Recycled Water Storage Reservoirs Nos. 1 and 2, which were constructed pursuant to the recommended project described in the EIR. Prior to construction, Joshua tree habitat was identified on Project Proponent’s property and surveyed for quality and mitigation evaluation by the consulting firm Environmental Science Associates in October 2007 (the “Replacement Evaluation”). The Replacement Evaluation, based on the potential construction of six recycled water storage reservoirs, determined that Project Proponent’s impacts, as set forth in the EIR MM, must be mitigated at a 1:1 ratio for 155 acres of habitat with an average of 1.9 Joshua trees per acre; however, to date, Project Proponent has constructed only two recycled water storage reservoirs. Using aerial photograph analysis, Project Proponent was able to determine that construction of Recycled Water Storage Reservoirs Nos. 1 and 2 impacted only 94 of the 155 acres of Joshua tree woodland, as shown on Exhibit C. Therefore, Project Proponent’s total replacement to comply with the Mitigation Measure is a minimum of 179 Joshua trees.

D. The Property includes suitable replacement habitat for the Joshua tree as required by the Mitigation Requirement. The suitability of the Property was confirmed during a biological resources assessment field study performed by the consulting firm Chambers Group in September 2021.

E. Subject to the terms and conditions of this Agreement, Project Proponent, in order to satisfy the Mitigation Requirement, desires to purchase the right to use the protection and preservation of the Property for Joshua tree mitigation purposes (the “Mitigation Credits”), as follows:

1. The Mitigation Credits associated with two of the 5-acre parcels (APNs 3064-012-095 and 3064-012-096) will be used to satisfy the mitigation for the previously constructed Recycled Water Storage Reservoirs Nos. 1 and 2.

2. The remaining Mitigation Credits associated with the other six parcels (APNs 3064-012-097 through 3064-012-102, totaling approximately 30 acres) will be retained by the Project Proponent to satisfy future mitigation requirements resulting from future projects.

3. The Project Proponent retains the sole right, in perpetuity, to sell the remaining Mitigation Credits associated with the other six parcels (APNs 3064-012-097 thru 3064-012-102) to another entity if the Mitigation Credits have remained unused by the Project Proponent and are determined to be surplus mitigation credits. The sale of said Mitigation Credits is subject to THC's approval, which shall not be unreasonably withheld.

F. In order to satisfy the Mitigation Requirement and ensure the long-term functionality and protection of the Mitigation Credits, Project Proponent desires to engage THC to preserve the Property in perpetuity through the use of a deed restriction and to provide for initial and capital tasks associated with the restriction of the Property and the Property's long-term stewardship pursuant to the terms of the Property Endowment and Cost Analysis Report ("PECAR") prepared for the Property by THC, using funding provided by Project Proponent as set forth in Article 2 below, and THC desires and is qualified to provide such services.

G. THC is a California nonprofit organization within the meaning of California Public Resources Code section 10221 and California Civil Code section 815.3, which is organized and operated for charitable purposes, including "the protection from further encroachment by unplanned residential development of regionally sensitive transition zones of two different habitat types (foothill and high desert) of protected wildlife species of regional interest for the benefit of the public..." and is a tax-exempt and "qualified conservation organization" within the meaning of sections 501(c)(3) and 170(b)(1)(A)(iv) of the Internal Revenue Code. In addition, THC is a "nonprofit organization" as defined under Senate Bill 1094 (Cal. Government Code sections 65965-65968), is committed to managing its mitigation endowments pursuant to the various legislative requirements of SB 1094, and meets the requirements of California Government Code section 65968(e); therefore, it is qualified to acquire, hold, and manage mitigation properties and endowments under Senate Bill 1094 as further described in Exhibit D and Exhibit E, both attached hereto and incorporated herein by this reference. THC in performance of this Agreement will be acting in an independent capacity and not as agent or employee of Project Proponent and is not entitled to any employee rights, benefits, or privileges of Project Proponent including, but not limited to, health/dental, retirement, workers' compensation, or unemployment insurance.

H. THC and Project Proponent acknowledge and agree that this Agreement is both a contract for the sale of the Mitigation Credits and a contract for services between THC and Project Proponent.

I. Pursuant to an option agreement entered into between Project Proponent and THC, dated July 1, 2022 ("Option Agreement"), Project Proponent issued THC a non-refundable payment of \$3,000 ("Option Payment") in July 2022 to ensure the exclusive rights to purchase the Mitigation Credits associated with APNs 3064-012-097 through 3064-012-102 ("Option") for the period of July 1, 2022, to December 31, 2022. In December 2022, Project Proponent issued THC a second Option Payment in the amount of \$3,000 to extend the Option Term through June 30, 2023 ("Option Term"). The two Option Payments, totaling \$6,000, will be applied to the Purchase Price (as defined below) of the Mitigation Credits.

NOW, THEREFORE, in consideration of the terms and conditions contained in this Agreement, together with other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1: CONTRACT REQUIREMENTS

1.1 Incorporation of Recitals and Exhibits. Each of the foregoing recitals, along with the referenced exhibits, are hereby incorporated in and made a part of this Agreement.

1.2 Covenant to Perform. THC and Project Proponent shall each fully execute their respective tasks and obligations described in this Agreement.

1.3 Escrow. THC and Project Proponent shall execute and process the Deed Restriction (as defined below) through an escrow that will be opened at Stewart Title of California, Inc. (“Title Company” or “Escrow Holder”), 1200 California Street, Suite 120, Redlands, California 92374, Tel: (909) 335-9868, Fax: (951) 346-3425, Senior Escrow Officer Joyce Strohm, Jstrohm@stewart.com. Escrow Holder will consummate the transaction contemplated herein as Escrow Number 2034613 (“Escrow”), which shall close (the “Close of Escrow” or “Closing”) pursuant to escrow instructions mutually agreeable to the parties, on the earliest practical date after Project Proponent deposits into Escrow funds in the amount of the Acquisition Management Fee (as defined below), the Purchase Price, the Stewardship Endowment (as defined below), the Closing Costs (as defined below), and all other funds necessary to consummate this transaction.

1.4 Deed Restriction. Two of the 5-acre parcels (APNs 3064-012-095 and 3064-012-096) comprising the Property shall be permanently preserved by the execution and recordation of a Covenant and Deed Restriction (the “Deed Restriction”), which has been approved by Project Proponent and THC as part of the execution of this Agreement and is attached hereto as Exhibit F. The Deed Restriction shall be recorded on the earliest practical date after (i) all terms and conditions of this Agreement have been satisfied by Project Proponent and THC; and (ii) Project Proponent deposits into Escrow the Contract Sum (as defined below). In the event there is any conflict between the terms, provisions and requirements of the Deed Restriction and this Agreement, the Deed Restriction will govern.

1.5 Habitat Compensation Management Plan and Management Duties. THC will manage the Property in accordance with this Agreement, the Deed Restriction, and the Habitat Compensation Management Plan (as defined below). The Deed Restriction identifies permitted uses of the Property, including maintenance, monitoring, scientific research, vegetation management, and service access. If permitted, any public access for hiking, mountain bicycling, or equestrian use shall occur on designated trails only and in a manner consistent with preservation of the Property. Within thirty (30) days of the Closing, THC shall prepare and send to Project Proponent for comment, correction, and approval a management and work plan (the “Habitat Compensation Management Plan”) detailing the ongoing maintenance and management of the Property to be undertaken by THC (the “Management Duties”). THC’s management, maintenance, and preservation of the Property shall be undertaken by use of the Stewardship Endowment as provided in the PECAR.

1.6 Additional Services.

1.6.1 THC will continue to hold fee title to the Property and will be responsible for any ownership responsibilities, including any management activities that are not specifically set forth as Management Duties in the Habitat Compensation Management Plan. In the event Project Proponent wishes to engage THC to undertake any activities on the Property that are beyond the scope of the Management Duties, such additional activities will be deemed “Additional Services.” Additional Services provided by THC with Project Proponent’s approval shall constitute “Approved Additional Services” and will be subject to the terms of this Section 1.5.

1.6.2 Compensation. THC shall be entitled to additional compensation for Approved Additional Services on such terms as are agreed to in writing by THC and Project Proponent. The following terms shall apply to Approved Additional Services unless otherwise agreed in writing by THC and Project Proponent: (i) THC shall be entitled to additional compensation for Approved Additional Services on an hourly basis at THC’s then-current hourly rates for the services at issue, (ii) such additional compensation shall not count towards the Stewardship Endowment nor be subject to the terms of Article 4 of this Agreement, and (iii) THC shall be entitled to expense reimbursement from Project Proponent with respect

to the Approved Additional Services on terms consistent with THC's then-standard and reasonable expense reimbursement terms.

1.6.3 Standard of Care. THC shall perform the Approved Additional Services in accordance with the level of care generally observed by similar companies providing the same services under similar circumstances.

1.6.4 Cost Estimate. Except where a fixed fee or a not-to-exceed amount is mutually agreed in writing, any fee quotes are non-binding estimates. If THC agrees to a fixed fee or a not-to-exceed amount based on inaccurate or incomplete information provided by Project Proponent or other circumstances that are not THC's fault and, as a result, the assumptions relied upon by THC for the originally agreed upon fee limit are materially affected, the Parties shall negotiate in good faith to determine appropriate modifications in pricing and related terms.

1.6.5 Payment Default. In the event Project Proponent fails to pay any amounts to THC when due, THC shall have the right to stop work on the Approved Additional Services after giving Project Proponent written notice of the non-payment and the intention to stop work. In the event Project Proponent fails to pay any amounts to THC when due and does not cure such failure within thirty (30) days from THC giving written notice of non-payment ("Payment Default"), a Payment Default will constitute a material breach of this Agreement and THC's remedies will include all remedies available at law and equity, including, but not limited to, the right to terminate this Agreement as set forth in Article 6 below. Overdue amounts bear interest at the rate of 1.5% per month until paid. Project Proponent shall reimburse THC for all reasonable attorneys' fees, court costs, and other expenses incurred by THC (including any commissions payable to collection agencies) in connection with efforts to collect overdue amounts payable under this Agreement (including efforts to collect such attorneys' fees, court costs, and other expenses).

1.6.6 Payment on Termination. If this Agreement terminates under any circumstances, THC's payment rights for any Approved Additional Services shall include the following: In the event of termination of this Agreement where the Approved Additional Services are priced on a fixed-fee basis, THC shall be entitled to payment of all amounts due and unpaid based on the percentage of work completed prior to the effective time of termination as reasonably estimated by THC. In the event of termination of this Agreement where the Approved Additional Services are priced on a time and materials basis, THC shall be entitled to payment of all amounts due and unpaid based on the number of hours worked prior to the effective time of termination. THC shall also be entitled to reimbursement of expenses that are reimbursable under the terms of this Agreement and incurred prior to the effective time of termination.

ARTICLE 2: CONTRACT SUM

2.1 Contract Sum. Project Proponent shall pay to THC, through Escrow on or before the Closing, the following sums (collectively, the "Contract Sum") in immediately available funds:

2.1.1 A payment in the amount of One Hundred Thirty-One Thousand Six Hundred Eighteen and 50/100 Dollars (\$131,618.50) to fund the initial and capital tasks associated with protection of the Property with the Deed Restriction as required by the Mitigation Requirement ("Acquisition Management Fee"); and

2.1.2 A purchase price for the Mitigation Credits in the amount of \$80,000 ("Purchase Price"), less the \$6,000 in Option Payments previously paid to THC by the Project Proponent.

2.1.3 An endowment payment in the amount of Two Hundred Eighty-Eight Thousand Eight Hundred Forty-One and 05/100 Dollars (\$288,841.05) to fund the long-term stewardship of the Property as further described in the PECAR (“Stewardship Endowment”) and Article 4 below; and

2.1.4 A payment to fund all other costs of the Closing, the amount of which shall be determined by the Escrow Holder (“Closing Costs”).

2.2 Management Duties Conditioned on Funding. Notwithstanding anything contained herein to the contrary, the parties acknowledge and agree that (1) Project Proponent remains ultimately responsible for fulfilling the Mitigation Requirement; (2) Project Proponent shall bear all cost, responsibility, and liability due to or arising out of Project Proponent’s obligation to fulfill the Mitigation Requirement; and (3) THC shall have no obligation, and shall incur no liability whatsoever, to perform any obligation contained in this Agreement to the extent THC has not been provided adequate funding through the Contract Sum or otherwise.

ARTICLE 3: PURCHASE OF MITIGATION CREDITS

3.1 Due Diligence Access to the Property. Project Proponent and its agents, employees, contractors, and invitees (collectively, “Project Proponent’s Agents”) shall have reasonable access to the Property for the purposes of Project Proponent’s due diligence investigation of the Property (“Due Diligence Investigation”), which may include, without limitation, the rights to (i) conduct such tests, surveys, studies, inspections, and other investigations as Project Proponent may deem appropriate. To assist Project Proponent’s Due Diligence Investigation, within five (5) business days after the Effective Date, THC shall provide Project Proponent with all documents and materials related to the Property in THC’s possession and/or in THC’s reasonable control and which have not been provided to Project Proponent pursuant to the Option Agreement or otherwise, including, but not limited to, legible copies of any recorded or unrecorded leases, licenses, occupancy agreements, liens or other agreements that encumber the Property, any title reports or title policies, environmental site assessments and any other documentation and reports that are material to evaluating the status of title and the environmental condition of the Property. At least twenty-four (24) hours prior to any entry onto or inspection of the Property, Project Proponent shall provide notice to THC of its intention to enter the Property and evidence of insurance covering the activities of Project Proponent and Project Proponent’s Agents on the Property. Such right of entry shall include, but not be limited to, the right to undertake a Phase I Environmental Site Assessment (“Phase I”). Project Proponent shall provide to THC copies of any reports or other materials obtained by it, including but not limited to the Phase I, related to the Property.

3.2 Indemnities. Project Proponent agrees to indemnify THC against any claims, losses, liabilities, injuries or damages to real or tangible property or persons that arise out of the activities of Project Proponent or Project Proponent’s Agents on the Property, including reasonable attorneys’ fees and court costs; provided, however, Project Proponent shall not be responsible or liable for any act or omission of THC or THC’s agents, representatives, employees, contractors, subcontractors or consultants or for any adverse condition or defect on or affecting the Property not caused by Project Proponent or Project Proponent’s Agents, but discovered during such inspections.

3.3 Status of Title.

3.3.1 Preliminary Title Report. Project Proponent shall obtain a preliminary title report or title commitment covering the Property (“Preliminary Title Report”) from the Title Company or other title search firm selected by Project Proponent. Project Proponent may approve or disapprove any exceptions to title to the Property shown in the Preliminary Title Report and provide THC with written notice thereof describing any objections with reasonable particularity. Within ten (10) days after receipt of Project Proponent’s title objections, if any, THC shall notify Project Proponent in writing whether THC intends to remove such disapproved exception on or prior to the closing date for the purchase of the Mitigation Credits. If THC notifies Project Proponent that THC agrees to eliminate such disapproved exceptions, THC shall remove such disapproved exceptions on or before the Closing Date at THC’s expense. If THC indicates to Project Proponent that THC does not intend to remove one or more of such disapproved exceptions or if THC fails to notify Project Proponent of its intent concerning the removal of such disapproved exceptions within such ten (10)-day period, Project Proponent may elect (i) not to exercise its Option with respect to the Property (or to rescind its exercise of the Option if Project Proponent already has done so); or (ii) to purchase the Mitigation Credits pursuant to this Agreement subject to such disapproved exceptions not to be so removed by THC, in which event such exceptions shall become “Permitted Exceptions”.

3.3.2 Monetary Liens and Encumbrances. At its expense, THC shall remove or cause to be subordinated to the Deed Restriction at or before the Closing Date any monetary liens, such as a mortgage, deed of trust, unpaid or delinquent taxes or assessments, mechanic’s or judgment lien, or any other consensual or non-consensual lien, affecting the Property other than non-delinquent taxes or assessments (collectively, “Monetary Liens”). At any time prior to the Closing Date, THC shall not place or allow any encumbrances or Monetary Liens on the Property that will survive as to the Property beyond the Closing.

3.3.3 Leases. If there are any leases, licenses, or occupancy agreements (including, without limitation, any farm leases or oil, gas or mineral leases) that grant a third party any rights with respect to the surface of the Property (or the area between the surface of the Property and 500 feet below the surface of the Property) that do not expire by their express terms prior to the Closing (collectively, “Leases”), THC shall, prior to the Closing, cause any such Leases to be subordinated to the Deed Restriction or amend any such Leases as follows: (i) to provide that the Leases shall terminate or expire by the Closing or be terminable from and after the Closing Date by the lessor (without any payment obligation) upon no more than thirty (30) days’ written notice from the lessor to the lessee thereunder, or (ii) to eliminate any surface rights to the Property (or the area between the surface of the Property and five hundred (500) feet below the surface of the Property) by the Closing. During the Option Term, THC shall not enter into or amend any Leases in a manner that grants rights to the subsurface or the surface of the Property.

3.4 Project Proponent’s Conditions Precedent. Project Proponent’s obligation to complete the purchase of the Mitigation Credits is subject to the following conditions:

3.4.1 Covenants. THC having performed in all material respects THC’s obligations under this Agreement.

3.4.2 Representations and Warranties. The representations and warranties of THC set forth in Section 3.11 being true and accurate in all material respects on the Closing Date (defined below), as if made on such date.

3.4.3 No Material Adverse Change. There shall have been no material adverse change in the condition of the Property between the date of this Agreement and the Closing Date.

3.5 THC’s Conditions Precedent. THC’s obligation under this Agreement to complete the sale of the Mitigation Credits is subject to the following conditions:

3.5.1 Covenants. Project Proponent having performed in all material respects Project Proponent's obligations under this Agreement.

3.6 Failure of Conditions. If any of the conditions set forth in Section 3.4 and 3.5 above are not timely satisfied or waived by the applicable party, and if such failure is not due to the default of either Project Proponent or THC, then the obligation of Project Proponent and THC to complete the Closing of the Mitigation Credits shall terminate and be of no further force or effect.

3.7 Closing.

3.7.1 Time. The Closing of the purchase and sale of the Mitigation Credits pursuant to this Agreement shall occur on or before July 31, 2023 (the "Closing Date"), or on such other date as is mutually agreed between the parties in writing.

3.7.2 THC's Deliveries. At least five (5) business days in advance of the Closing Date, THC shall deliver the following documents ("Documents") to Escrow for Closing:

3.7.2.1 Duly executed and acknowledged Deed Restriction in the form attached hereto as Exhibit F;

3.7.2.2 A title policy on the Deed Restriction, subject only to the Permitted Exceptions ("Title Policy"); and

3.7.2.3 Such additional documents as may be necessary or desirable for conveyance of the Mitigation Credits in accordance with this Agreement, including, but not limited to, such documents and escrow instructions as may be required by Escrow.

3.7.3 Project Proponent's Deliveries. Project Proponent shall deliver the following funds and documents to Escrow for Closing:

3.7.3.1 The Purchase Price for the Mitigation Credits, less the amount of the Option Payment previously paid by Project Proponent, which in each case shall be credited against the Purchase Price (the "Net Purchase Price Proceeds");

3.7.3.2 The Acquisition Management Fee, Stewardship Endowment, and Closing Costs;

3.7.3.3 Duly executed and acknowledged Deed Restriction in the form attached hereto as Exhibit F.

3.7.3.4 Such additional documents as may be necessary or desirable for conveyance of the Mitigation Credits in accordance with this Agreement, including such escrow instructions as may be required by the Title Company.

3.8 Closing. When Escrow has received all deliveries identified in Section 3.7 and has received written notification from Project Proponent and THC that all conditions to Closing have been satisfied or waived, and there is an irrevocable commitment to issue the Title Policy, then, and only then, Escrow shall:

3.8.1 Record the Deed Restriction in the Official Records of Los Angeles County, California;

3.8.2 Deliver the Net Purchase Price Proceeds, Acquisition Management Fee, and Stewardship Endowment to THC;

3.8.3 Issue the Title Policy to Project Proponent; and

3.8.4 Deliver to Project Proponent a conformed copy (showing all recording information thereon) of the recorded Deed Restriction.

3.9 Closing Costs and Prorations. In connection with the Closing, Project Proponent shall pay the Closing Costs, which include, but are not limited to, as determined by the Escrow Holder: (a) the premium cost of the CLTA Title Policy and any endorsements to the Title Policy, and (b) the costs of recording fees, escrow fees, and documentary transfer taxes, as provided in a final settlement statement approved by the parties. Each party shall be responsible for its own legal costs, fees and expenses. THC shall be solely responsible for, and shall promptly pay when due, any property taxes, assessments, and supplemental, escape and other taxes and assessments made or levied against the Property to the extent they apply to any period prior to the Closing.

3.10 Possession. THC shall retain possession of the Property on and after the Closing Date.

3.11 THC's Representations and Warranties. THC hereby makes the following representations and warranties to Project Proponent, to the best of the actual knowledge of Jill Bays, President of THC, which are true as of the Effective Date and shall be true as of the Closing Date:

3.11.1 Title. THC is the sole fee owner of the Property, including, without limitation, all water rights and mineral rights pertaining to the Property. Except to the extent true and complete copies have been provided to Project Proponent, there are no unrecorded leases, licenses, occupancy agreements, liens or other agreements in effect that are binding upon the Property. THC has not granted or entered into any options, rights of first refusal, rights of first offer, offers to sell or agreements to purchase all or part of the Property or Mitigation Credits other than with Project Proponent pursuant to this Agreement (or previous agreements with Project Proponent). Except as specifically disclosed in the Title Report, no third parties are either in possession of any part of the Property or have any easement, license, lease or other right or interest relating to the use or possession of any part of the Property.

3.11.2 THC's Authority. THC has the unrestricted right and authority to enter into, execute and perform this Agreement and to grant to Project Proponent the rights granted hereunder. Each person signing this Agreement has the capacity to do so and all persons (including spouses) having any ownership or other right, title or interest in the Property are signing this Agreement. When signed by THC, this Agreement constitutes a binding and valid agreement enforceable against THC and the Property in accordance with its terms.

3.11.3 No Violations or Defaults. Neither the execution and delivery of this Agreement by THC nor the consummation by THC of the transactions contemplated in this Agreement, nor compliance by THC with the terms and provisions of this Agreement, will violate any of the terms or provisions of any instrument or obligation encumbering the Property and/or by which THC is bound.

3.11.4 Consents and Approvals. No consents or approvals of, or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality or with any other third party by THC are necessary in connection with the execution, delivery and performance of this Agreement by THC.

3.11.5 No Violation of Law. There are no violations of any law, statute, ordinance, regulation or administrative or judicial order, existing with respect to the Property.

3.11.6 Hazardous Substances. There are no Hazardous Substances (as defined hereafter) on, about, or under the Property, and Hazardous Substances have not been stored, handled, disposed of or released on, about, or under any portion of the Property, except as disclosed to Project Proponent in writing. The term “Hazardous Substances” as used in this Agreement shall include, without limitation, any substances, materials, or wastes which are or may become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; any petroleum or refined petroleum product or byproduct; asbestos; any flammable explosive; or radioactive material. There are no storage or other tanks or containers above or below the surface of the Property, nor have any storage or other tanks or containers ever previously been located above or below the surface of the Property.

3.11.7 No Litigation or Condemnation. There is no litigation threatened or pending respecting the ownership, possession, condition, use or operation of any portion of the Property. THC has not received any notice of, and there are no pending condemnation actions nor threat of the same.

3.12 THC’s Pre-Closing Covenants. THC shall comply with the covenants contained in this Agreement from the Effective Date through the expiration of the Option Term with respect to the Property, unless Project Proponent consents otherwise in writing in its sole discretion.

3.12.1 Contracts and Documents. THC shall not enter into or modify any agreement of any type affecting the operation or use of any portion of the Property that would survive the Closing Date as an obligation of Project Proponent or as an encumbrance on any portion of the Property.

3.12.2 No Transfers. During the Option Term, and, in the event Project Proponent exercises the Option, at any time prior to the Closing Date, THC shall not, other than in accordance with this Agreement, sell, encumber or otherwise transfer any interest in all or any portion of the Property or agree to do so.

ARTICLE 4: STEWARDSHIP ENDOWMENT

4.1 Endowment Management. THC has an affirmative fiduciary duty to ensure the Stewardship Endowment funds are held in trust and properly managed. THC certifies that it has the capability and capacity to effectively manage the Stewardship Endowment and it will be able to ensure that the funds are accounted for and tied to the Property. THC manages its stewardship endowments generally pursuant to an investment policy.

4.2 Earnings Limitations. THC will set aside, hold, invest, and disburse the Stewardship Endowment funds in trust solely for the purposes of funding THC’s activities as required under the Deed Restriction, the Habitat Compensation Management Plan, and this Agreement, preserving the Property under the terms of the Deed Restriction in perpetuity. If the earnings from the Stewardship Endowment are insufficient to provide for the management, maintenance, and preservation of the Property pursuant to the Habitat Compensation Management Plan and the Deed Restriction, THC shall use such available earnings to address the most critical management, maintenance and preservation needs of the Property, as determined by THC. THC shall not be required to incur expenses beyond the means of the available earnings from the Stewardship Endowment and shall incur no liability whatsoever for failing to address any other management, maintenance, and preservation needs of the Property in the event the earnings from the Stewardship Endowment are insufficient to provide therefor. In such event, Project Proponent will have no obligation or duty to provide additional funds, except as set forth in Section 1.5 above.

4.3 Use of Income for Other Conservation Properties. Five (5) years after THC’s receipt of the Stewardship Endowment and with the advance written approval of Project Proponent, if consistent with applicable law at the time, THC may use any earnings available from the Stewardship Endowment, beyond those necessary for management, maintenance, and preservation of the Property pursuant to the terms of

this Agreement, for management, maintenance, and preservation of other properties owned by THC in accordance with applicable law.

4.4 Transfer on Termination. Should the Deed Restriction be extinguished by operation of law, or should THC cease to exist (including if THC is dissolved, becomes bankrupt, or insolvent), the Stewardship Endowment, along with any accrued and unused interest, will be conveyed to the successor of THC in accordance with the terms and provisions of the Deed Restriction.

ARTICLE 5: LIABILITY

5.1 General Indemnification of THC. Project Proponent shall indemnify, defend, protect, hold harmless, and release THC and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors, and assigns of each of them (collectively, “THC Indemnified Parties”), from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, or expense (including attorneys’ fees and witness costs) arising from or in connection with, or caused by, any negligent act or omission or willful misconduct of Project Proponent and its consultants, contractors, subcontractors, and any other third party employed by Project Proponent, except to the extent any such claim, damage, loss, and expense is attributable to the active negligence or willful misconduct of any of the THC Indemnified Parties. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

5.2 Indemnification of THC for Mitigation Requirement. In addition, Project Proponent shall indemnify, defend, protect, hold harmless, and release the THC Indemnified Parties, from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, or expense (including attorneys’ fees and witness costs) arising from or in connection with, or caused by, any administrative or judicial challenge to the Mitigation Requirement, including but not limited to the use of the Property or Deed Restriction to meet the Mitigation Requirement, except to the extent any such claim, damage, loss, and expense is attributable to the active negligence or willful misconduct of any of the THC Indemnified Parties.

5.3 General Indemnification of Project Proponent. THC shall indemnify, defend, protect, hold harmless, and release Project Proponent and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (collectively, “Project Proponent Indemnified Parties”), from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, or expense (including reasonable attorneys’ fees and witness costs) arising on the Property from or in connection with, or caused by, any active negligence or willful misconduct of THC and its consultants, contractors, subcontractors, any other third party employed by THC, except to the extent any such claim, damage, loss and expense is attributable to the active negligence or willful misconduct of any of the Project Proponent Indemnified Parties.

ARTICLE 6: TERMINATION

6.1 Pre-Closing Termination by Project Proponent. Project Proponent may terminate this Agreement before Closing for material breach by THC of the terms of this Agreement only after giving THC written notice specifying the breach and a reasonable opportunity to cure. THC shall make reasonable efforts to cure such breach within ninety (90) days after receipt of notice thereof from Project Proponent; provided, however, that under circumstances where the breach cannot reasonably be cured within a ninety (90)-day period, given the seasonally dependent nature of some mitigation requirements, THC shall begin curing such breach within the ninety (90)-day period or as soon as is reasonably practicable and continue diligently to cure such breach until finally cured.

6.2 Post-Closing Termination by Project Proponent Project Proponent may terminate this Agreement and the Habitat Compensation Management Plan after Closing for material breach by THC of the terms of this Agreement or the Habitat Compensation Management Plan only after giving THC written notice specifying the breach and a reasonable opportunity to cure. THC shall make reasonable efforts to cure such breach within ninety (90) days after receipt of notice thereof from Project Proponent; provided, however, that under circumstances where the breach cannot reasonably be cured within a ninety (90)-day period, given the seasonally dependent nature of some mitigation requirements, THC shall begin curing such breach within the ninety (90)-day period or as soon as is reasonably practicable and continue diligently to cure such breach until finally cured.

6.3 Pre-Closing or Post-Closing Termination by THC. THC may terminate this Agreement for material breach by Project Proponent, which includes but is not limited to failure to make payments in accordance with Article 2 of this Agreement, only after giving Project Proponent written notice specifying the breach and a reasonable opportunity to cure. Project Proponent shall make reasonable efforts to cure such breach, and, if such breach involves failure to make payments as and when required under this Agreement, Project Proponent's efforts to cure shall commence within sixty (60) calendar days after receipt of notice thereof from THC. Project Proponent's time to cure any other breach of this Agreement shall occur within ninety (90) calendar days after receipt of notice thereof from THC. In the event that circumstances occur where the breach cannot reasonably be cured within a ninety (90)-day period, Project Proponent shall begin curing such breach within the ninety (90)-day period, or as soon as is reasonably practicable, and shall continue diligently to cure such breach until finally cured.

6.4 Payment Upon Termination. Upon termination by either party as provided in this Article 6, Project Proponent shall pay THC in full for any costs and expenses actually incurred by THC in substantial compliance with the terms of this Agreement that were not already compensated for by any payments made by Project Proponent, as applicable. In addition, THC may retain (i.e., shall not be required to refund) any payment actually paid to THC pursuant to the terms of this Agreement.

6.5 Effect on Habitat Compensation Management Plan and Deed Restriction. Upon termination by either party after Closing as provided in this Article 6, the Habitat Compensation Management Plan will terminate concurrently with this Agreement. However, the termination of this Agreement and the Habitat Compensation Management Plan will not affect the Deed Restriction, which will remain in place for perpetuity unless it is otherwise terminated in accordance with the terms specified in the Deed Restriction. Further, the termination of this Agreement and the Habitat Compensation Management Plan will not affect THC's status as the holder of the Deed Restriction, which may only be affected pursuant to the terms specified in the Deed Restriction.

ARTICLE 7: TRANSFER OF DEED RESTRICTION INTERESTS

7.1 After recordation of the Deed Restriction, THC may convey its interest in the Deed Restriction to a third party pursuant to the terms of the Deed Restriction, provided that the terms of the transfer shall maintain all the restrictions set out in the Deed Restriction and that, as part of the transfer, THC shall assign to the subsequent deed holder, and the subsequent deed holder shall agree to assume, all of THC's rights and responsibilities under this Agreement, including but not limited to management, maintenance, and preservation of the Property pursuant to the terms of this Agreement. The subsequent deed holder (or a qualified entity, if the subsequent owner is not qualified to hold such funds) shall receive and manage the funds remaining in the Stewardship Endowment for the management, maintenance, and preservation of the Property pursuant to the terms of this Agreement.

ARTICLE 8: NOTICES

8.1 All notices and other communications made in connection with this Agreement shall be in writing, addressed as set forth below, and given as follows:

1. Notices shall be sent by: (i) certified or registered mail, postage prepaid, return receipt requested; (ii) personal delivery; or (iii) a recognized overnight carrier that provides proof of delivery.

2. Notices shall be deemed received upon actual receipt or rejection only.

3. If a party desires to change its address for the purpose of receipt of notice, such notice of change of address shall be given in the manner specified herein. However, unless and until such written notice of change is actually received, the last address and addressee as stated by written notice, or provided herein if no written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

Project Proponent: County Sanitation District No. 20 of Los Angeles County
Attention: Supervisor, Property Management Group
1955 Workman Mill Road
Whittier, CA 90601

THC: Transition Habitat Conservancy
Attention: Executive Director
P.O. Box 721300
Pinon Hills, CA 92372

With a copy to: Conservation Partners LLP
Attn: Ellen A. Fred, Esq.
5111 Telegraph Ave., No. 311
Oakland, CA 94609

ARTICLE 9: AMENDMENT TO AGREEMENT

This Agreement constitutes the entire agreement between THC and the Project Proponent respecting the subject matter. Any agreement, understanding or representation respecting the Property or Mitigation Credits, or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both parties, is null and void. Any modification or amendment to this Agreement must be made in writing and signed by both parties.

ARTICLE 10: WAIVER

Failure of any party at any time to require performance of any provision of this Agreement shall not limit that party's right to enforce the provision. Waiver of any breach of a provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or of any other provision.

ARTICLE 11: DISPUTE RESOLUTION

In the event there is a disagreement regarding any aspect of this Agreement that the parties cannot resolve between themselves, each party shall notify the other side of the impasse and suggest the name of a mediator or mediators. If the other side does not accept the suggested mediator(s), the disapproving party shall have ten (10) days to make a counter-suggestion. In the event the parties cannot agree on a mediator(s), each party shall select one (1) mediator, who, together, shall select a mediator. Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of the selection or appointment of a mediator or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in mutually agreeable resolution of the dispute. Any applicable statutes of limitation shall be tolled during the mediation process. In the event the dispute is not resolved by mediation, the parties

may then proceed with such other means of dispute resolution as they so choose. The costs of mediation shall be borne equally by the parties, but each party shall bear its own costs, including attorneys' fees, individually.

ARTICLE 12: LIMITATION OF LIABILITY.

In no event shall THC have any liability for any adverse consequences that result from following the directions of Project Proponent. In addition, to the fullest extent permitted by law, THC's liability for any claims arising under this Agreement or relating to the subject matter of this Agreement shall not exceed the greater of the fees paid by Project Proponent to THC under this Agreement and any additional proceeds received under THC's insurance policies to cover the claims asserted.

ARTICLE 13: ATTORNEYS' FEES

If any legal action is brought by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the other party costs, including reasonable attorneys' fees, and court costs in such amounts as shall be allowed by the court.

ARTICLE 14: CONSTRUCTION AND GOVERNING LAW

Headings at the beginning of each article, section, and subsection are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if all parties have prepared it. Unless otherwise indicated, all references to articles or sections are to this Agreement. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its choice of laws rules.

ARTICLE 15: EXCLUSIVE AGREEMENT

This Agreement contains the entire agreement between the parties respecting the matter set forth herein, and expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the parties respecting this matter.

ARTICLE 16: COUNTERPARTS

This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Each counterpart shall be deemed an original instrument as against any Party who has signed it. PDF, facsimile, and/or digitally signed (e.g., DocuSign) counterparts shall be deemed originals.

ARTICLE 17: SEVERABILITY

If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 18: SUCCESSORS

This Agreement shall be binding on and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns.

ARTICLE 19: FURTHER ASSURANCES

Whenever reasonably requested to do so by another party, each party shall execute, acknowledge, and deliver any further instrument and/or document as may be necessary, expedient, or proper under the terms and conditions of this Agreement, in order to carry out the intent and purpose of this Agreement.

ARTICLE 20: RELATIONSHIP

The relationship between Project Proponent and THC shall be that of independent contractors and not that of partners, joint venturers, or otherwise.

ARTICLE 21: BROKERAGE FEES

Each party hereto agrees that if any person or entity makes a claim for brokerage commissions or finder's fees related to the sale of the Credits (or any portion thereof) by Seller to Buyer, and such claim is made by, through or on account of any acts or alleged acts of such party hereto or its representatives, such party hereto will protect, indemnify, defend and hold the other party hereto free and harmless from and against any and all loss, liability, cost, damage and expense (including reasonable attorneys' fees) in connection therewith.

ARTICLE 22: PROJECT PROPONENT'S DELEGATION OF AUTHORITY

Project Proponent hereby delegates to its Chief Engineer and General Manager (the "Chief Engineer") authority to act on behalf of Project Proponent in carrying out the terms of this Agreement. The Chief Engineer, or his or her designee, may execute without further Board of Directors action the Deed Restriction and make any other determinations and approvals on behalf of Project Proponent to fulfill all responsibilities of Project Proponent under this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written:

**COUNTY SANITATION DISTRICT NO. 20
OF LOS ANGELES COUNTY**, a county
sanitation district organized and existing under the
provisions of the County Sanitation District Act,
California Health and Safety Code Section 4700
et seq.

By: _____
Laura Bettencourt
Chairperson, Board of Directors

ATTEST:

Secretary, Board of Directors

APPROVED AS TO FORM:
Lewis Brisbois Bisgaard & Smith, LLP

By: _____
District Counsel

TRANSITION HABITAT CONSERVANCY, a
California nonprofit public benefit corporation

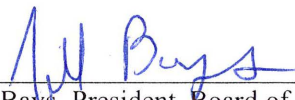
By:  _____
Jill Bays, President, Board of Directors

EXHIBIT A
Legal Description of the Property

Real property in the unincorporated area of the County of Los Angeles, State of California, described as follows:

THE SOUTHWEST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 8 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

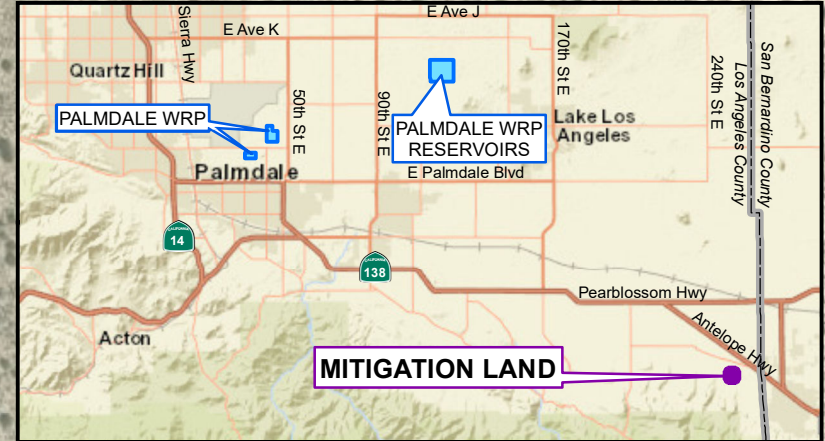
APNs: 3064-012-095, 3064-012-096, 3064-012-097, 3064-012-098, 3064-012-099, 3064-012-100, 3064-012-101, and 3064-012-102

EXHIBIT B

Palmdale WRP 2025 Facilities Plan & EIR Land For Joshua Tree Woodland Mitigation




3064-012-095 5.00 ±	3064-012-096 5.00 ±	3064-012-097 5.00 ±	3064-012-098 5.00 ±
3064-012-099 5.00 ±	3064-012-100 5.00 ±	3064-012-101 5.00 ±	3064-012-102 5.00 ±



VICINITY MAP

LEGEND

Joshua Tree Mitigation Land 40 acres ±


 300 Feet

COUNTY SANITATION DISTRICTS
 OF LOS ANGELES COUNTY
 ROBERT C. FERRANTE
 CHIEF ENGINEER & GENERAL MANAGER
 WHITTIER, CA
 GENERAL MAP OF
 ANTELOPE VALLEY

County Landbase 2023, County, Sanitation District Property Boundary

EXHIBIT C - Joshua Tree Woodland Areas Impacted by Construction of Palmdale WRP Storage Reservoir Nos. 1 and 2

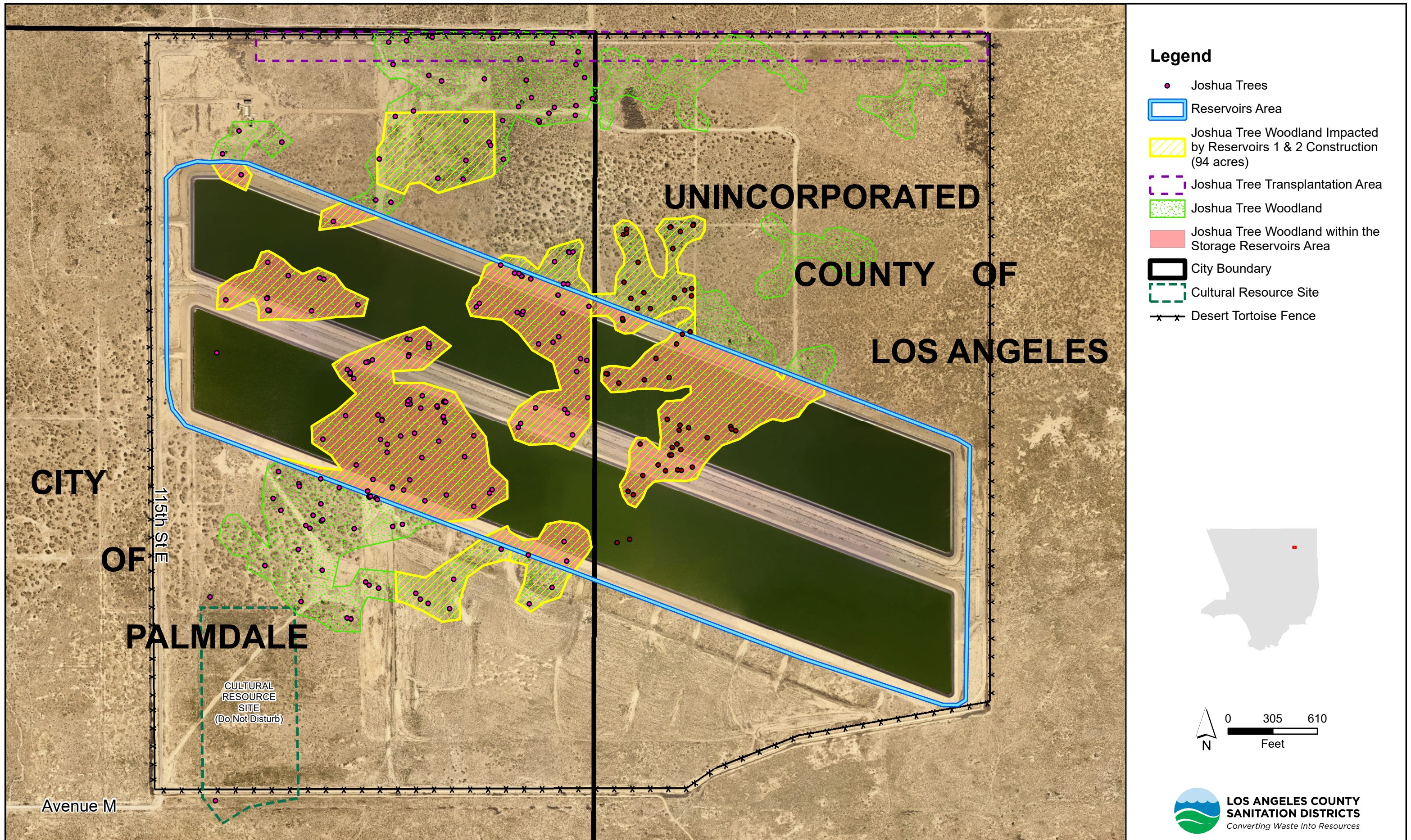


EXHIBIT D TO MITIGATION AGREEMENT

Memo re: Qualifications of THC as Holder of Mitigation Funds re SB 1094

(Attached)



MEMORANDUM

TO: JILL BAYS, TRANSITION HABITAT CONSERVANCY
FROM: ELLEN A. FRED, ESQ.
SUBJECT: ELIGIBILITY OF TRANSITION HABITAT CONSERVANCY AS HOLDER OF MITIGATION FUNDS
UNDER SENATE BILL 1094
DATE: 11/6/2012

I. Introduction

Developers are often required to mitigate for the loss of wildlife habitat or agricultural land caused by their projects by securing protection of suitable habitat or agricultural properties in nearby areas. As part of these mitigation measures, the developer is typically required to convey an endowment to fund the long-term protection and stewardship of the mitigation property. Transition Habitat Conservancy has been approved to acquire, hold, and ensure the perpetual protection of mitigation property. This memorandum is intended to provide assurances that Transition Habitat Conservancy is qualified to hold the mitigation endowment associated with the mitigation property under applicable law, and, in particular, under newly enacted Senate Bill (“SB”) 1094.

Short Question: Is Transition Habitat Conservancy qualified to acquire, hold, and manage mitigation endowments under SB 1094?

Short Answer: Yes. Transition Habitat Conservancy meets the requirements of SB 1094 and is therefore qualified to acquire, hold, and manage mitigation endowments in California.

II. Analysis

SB 1094, which was enacted in early 2012 and signed by the Governor on September 28, 2012, with an immediate effective date, amended certain provisions of the California Government Code related to how state and local agencies and private organizations must hold and manage lands and associated endowment funds provided by project proponents to mitigate the impacts of their projects on wildlife habitat and other natural resources. In particular, SB 1094 expands the types of entities that may hold endowment funds and modifies the requirements that an entity holding endowment funds must meet. In order to qualify to hold mitigation endowments under SB 1094, therefore, Transition Habitat Conservancy must demonstrate that it meets the requirements of the new law.

p.o. box 47, traverse city, mi 49685 P (510) 290-0165 F (231) 228-2371 www.conservationpartners.com

Ellen A. Fred
efred@conservationpartners.com
principal

1. Statutory Framework

a. Who may hold mitigation endowments under SB 1094?

Generally, the amended California Government Code¹ provides that any agency that requires a project proponent to convey property to mitigate for the loss of habitat or other natural resources may also require the conveyance of an endowment to provide for the long-term stewardship of the mitigation property and, further, that such endowment may be held by the same entity that holds the property.²

First, Section 65967 states that if a state or local agency requires a project proponent to transfer property to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, the agency may authorize a nonprofit organization to hold title to and manage that property. Section 65966(b) then provides that any local or state agency that requires property to be protected pursuant to Section 65967 may identify how the funding needs of the long-term stewardship of the property will be met, and Section 65968 goes on to state that if an endowment is conveyed pursuant to Section 65966 for property conveyed pursuant to Section 65967, the endowment may be held by the same nonprofit organization that holds the property. Finally, Section 65968(b) requires that the endowment must be held by one of a list of potential entities, including, “[t]he nonprofit organization that either holds the property, or holds an interest in the property, for conservation purposes.”

For purposes of SB 1094, “nonprofit organization” is defined as any nonprofit organization that meets all of the following requirements:

- (1) Is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.
- (2) Is qualified to do business in California.
- (3) Is a “qualified organization” as defined in Section 170(h)(3) of the Internal Revenue Code.
- (4) Is registered with the Registry of Charitable Trusts maintained by the Attorney General pursuant to Section 12584.
- (5) Has as its principal purpose and activity the direct protection or stewardship of land, water, or natural resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas. [Section 65965(h).]

To qualify under Internal Revenue Code (“IRC”) section 501(c)(3), an organization must satisfy the following criteria:

¹ All references to “Code” or “Section” shall refer to the California Government Code unless otherwise specified.

² Transition Habitat Conservancy applied and was approved as an organization qualified to hold mitigation fee property and conservation easements under Section 65967(c). (Please see the approval letter from the California Department of Fish and Game, attached hereto as [Exhibit A](#).)

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

In addition, IRC section 170(h)(3) enumerates the types of nonprofit organizations that are qualified to accept and hold federally tax-deductible conservation easements. Under that provision, an eligible organization is one that:

- (A) is described in clause (v) or (vi) of subsection (b)(1)(A), or
- (B) is described in section 501(c)(3) and—
 - (i) meets the requirements of section 509(a)(2), or
 - (ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

b. How must mitigation endowments be managed under SB 1094?

Once it is established that a particular entity is qualified to hold the mitigation endowment, SB 1094 provides certain requirements for the management of such mitigation funds. First, under SB 1094, the definition of “endowment” provides a general set of guidelines for the management of a mitigation endowment:

“Endowment” means the funds that are conveyed solely for the long-term stewardship of a mitigation property. Endowment funds are held as charitable trusts that are permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside. Endowments shall be governed by the underlying laws, regulations, and specific governmental approvals under those laws and regulations pursuant to which the endowments were exacted, consistent with subdivision (b) of Section 65966 and with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code). Endowments do not include funds conveyed for meeting short-term performance objectives of a project. [Section 65965(a).]

Section 65966(b) provides that if an endowment is conveyed or secured at the time the property is protected, all of the following shall apply:

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Ellen A. Fred
efred@conservationpartners.com
principal

- (1) The endowment shall be held, managed, invested, and disbursed solely for, and permanently restricted to, the long-term stewardship of the specific property for which the funds were set aside.
- (2) The endowment shall be calculated to include a principal amount that, when managed and invested, is reasonably anticipated to cover the annual stewardship costs of the property in perpetuity.
- (3) The endowment shall be held, managed, invested, disbursed, and governed as described in subdivision (a) of Section 65965 consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code). [Note that Section 65965(a) is the definition of “endowment” recited above.]

Section 65966(c) then provides that if a nonprofit corporation holds the endowment, the nonprofit shall utilize generally accepted accounting practices that are promulgated by the Financial Accounting Standards Board or any successor entity. Section 65968(d) reiterates that any entity that holds an endowment shall hold, manage, invest, and disburse the funds in furtherance of the long-term stewardship of the property in accordance with subdivision (a) of Section 65965 (again, the guidelines provided in the definition of “endowment” above).

c. Certification and designation of an endowment holder under SB 1094

A holder of a mitigation endowment must certify to the project proponent and the local or state agency that required the endowment that it meets certain requirements. Namely, pursuant to Section 65968(e), the holder of an endowment must certify that it meets all of the following requirements:

- (1) The holder has the capacity to effectively manage the mitigation funds.
- (2) The holder has the capacity to achieve reasonable rates of return on the investment of those funds similar to those of other prudent investors for endowment funds and shall manage and invest the endowment in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).
- (3) The holder utilizes generally accepted accounting practices as promulgated by either of the following:
 - (A) The Financial Accounting Standards Board or any successor entity for nonprofit organizations.
 - (B) The Governmental Accounting Standards Board or any successor entity for public agencies, to the extent those practices do not conflict with any requirement for special districts in Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5.

(4) The holder will be able to ensure that funds are accounted for, and tied to, a specific property.

(5) If the holder is a nonprofit organization . . . , it has an investment policy that is consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).

Finally, Section 65968(f) concludes that if a nonprofit organization meets the requirements of SB 1094, it is qualified to be a holder of the endowment for the purpose of obtaining any permit, clearance, or mitigation approval from a state or local agency, and subsection (h) confirms that nothing in this section shall prohibit a state or local agency from determining that a nonprofit organization meets the requirements of this section and is qualified to hold the endowment.

III. Discussion

1. **Transition Habitat Conservancy qualifies as a “nonprofit organization” under SB 1094.**

Transition Habitat Conservancy is a California nonprofit public benefit corporation in good standing, qualified to do business in California, and organized and operated for charitable purposes. Its Articles of Incorporation, which were filed on April 6, 2005, and which are attached to this memorandum as Exhibit B, provide that its specific organizational purposes include, but are not limited to:

the protection from further encroachment by unplanned residential development of regionally sensitive transition zones of two different habitat types (mountain and high desert) of protected wildlife species of regional interest for the benefit of the public, including, for such purposes, lessening the burdens of government by acquiring easements for right of way and title to what is now private property for public hiking, horseback riding, and educational and natural science studies.

Transition Habitat Conservancy received its federal tax-exemption determination on April 26, 2006, and is therefore federally tax-exempt under IRC section 501(c)(3). Moreover, as stated in the determination letter, it is an organization that meets the requirements of IRC section 509(a)(2). (Please see IRS Determination Letter, attached hereto as Exhibit C.) Therefore, not only does Transition Habitat Conservancy qualify as federally tax-exempt under IRC section 501(c)(3), it also is a “qualified organization” as defined in IRC section 170(h)(3)(B) (i.e., as it is described in IRC section 501(c)(3) and meets the requirements of IRC section 509(a)(2)).

Transition Habitat Conservancy is currently registered with the Registry of Charitable Trusts maintained by the Attorney General pursuant to Section 12584. (Please see Transition Habitat Conservancy’s registration data taken from the California Attorney General’s website, attached hereto as Exhibit D.) And, as stated above, Transition Habitat Conservancy has as its principal purpose and activity the direct protection or stewardship of land, water, or natural resources,

including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

Therefore, Transition Habitat Conservancy is a “nonprofit organization” under Section 65965(h).

2. Transition Habitat Conservancy commits to manage its mitigation endowments pursuant to SB 1094.

As stated above, SB 1094 provides specific guidelines and requirements for the management of mitigation endowments, which Transition Habitat Conservancy commits to upholding. Transition Habitat Conservancy’s professional investment consultants are well versed in these requirements and will guide Transition Habitat Conservancy in its proper and lawful investment and management of these funds. (Please see Transition Habitat Conservancy’s investment policy at Exhibit E for an example of how it currently manages its endowment funds.)

3. Transition Habitat Conservancy certifies that it meets the requirements of Section 65968(e).

Transition Habitat Conservancy hereby certifies that:

- (1) It has the capacity to effectively manage the mitigation funds.
- (2) It has the capacity to achieve reasonable rates of return on the investment of those funds similar to those of other prudent investors for endowment funds and shall manage and invest the endowment in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).
- (3) It utilizes generally accepted accounting practices as promulgated by either of the following:
 - (A) The Financial Accounting Standards Board or any successor entity for nonprofit organizations.
 - (B) The Governmental Accounting Standards Board or any successor entity for public agencies, to the extent those practices do not conflict with any requirement for special districts in Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5.
- (4) It will be able to ensure that funds are accounted for, and tied to, a specific property.
- (5) It has an investment policy that is consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code). (Please see Exhibit E for Transition Habitat Conservancy’s investment policy, which is consistent with the Uniform Prudent Management of Institutional Funds Act.)

IV. Conclusion

Transition Habitat Conservancy is a “nonprofit organization” as defined under SB 1094, who is committed to managing its mitigation endowments pursuant to the various legislative requirements of SB 1094 and who hereby certifies that it meets the requirements of Section 65968(e). Therefore, it is qualified to acquire, hold, and manage mitigation endowments under SB 1094.

Exhibit A
California Department of Fish and Game Mitigation Approval Letter



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Division of Ecosystem Conservation
1416 Ninth Street, Suite 1208
Sacramento, CA 95814
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



March 13, 2017

Jill Bays, President
Transition Habitat Conservancy
P.O. Box 720026
Pinon Hills, California 92372

Dear Ms. Bays

Application for Transition Habitat Conservancy to Hold and Manage Mitigation Lands

On August 15, 2016, the California Department of Fish and Wildlife (CDFW) received your application to hold and manage mitigation lands within CDFW's South Coast and Inland Deserts regions. Pursuant to Government Code section 65967, CDFW has exercised our required due diligence process in reviewing your application and supporting documentation. We are pleased to inform you that your request to hold and manage mitigation lands within CDFW's South Coast and Inland Deserts regions is hereby approved. Please keep this letter of approval until its expiration on March 13, 2022.

If you would like to renew your current approval status, we encourage you to contact CDFW six months prior to March 13, 2022 for updated applications and requirements. Currently, the renewal process requires you to submit application sections: A, B, and I. Application sections C, D, and H, are required only if any information has changed since the approval date. Application sections E, F, and G are not required for renewal.

Please provide a copy of this letter to any project proponent that wishes to seek CDFW approval for your organization to hold and manage mitigation lands as a condition of any permit requiring the transfer interest in real property to mitigate the impact that the project will have on fish and wildlife resources. If you have any questions, please contact Beatriz Rambarran at (916) 651-1279 or beatriz.rambarran@wildlife.ca.gov.

Sincerely,

Richard Macedo
Branch Chief
Department of Fish and Wildlife
Habitat Conservation Planning Branch

Exhibit B
Articles of Incorporation

State of California
Secretary of State



I, BRUCE McPHERSON, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

MAY 7 2005

A handwritten signature in black ink, appearing to read "Bruce McPherson".

BRUCE McPHERSON
Secretary of State

2745620

ENDORSED - FILED

In the office of the Secretary of State
of the State of California

APR - 6 2005

**ARTICLES OF INCORPORATION
OF
TRANSITION HABITAT CONSERVANCY

A CALIFORNIA PUBLIC BENEFIT CORPORATION**

ONE: The name of this corporation is Transition Habitat Conservancy.

TWO: This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. The specific purposes for which this corporation is organized include, but are not limited to, the protection from further encroachment by unplanned residential development of regionally sensitive transition zones of two different habitat types (mountain and high desert) of protected wildlife species of regional interest for the benefit of the public, including, for such purposes, lessening the burdens of government by acquiring easements for right of way and title to what is now private property for public hiking, horseback riding, and educational and natural science studies, and the making of distributions to governmental and private organizations with similar purposes that qualify as exempt organizations under section 501(c) (3) of the Internal Revenue Code, or corresponding section of any future federal tax code

THREE: The name and address in the State of California of this corporation's initial agent for service of process is Robert Plank, 9252 Hoopa Drive, Kelseyville, CA 95451.

FOUR: (a) This corporation is organized and operated exclusively for educational and scientific purposes within the meaning of Section 501(c) (3) of the Internal Revenue Code.

(b) Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501(c) (3) of the Internal Revenue Code or (2) by a corporation contributions to which are deductible under Section 170(c) (2) of the Internal Revenue Code.

(c) No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.


FIVE: The names and addresses of the persons appointed to act as the initial directors of this corporation are:


<u>Name</u>	<u>Address</u>
Mary Jill Bays	P. O. Box 720026, Pinon Hills, CA 92372
Roberta Dewey	1681 Hillview Road, Pinon Hills, CA 92372
Tara Matthews	8365 Zohra Canyon Dive, Pinon Hills, CA 92372
Robert Plank	9252 Hoopa Drive, Kelseyville, CA 95451

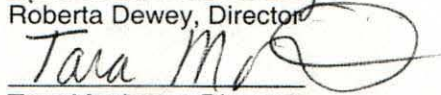
SIX: The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of the organization shall ever inure to the benefit of any director, officer, or member thereof or to the benefit of any private person.

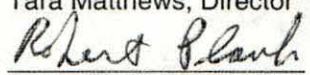
On the dissolution or winding up of the corporation, its assets remaining after payment of, or provision for payment of, all debts and liabilities of this corporation, shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its tax-exempt status under Section 501(c) (3) of the Internal Revenue Code.

Date: 3/24/05, 2005

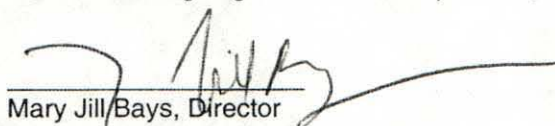

Mary Jill Bays, Director

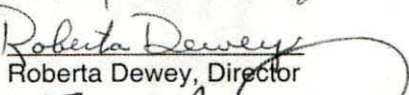

Roberta Dewey, Director

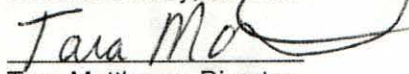

Tara Matthews, Director


Robert Plank, Director

We, the above-mentioned initial directors of this corporation, hereby declare that we are the persons who executed the foregoing Articles of Incorporation, which execution is our act and deed.


Mary Jill Bays, Director


Roberta Dewey, Director


Tara Matthews, Director

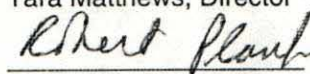

Robert Plank, Director



Exhibit C
IRS Determination Letter

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: APR 6 2006

TRANSITION HABITAT CONSERVANCY
C/O MARY JILL BAYS
PO BOX 720026
PINON HILLS, CA 93272-0026

Employer Identification Number:
74-3146328
DLN:
17053223022025
Contact Person:
COLLEEN E. PROCTOR ID# 52418
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
509(a)(2)
Form 990 Required:
Yes
Effective Date of Exemption:
April 6, 2005
Contribution Deductibility:
Yes
Advance Ruling Ending Date:
December 31, 2009

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. During your advance ruling period, you will be treated as a public charity. Your advance ruling period begins with the effective date of your exemption and ends with advance ruling ending date shown in the heading of the letter.

Shortly before the end of your advance ruling period, we will send you Form 8734, Support Schedule for Advance Ruling Period. You will have 90 days after the end of your advance ruling period to return the completed form. We will then notify you, in writing, about your public charity status.

Please see enclosed Information for Exempt Organizations Under Section 501(c)(3) for some helpful information about your responsibilities as an exempt organization.

Letter 1045 (DO/CG)

TRANSITION HABITAT CONSERVANCY

Sincerely,

A handwritten signature in black ink, reading "Lois G. Lerner". The signature is written in a cursive, flowing style with a large initial "L".

Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Enclosures: Information for Organizations Exempt Under Section 501(c)(3)
Statute Extension

Exhibit D
California Attorney General Registration Information

Registrant Details

Entity type: Corporate Class as registered with the Secretary of State or based on founding & registration documents.

Organization Name: TRANSITION HABITAT CONSERVANCY **IRS FEIN:**
Entity Type: Public Benefit **SOS/FTB Corporate/Organization Number:**

Registry Status: Current **Renewal Due/Exp. Date:**
RCT Registration Number: CT0170539 **Issue Date:**
Record Type: Charity Registration **Effective Date:**
Date of Last Renewal: 9/21/2022 **DBA:**

Mailing Address

Street: PO BOX 721300
Street Line 2:
City, State Zip: PINON HILLS CA 92372

Filings & Correspondence

Founding Documents	Founding Documents
First Notice to Register	First Notice to Register
Confirmation of registration letter	Confirmation of registration letter
Renewal Filing	2021
CT-416 Letter of Good Standing	2020
Renewal Filing	2020
Renewal Filing	2019
Renewal Filing	2018
CT-550 Form RRF-1 Incomplete	2018
Renewal Filing	2017
Renewal Filing	2017
CT-550 Form RRF-1 Incomplete	2017
2016 IRS Form 990 Series	2016 IRS Form 990 Series
2016 Form RRF-1	2016 Form RRF-1
2015 RRF-1	2015 RRF-1
2015 IRS Form 990	2015 IRS Form 990
RRF-1 2014	2014 RRF-1
IRS Form 990 2014	2014 IRS Form 990
RRF-1 2013	2013 RRF-1
IRS Form 990 2013	2013 IRS Form 990
RRF-1 2012	2012 RRF-1
IRS Form 990 2012	2012 IRS Form 990
RRF-1 2011	2011 RRF-1

RRF-1 2011	2011 RRF-1
IRS Form 990 2011	2011 IRS Form 990
IRS Form 990 2011	2011 IRS Form 990
RRF-1 2010	2010 RRF-1
RRF-1 2010	2010 RRF-1
IRS Form 990-EZ 2010	2010 IRS Form 990-EZ
RRF-1 2009	2009 RRF-1
IRS Form 990-EZ 2009	2009 IRS Form 990-EZ
RRF-1 2008	2008 RRF-1
IRS Form 990-EZ 2008	2008 IRS Form 990-EZ
RRF-1 2007	2007 RRF-1
IRS Form 990-EZ 2007	2007 IRS Form 990-EZ
RRF-1 2006	2006 RRF-1
IRS Form 990-EZ 2006	2006 IRS Form 990-EZ
RRF-1 2005	2005 RRF-1
IRS Form 990-EZ 2005	2005 IRS Form 990-EZ

Annual Renewal Data

Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2010
Accounting Period End Date:	12/31/2010
Filing Received Date:	2/22/2011
Form RRF-1 Reject/Incomplete Reason:	
Form CT-TR-1 Reject/Incomplete Reason:	
IRS Form 990 Reject/Incomplete Reason:	
Notes From Registry Staff:	
Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2011
Accounting Period End Date:	12/31/2011
Filing Received Date:	11/1/2012
Form RRF-1 Reject/Incomplete Reason:	
Form CT-TR-1 Reject/Incomplete Reason:	
IRS Form 990 Reject/Incomplete Reason:	
Notes From Registry Staff:	
Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2012
Accounting Period End Date:	12/31/2012
Filing Received Date:	8/8/2013
Form RRF-1 Reject/Incomplete Reason:	
Form CT-TR-1 Reject/Incomplete Reason:	
IRS Form 990 Reject/Incomplete Reason:	
Notes From Registry Staff:	
Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2013

Accounting Period End Date:	12/31/2013
Filing Received Date:	11/19/2014
Form RRF-1 Reject/Incomplete Reason:	
Form CT-TR-1 Reject/Incomplete Reason:	
IRS Form 990 Reject/Incomplete Reason:	
Notes From Registry Staff:	
Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2014
Accounting Period End Date:	12/31/2014
Filing Received Date:	11/12/2015
Form RRF-1 Reject/Incomplete Reason:	
Form CT-TR-1 Reject/Incomplete Reason:	
IRS Form 990 Reject/Incomplete Reason:	
Notes From Registry Staff:	
Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2015
Accounting Period End Date:	12/31/2015
Filing Received Date:	9/9/2016
Form RRF-1 Reject/Incomplete Reason:	
Form CT-TR-1 Reject/Incomplete Reason:	
IRS Form 990 Reject/Incomplete Reason:	
Notes From Registry Staff:	
Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2016
Accounting Period End Date:	12/31/2016
Filing Received Date:	5/15/2017
Form RRF-1 Reject/Incomplete Reason:	
Form CT-TR-1 Reject/Incomplete Reason:	
IRS Form 990 Reject/Incomplete Reason:	
Notes From Registry Staff:	
Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2017
Accounting Period End Date:	12/31/2017
Filing Received Date:	11/13/2018
Form RRF-1 Reject/Incomplete Reason:	
Form CT-TR-1 Reject/Incomplete Reason:	
IRS Form 990 Reject/Incomplete Reason:	
Notes From Registry Staff:	
Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2018
Accounting Period End Date:	12/31/2018
Filing Received Date:	11/18/2019
Form RRF-1 Reject/Incomplete Reason:	
Form CT-TR-1 Reject/Incomplete Reason:	
IRS Form 990 Reject/Incomplete Reason:	
Notes From Registry Staff:	
Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2019
Accounting Period End Date:	12/31/2019
Filing Received Date:	7/1/2020
Form RRF-1 Reject/Incomplete Reason:	
Form CT-TR-1 Reject/Incomplete Reason:	
IRS Form 990 Reject/Incomplete Reason:	
Notes From Registry Staff:	
Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2020
Accounting Period End Date:	12/31/2020
Filing Received Date:	10/19/2021

Form RRF-1 Reject/Incomplete Reason:
Form CT-TR-1 Reject/Incomplete Reason:
IRS Form 990 Reject/Incomplete Reason:
Notes From Registry Staff:

Status of Filing:	Accepted
Accounting Period Begin Date:	1/1/2021
Accounting Period End Date:	12/31/2021
Filing Received Date:	5/23/2022
Form RRF-1 Reject/Incomplete Reason:	
Form CT-TR-1 Reject/Incomplete Reason:	
IRS Form 990 Reject/Incomplete Reason:	
Notes From Registry Staff:	

Related Registrations & Event Reports

The related records shown below depend on the record type being viewed:

- Charity Registrations relate to Professional Fundraising Events which relate to Professional Fundraiser Registrations.
- Raffle Registrations relate to Raffle Reports.
- Click on the **RCT Registration No** to navigate to the related record.

Exhibit E
Transition Habitat Conservancy Investment Policy



Investment and Finance Policy

Investment Philosophy: Transition Habitat Conservancy (THC) holds assets for both current operations and long-term reserves for the purpose of protecting transition zone and wildlife habitat and corridor ecosystems and their scenic, agricultural, and cultural resource value in the West Mojave Desert. This purpose requires a non-wasting, growing asset base as well as a growing annual return on that corpus and dictates the following general philosophy guiding THC's investments:

1. Primary emphasis shall be placed on safety of principal by minimizing risks from either market or credit factors, and
2. The principal shall be non-wasting
3. Moderate growth of principal and total return will be expected, consistent with maintaining safety of principal.

Spending Policy: Sufficient funds shall be made available to fund the stewardship of THC's properties. It is the intention of THC's Board to spend no more than **4% net of inflation of the rolling 12 quarter rolling average** of the endowment to ensure the protection of the corpus.

Endowment funds will be reported and controlled based on contractual agreements for endowments that result from mitigation transactions. Each endowment tied specifically to a property (mitigation requirement or donor restricted) will have a separate annual financial report that shows investment performance and spending related to land management activities for those lands.

Investment Objective: THC's investment objective is a real total rate of return averaging at least 4% per annum measured over a full market cycle (three to five years) net of inflation. THC will leave the endowment at rest, and not withdraw the earnings for a period of three years. The total fund objective is to compare favorably with the following benchmarks:

1. Equity Securities to perform above the Russell 3000 Broad Market Index.
2. Fixed Income Securities to perform above the Barclay's Aggregate Bond Index.
3. Cash Securities to perform above the 90-day T-bill.
4. Maintain an overall investment cost to the investment portfolio of less than 1.5%.

Investment Strategies: The portfolio of THC will be diversified using the tenets of modern portfolio theory. The basic approach to optimize risk return utilizes a globally diverse portfolio made up of low correlating assets along with the discipline of regular rebalancing. The asset allocation of the portfolio shall be actively managed to consist of 50% Global Equity Securities, 30% Fixed Income Securities, 15% Alternative Investments, (inclusive of real estate), focused on protection and balanced growth and 5% cash investments.

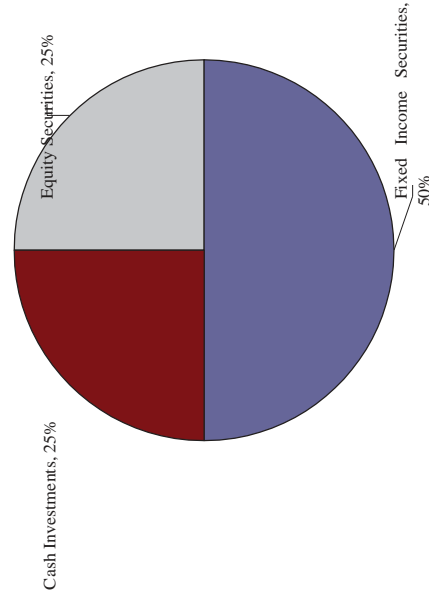
Responsibilities: The THC’s Finance Committee shall hire an investment manager. In addition, the THC’s Treasurer shall present a formal review of portfolio performance, including the above parameters, quarterly to the Board of Directors. The investment manager(s) are delegated the responsibility of advising THC’s Board on investment policy, providing performance analysis and monitoring services as well as investing and managing THC’s assets in accordance with this Investment Policy and all applicable law. The Board of Directors of THC prudently manages and invests the endowments in accordance with all the rules, regulations, and laws, including California’s Uniform Prudent Management of Institutional Funds Act (“UPMIFA”) (Probate Code 18501-18510). The Board of Directors considers all the factors contained in the UPMIFA when making management and investment decisions.

Procedure for financial review

No less than quarterly, our contract bookkeeper presents the organization’s income and expenditures and financial position through the previous month end to the board for their review, per GAAP as explained by our outside auditor. At that time any questions the board has regarding the financials are addressed and areas of particular interest to the board are presented in greater detail.

Because primary emphasis shall be placed on safety of principal by minimizing risks from either market or credit factors and because markets can be very volatile, the board reserves the right to sell equities and sideline cash when market conditions are showing strong downside volatility risks with very low upside potential. This is not considered panic and is solely for the protection of the principal endowment (nest egg). The board may also decide to set stop loss points where stocks can be automatically sold based on downside volatility and determined by a set percentage of loss in a certain time period as well as reentry points for reinvesting into equities.

Initial Asset Allocation



Investment Policy
Revision History Table

Date	Comment	Result of Review
2009	It was decided that a THC needed to develop an investment policy. The Board read and reviewed the investment and finance policy that was proposed.	The Transition Habitat Conservancy Board of directors voted to adopt the Personnel policy 8-31-2009
2012	THCs investment consultant suggested changes to the investment policy which are reflected in the minutes. The THC Board reviewed the proposed changes to the Investment and finance policy.	THC Board members approved and adopted the Investment and Finance policy 2-24-2012
2014	THC reviewed the proposed changes to the investment policy	THC Board members approved and adopted the Investment and Finance policy April 2014
2016	THC reviewed suggested changes to the investment policy concerning minimizing investment risks.	THC Board voted and approved the investment policy changes 3-17-2016
2016	THC Board reviewed the proposed changes that were suggested Kelly Velasco, Accreditation Consultant to reflect THC's adherence to California's Uniform Prudent Management of Institutional Funds Act ("UPMIFA)	THC Board voted and approved the changes at a regularly scheduled board meeting. Sept 2016
1/26/2017	<p>THC Board reviewed the proposed changes. (Below)</p> <p>50% Global Equity Securities, 30% Fixed Income Securities, 15% Alternative Investments, (inclusive of real estate), focused on protection and balanced growth and 5% cash investments.</p>	THC Board voted and approved the changes at a regularly scheduled board meeting.

EXHIBIT E TO MITIGATION AGREEMENT

Mitigation Lands and Mitigation Endowment Approval Letters

(Attached)

EXHIBIT F TO MITIGATION AGREEMENT

Form of Covenant and Deed Restriction

(Attached)

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

Transition Habitat Conservancy
Attention: Executive Director
P.O. Box 721300
Pinon Hills, CA 92372

Exempt from Doc. Transfer Tax per R&TC §11922
Exempt from Recording Fee per Gov. C. §§ 6103 & 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APNs: 3064-012-095 and 3064-012-096

COVENANT AND DEED RESTRICTION

This Covenant and Deed Restriction (“Deed Restriction”) is made and executed on this ____ day of _____, 2023, by the **Transition Habitat Conservancy**, a California nonprofit public benefit corporation (“Conservancy” or “Covenantor”), which is the owner of fee title of certain real property located within an unincorporated area of the County of Los Angeles, State of California, Assessor’s Parcel Numbers 3064-012-095 and 3064-012-096, for a total of approximately 10 acres, and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the “Property”) for the benefit of **County Sanitation District No. 20 of Los Angeles County** (the “District” or “Project Proponent”), a county sanitation district organized and existing pursuant to the County Sanitation District Act, California Health and Safety Code Section 4700 *et seq.* with reference to the following facts:

A. In 2005, the Board of Directors of the District approved and certified the Palmdale Water Reclamation Plant 2025 Facilities Plan and Environmental Impact Report (the “EIR”) for the construction, operation, and maintenance of certain wastewater facilities, including six reservoirs for the storage of recycled water, which is used to irrigate agricultural land. The EIR contains various mitigation measures, including Mitigation Measure 12-18 (“Mitigation Measure 12-18”). Mitigation Measure 12-18 provides that compensatory mitigation for the loss of moderate density Joshua tree woodland at a 1:1 ratio shall be made in perpetuity for the protection of this sensitive community and associated special-status habitat and that the compensation may include development of or donation to a conversation bank, land trust, or conservation easement. The District must also develop and implement a Habitat Compensation Management Plan for the compensatory lands and submit the plan to the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS). Elements of such plan must include, but are not limited to, the identification of responsible parties and financial assurances for management of compensatory lands in perpetuity, and other project compensation and monitoring activities (the “Mitigation Requirement”).

B. In 2007, Environmental Science Associates completed a Joshua Tree Survey Report (“ESA Report”) and determined that the site analyzed in the EIR contains approximately 155 acres of Joshua tree woodland. The ESA Report determined there was an average of 1.9 Joshua trees per acre, resulting in a mitigation requirement for approximately 295 Joshua trees; however, of the six reservoirs covered in the EIR, only two were constructed by the District (“Reservoirs Nos. 1 and 2”). As a result of the construction of Reservoirs Nos. 1 and 2, only 94 acres, or approximately 179 Joshua trees out of the totals analyzed in the EIR, were impacted. Therefore, in compliance with Mitigation Requirement and in order to mitigate for the Joshua tree woodland impacts associated with the construction of Reservoirs Nos. 1 and 2, the Project Proponent must provide mitigation for approximately 179 Joshua trees.

C. In 2021, Chambers Group, Inc. surveyed the Property and determined it to have high to very high density of Joshua trees. The Property consists of 10 acres of undeveloped land containing 180 Joshua trees. The Project Proponent desires to beneficially utilize the Property to satisfy the Mitigation Requirement in conjunction with the construction of Reservoirs Nos. 1 and 2.

D. In consideration of the Conservancy's agreement to allow use of the Property for mitigation purposes as required by the Mitigation Requirement, the Project Proponent has agreed to make certain payments to the Conservancy, as described in that certain *Acquisition and Mitigation Agreement*, dated June 8, 2023, between the Conservancy and the District ("**Mitigation Agreement**").

E. The Mitigation Requirement obligates the Project Proponent to ensure protection of the Property, in perpetuity, in its natural and undeveloped open-space condition.

F. As required in the Mitigation Agreement, the Conservancy has agreed to execute and record this Deed Restriction to satisfy the above Mitigation Requirement in connection with the construction of Reservoirs Nos. 1 and 2 and to collect the required endowment amounts necessary to ensure the long-term maintenance and monitoring of the Property which will enable the Project Proponent to complete the Mitigation Requirement for the construction of Reservoirs Nos. 1 and 2 as discussed and analyzed in the EIR.

G. Therefore, this Deed Restriction shall require, and is made for the purpose of ensuring, that the Property be preserved in its natural and undeveloped open space condition and maintained in perpetuity as set forth herein.

NOW, THEREFORE, in consideration of the Mitigation Requirement established in the EIR and the payments made by the Project Proponent, the undersigned Conservancy, for itself and for its assigns and successors in interest, hereby irrevocably covenants that the protective provisions, covenants and restrictions (collectively, "Restrictions") set forth in this Deed Restriction shall at all times on and after the date on which this Deed Restriction is recorded constitute for all purposes, covenants, conditions and restrictions on the use and enjoyment of the Property that are hereby attached to the deed to the Property as fully effective components thereof pursuant to the terms hereof.

ARTICLE I DEFINITIONS

1.1 District. The "District" or "Project Proponent" as used herein shall mean County Sanitation District No. 20 of Los Angeles County and shall include its successor agencies, if any.

1.2 Owner. "Owner" as used herein shall mean the Conservancy and/or its successors in interest, who hold title to all or any portion of the Property.

ARTICLE II GENERAL PROVISIONS

2.1 Provisions to Run with the Land. This Deed Restriction sets forth restrictions, as detailed in Article 3.1, upon and subject to which every portion of the Property shall be improved, held, used, sold, hypothecated, encumbered and/or conveyed. Each and all of the Restrictions shall run with the land, pass with each and every portion of the Property, and apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the District. Each and all of the Restrictions are enforceable by the District; provided, that any right granted to the District under this Deed Restriction is predicated on the condition that the District complies with the terms and conditions of this Deed Restriction.

2.2 Concurrence of Owner Presumed. Any purchaser of any portion of the Property shall be presumed by its purchase of such Property to be in accord with the foregoing and to agree for and among itself, its heirs, successors, and assigns, and the agents, employees, and contractors of such owners, heirs, successors, and assigns, that the Restrictions as herein established must be adhered to for the benefit of the Project Proponent and that the interest of the Owner of the Property shall be subject to the Restrictions contained herein.

2.3 Incorporation into Deeds. The Conservancy desires and covenants that the Restrictions shall be incorporated in and attached to each and all deeds of any portion of the Property. Recordation of this Deed Restriction shall be deemed binding on all successors and assigns, regardless of whether a copy of this Deed Restriction has been attached to or incorporated into any given deed.

2.4 Monitoring. The Conservancy agrees that the Project Proponent and its agents and/or contractors shall, upon providing no less than three (3) days' advance notice to the Conservancy, have reasonable access to the Property for the purposes of inspection, surveillance, or monitoring of the Restrictions, provided that any such entry by the Project Proponent shall not unreasonably interfere with Conservancy's permitted use and quiet enjoyment of the Property. Any right of entry afforded to the Project Proponent under this section is predicated on the condition that Project Proponent complies with the terms of this section and the other terms and conditions of this Deed Restriction, including providing advance notice to the Conservancy and not unreasonably interfering with Conservancy's permitted use and quiet enjoyment of the Property.

2.5 Acts Consistent with Restrictions. No Owner of the Property shall act in any manner that would be inconsistent with the Restrictions.

2.6 Enforcement. The Project Proponent shall have the right to enforce each and every provision herein. This Deed Restriction shall be enforceable by remedy of injunctive relief in addition to any other remedy in law or equity. In the event the Project Proponent reasonably determines that an Owner is in violation of the terms of this Deed Restriction or that a violation is threatened, the Project Proponent shall give written notice to such Owner of such violation and demand corrective action sufficient to cure the violation. The Owner shall cure the violation within sixty (60) days after receipt of notice thereof from the Project Proponent, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, shall begin curing such violation within the sixty (60) day period and continue diligently to cure such violation until finally cured; provided, however, that if the Project Proponent determines that circumstances require immediate action to prevent or mitigate significant damage to the Property, the Project Proponent may pursue its remedies under this Section 2.6 without waiting for the cure period to expire. Failure of an Owner to comply with any provision of this Deed Restriction shall be grounds for the Project Proponent, by reason of this Deed Restriction, to have the authority to require that the Owner modify or remove any improvements constructed in violation of this Deed Restriction and restore the Property to the condition that existed prior to the violation. In the event of a breach, any forbearance on the part of any party to this Deed Restriction to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach. The Project Proponent's right of enforcement of this Deed Restriction is predicated on the condition that it complies with the terms of this section and the other terms and conditions of this Deed Restriction. Notwithstanding the foregoing, nothing contained in this Deed Restriction shall be construed to entitle the Project Proponent to bring any action against Owner for any injury to or change in the Property to the extent such injury or change results from (i) any natural cause beyond Owner's control including, without limitation, fire, flood, storm, and earth movement; (ii) acts by the Project Proponent, its employees, agents, contractors, and invitees; (iii) unauthorized acts by unrelated third parties; or (iv) any prudent action taken by Owner under emergency conditions to prevent, abate or mitigate significant injury to the Property or to persons or personal property resulting from any of the foregoing causes.

2.7 Notice in Agreements. After the date of recordation hereof, Owner shall execute a written instrument, which shall accompany all purchase agreements relating to the Property. Any such instrument shall contain the following statement:

The land described herein, or a portion thereof, is subject to a deed restriction dated as of _____, 2023, and recorded on _____, 2023, in the Official Records of Los Angeles County, California, as Document No. [recordation number], which Covenant and Deed Restriction imposes certain covenants, conditions, and restrictions on usage of a portion of the property described herein.

2.8 Prior Encumbrances. Owner represents and warrants that Owner has fee simple title to the Property and, to the best of Owner's actual knowledge, the Property is not subject to any financial liens, financial encumbrances, or leases as of the date of execution of this Deed Restriction (excepting liens for property taxes which are not yet due and payable). Exhibit B sets forth the non-financial, senior, prior encumbrances of record existing as of the date of execution of this Deed Restriction.

ARTICLE III RESTRICTIONS

3.1 Owner's activities on the Property shall be undertaken in a manner that retains the Property in its predominantly natural condition. To such end, unless allowed pursuant to Section 3.2 or 4.2 below, the following activities are prohibited within the Property:

- a) Unseasonal watering and use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals in any manner that may adversely affect the purpose of this Deed Restriction;
- b) Depositing or allowing the uncontained accumulation of trash, ashes, garbage, waste, or any similar other material within the Property, except for normal and customary waste generated on the Property by permitted activities and uses for removal at reasonable intervals;
- c) Removing, destroying, or cutting of native trees, including the existing 180 Joshua trees on the Property, native shrubs, or other native vegetation, except as required for (i) the prevention or treatment of disease; (ii) abatement of weeds or invasive plants; (iii) emergency response; (iv) fire prevention, response, or management; and/or (v) personal and public safety; provided, however, that any such activities for fire prevention purposes (other than removal of dry or dead debris and mowing of dry grasses) shall require the prior written approval of the Project Proponent;
- d) Intentional introduction of non-native, exotic, or invasive species, or negligence that fosters their establishment and that may adversely affect the purpose of this Deed Restriction;
- e) Grazing of livestock or other agricultural use unless required to remove wildfire fuel or invasive species or otherwise permitted in any management plan prepared for the Property and approved by Owner, Project Proponent, and applicable permitting agencies;
- f) Diverting or exporting water off the Property and transferring, encumbering, leasing, selling or otherwise severing the Property's water rights from title to the Property itself;

- g) Use of motorized vehicles off of designated roadways unless for (i) maintenance, repair, restoration or management of the Property; (ii) emergency response; (iii) fire prevention, response, or management; and/or (iv) personal and public safety;
- h) Paving or otherwise covering of Property with concrete, asphalt, or any other impervious paving material;
- i) Filling, dumping, excavating, draining, dredging, mining, drilling;
- j) Removing or exploring for or extraction of minerals, loam, sands, gravel or other material on or below the surface;
- k) Altering the surface or general topography, including building of roads or construction of temporary or permanent structures, except as necessary for maintenance or restoration of the existing improvements on the Property; and
- l) Leasing of the Property to third parties for any purpose.

3.2 Notwithstanding the foregoing restrictions, the following activities may be conducted by Owner and its agents and/or contractors in the Property:

- a) Engaging in any use and activity necessary or appropriate to restore and maintain the Property, as required in the Habitat Compensation Management Plan approved by Project Proponent and Owner;
- b) Control of entry upon the Property, including, without limitation, the installation and maintenance of signs and/or fences that do not impede the movement of wildlife; and
- c) Permitting public access in a manner consistent with preservation of the ephemeral stream and riverine habitat and other conservation values of the Property.

ARTICLE IV VARIANCE AND TERMINATION

4.1 This Deed Restriction and the provisions thereof are irrevocable and nonmodifiable and shall continue in effect in perpetuity unless modified or terminated as provided herein.

4.2. Any Owner may apply to the Project Proponent for a variance from, or amendment to, the provisions of this Deed Restriction.

ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the Project Proponent or the general public. This Deed Restriction does not convey a general right of access to the public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Deed Restriction, each such notice, demand, or other communication shall be in writing and shall be delivered either personally to the person being served or official of a government agency being served; by United States mail, postage paid certified, return receipt requested; or by overnight courier service to the following addresses or such other address as either party may notify the other party in writing pursuant to the terms hereof:

If to the “Conservancy”:

Transition Habitat Conservancy
Attention: Executive Director
P.O. Box 721300
Pinon Hills, CA 92372

If to the "Project Proponent":

County Sanitation District No. 20 of Los Angeles County
Attention: Supervisor, Property Management Group
1955 Workman Mill Road
Whittier, CA 90601

Any notice shall be deemed effective when delivered, if personally delivered to the person being served or official of a government agency being served or by overnight courier service; or three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested.

5.3 Partial Invalidity. If any portion of this Deed Restriction is determined to be invalid for any reason, the remaining portion shall remain in full force and effect.

5.4 Article Headings. Headings at the beginning of each numbered article of this Deed Restriction are solely for the convenience of the parties and are not a part of the Deed Restriction and shall not be used in the interpretation thereof.

5.5 Recordation. This Deed Restriction shall be recorded by the Conservancy in the Official Records of the County of Los Angeles, California, within ten (10) days of the date of execution by the last party to sign this Deed Restriction.

5.6 References. All references to code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this Deed Restriction shall be liberally construed in favor of effecting the purpose of this Deed Restriction and the Mitigation Requirement. If any provision of this Deed Restriction is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

5.8 Governing Law. This Deed Restriction shall be governed by and construed in accordance with the laws of the State of California.

[Signature on Following Page]

IN WITNESS WHEREOF, the parties execute this Covenant and Deed Restriction as of the date set forth above.

COVENANTOR:

Transition Habitat Conservancy,
a California nonprofit public benefit corporation

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND AGREED TO BY:

DISTRICT:

County Sanitation District No. 20 of Los Angeles County

By: _____

Stan Pegadiotes
Section Head, Planning and Property Management

[Signatures to be Notarized]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA } §§
COUNTY OF }

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Notary Public

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA } §§
COUNTY OF }

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Notary Public

EXHIBIT A
Legal Description of the Property

Real property in the unincorporated area of the County of Los Angeles, State of California, described as follows:

THE NORTHWEST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 11,
TOWNSHIP 4 NORTH, RANGE 8 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT
OF SAID LAND.

APNs: 3064-012-095 and 3064-012-096

EXHIBIT B
Prior Encumbrances

[To be completed after District and THC review Title Report during Escrow]