

## ATTACHMENT C

### **AGREEMENT BETWEEN THE CITY OF NEWPORT BEACH AND NEWPORT BAY NATURALISTS AND FRIENDS DBA NEWPORT BAY CONSERVANCY TO DELINEATE RESPONSIBILITIES AND DESIGNATE FUNDING FOR PHASE3 RESTORATION WORK IN BIG CANYON**

THIS AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and NEWPORT BAY NATURALISTS AND FRIENDS, a California non-profit public benefit corporation doing business as ("DBA") NEWPORT BAY CONSERVANCY ("NBC"), with the foregoing referred to herein in the singular as "Party" and collectively as "Parties," and is made with reference to the following:

#### **RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. Big Canyon between Jamboree Road and Back Bay Drive consists of the Big Canyon Nature Park owned by the City of Newport Beach as well as a freshwater lake area owned by California Department of Fish and Wildlife ("CDFW").
- C. City is the owner of real property commonly known as the Big Canyon Nature Park, located in Sections 24 and 25 of Township 6 South, Range 10 West of the Newport Beach 7.5 minute U.S. Geological Survey (USGS) topographic quadrangle within the lowest subwatershed of the Big Canyon Watershed situated west of Jamboree Road and along Back Bay Drive as depicted on Exhibit A attached hereto and incorporated herein by reference.
- D. CDFW is the owner of a freshwater lake located to the east and upstream of Back Bay Drive within Big Canyon, as depicted on Exhibit A.
- E. The City and NBC have been working together since 2016 on a plan to restore Big Canyon Nature Park due to it becoming heavily vegetated with invasive trees, notably the Brazilian Pepper Tree, and a tulle-chocked freshwater lake that is now a large mosquito breeding area and a sink for pollutants, especially selenium. The six acre Phase 1 of the restoration was completed in July 2017. The eleven acre Phase 2 was completed in July 2021. The proposed fourteen acre Phase 3 project is located west of Phase 2 and east of Back Bay Drive.
- F. NBC is the recipient of three grants to fund, in part, the design and implementation of construction for Phase 3 of the restoration project: (1) State Coastal Conservancy in the amount of \$1,575,409.00; (2) Ocean Protection Council in the amount of \$2,684,675.00; and (3) to be finalized in August of 2025, Wildlife Conservation Board expected in the amount of \$3,241,000 (collectively, "Grants").

- G. The Grants provide NBC with funds for Phase 3 of the restoration project including preparation of final construction documents and the implementation of restoration of fourteen acres of coastal sage upland, riparian, and freshwater and saltwater marsh habitats within and adjacent to the area owned by CDFW ("Project").
- H. The Project includes but is not limited to: restoring Big Canyon Creek; creating or restoring fourteen acres with native vegetation; recreating an estuary in Big Canyon by removing bay spoils stockpiled in the canyon in the 1960's; providing pristine habitat for endangered or sensitive bird, fish, and plant species; reducing the selenium hazard in the canyon; removing a large mosquito breeding area; removing an infestation of the Polyphagous Shothole Borer; providing for coastal habitat adaptation to sea level rise; and, significantly enhancing the educational opportunities for a popular destination for school classes around the county.
- I. City will provide upfront interim funding to proceed with the Project, and upon receipt of the funding from the Grants, NBC will reimburse the City for the interim funding as specified in this Agreement. NBC will also utilize a portion of the Grant funds for other activities such as monitoring and maintenance.

**NOW, THEREFORE,** it is mutually agreed by and between the undersigned Parties as follows:

## **ARTICLE 1. ELEMENTS OF AGREEMENT**

The Parties will work cooperatively together so that the Project may be completed in a manner so as to minimize costs and impacts to the public. The specific terms and conditions governing the elements of this Agreement are set forth hereinafter.

## **ARTICLE 2. RESPONSIBILITIES OF NBC**

2.1 NBC shall administer the provisions of the Grants, including but not limited to Project reporting and data management. NBC will provide copies of all Grants and permits to the City.

2.2 NBC shall be responsible to ensure all authorization is obtained from CDFW for the City to access the CDFW property and perform the Project, and for obtaining all resource and regulatory agency permits, paying all permit fees, and ensuring all permit and Grants requirements are incorporated into the construction documents.

2.3 NBC will process all invoices received from the City for work satisfactorily performed by a contractor or consultant and other reimbursable Project related charges and services pursuant to the terms of the Grants and submit such invoices for reimbursement to the Grants funding agencies within thirty (30) days and in accordance with the provisions of the Grants. NBC shall send the reimbursement funds to the City within thirty (30) days of receipt of funding through the Grants.



2.4 NBC shall ensure the Grants funding includes reimbursement for all fees for consultant provided construction support services including hiring the design Engineer of Record. Construction support services include, but are not limited to: preparing construction document packages to be uploaded into PlanetBids; reviewing and answering questions posed by contractors during the bid period; reviewing qualifications of low-bidders; preparing for and running pre-construction meetings; reviewing contractor submittals and requests-for-information; and attending site visits to the construction site when requested by the City or the Project construction manager.

2.5 NBC will provide funding to hire a project management team that will provide the day-to-day oversight over the construction contractor. The contracted construction management team will report to the City.

2.6 During Project implementation, NBC shall be responsible for all cultural and biological monitoring including hiring and paying consultants and monitors as may be required.

2.7 After Project completion, NBC is responsible for irrigation and site maintenance and monitoring as may be required. As stated in Section 3.10 of this Agreement, during the second through fifth year after Project completion (excluding the first year), City agrees to contribute up to twenty percent (20%) of these maintenance and monitoring costs, in an amount not to exceed fifty thousand dollars (\$50,000) per year.

2.8 NBC staff shall attend construction meetings when requested by City or the Project construction manager.

2.9 NBC will perform close-out of funding for the Grants and permit applications.

### **ARTICLE 3. RESPONSIBILITIES OF CITY**

3.1 City will hire construction contractor(s) for the Project following public bid and contract procedures. City, in its sole discretion and for any reason, shall have the right to reject any bids for the implementation of the Project.

3.2 City will contract with a construction management company to manage and inspect the Project per the approved construction documents, permits, established budget and Project schedule. City will pay the construction manager invoices. City shall submit paid invoices to NBC for reimbursement within thirty (30) days of paying the invoice. NBC shall send the reimbursement funds to the City within thirty (30) days of receipt of funding through the Grants.

3.3 City will contract with a geotechnical engineer and a surveyor to assist City's project manager in the implementation of the Project. City will pay the

geotechnical engineer and surveyor invoices. City shall submit paid invoices to NBC for reimbursement.

3.4 City will conduct the construction activities in accordance with industry standards and including any repairs of property damaged during construction.

3.5 City will review all change order requests with NBC and obtain written authorization from NBC, which shall not be unreasonably withheld, before directing a contractor to perform work under a change order. NBC acknowledges that costs for change order work is often time-sensitive and its timely review and responses to City are required in order to avoid additional costs.

3.6 The City shall require that all contractors provide insurance coverage with NBC and the Grants funding agencies named as additionally insured entities.

3.7 City agrees to review with NBC all invoices from the contractors. NBC's approval of invoices shall not be unreasonably withheld. City will forward copies of paid invoices to NBC for reimbursement.

3.8 City agrees to provide information that is in the custody or control of the City to NBC as needed to meet the reporting requirements of the Grants.

3.9 City will not charge NBC for time spent by City staff administering the Project.

3.10 City agrees to contribute up to twenty percent (20%) of the maintenance and monitoring costs for the second through fifth year after Project completion (excluding the first year), in an amount not to exceed fifty thousand dollars (\$50,000) per year. Such funds may also be used by City for any unforeseen and unbillable costs associated with the Project that may not be covered under the Grants. Notwithstanding the foregoing, NBC will use best efforts to secure additional grant funding to cover any unforeseen and unbillable costs not covered under the Grants.

#### **ARTICLE 4. TERM**

The term of this Agreement shall commence on the Effective Date and shall continue for five (5) years after Project completion, or until June 30, 2032, whichever occurs first, unless terminated earlier as provided herein.

#### **ARTICLE 5. PAYMENT AND REIMBURSEMENT**

In accordance with the terms and conditions of this Agreement, the total cost of the Project shall not exceed **Six Million Five Hundred Ninety Four Thousand Dollars and 00/100 cents (\$6,594,000.00)**. City shall be responsible for making payments on invoices submitted by contractor(s). Upon City's payment to contractor(s), City shall



forward copies of invoices to NBC, and NBC shall submit such invoices within thirty (30) days to the Grants funding agencies for reimbursement in accordance with the Grants. Upon NBC's receipt of the reimbursements, NBC shall provide such reimbursements to City within thirty (30) days. NBC shall not unreasonably delay providing City with reimbursements for the Project.

## **ARTICLE 6. LICENSE**

6.1 For the duration of this Agreement, City hereby grants a revocable, non-exclusive license to NBC, including its agents, contractors, subcontractors, and consultants when acting on behalf of NBC, to enter upon, over and under and temporarily occupy those portions of City property in Big Canyon necessary to carry out the Project in accordance with the terms and conditions of the Grants and this Agreement ("License").

6.2 The License includes posting of signs, subject to approval of the City, as reasonably necessary or required to notify the public of the work, for safety purposes, as required by the terms of the Grants, or other such lawful purpose.

6.3 No grant of an easement or other interest in land is intended by the License or this Agreement.

6.4 Nothing herein shall be construed to give NBC any right to hold over or to continue possession of after the expiration or termination of this Agreement.

6.5 NBC shall keep the City reasonably informed of its use of the licensed area, and shall submit its work schedule, including intended days and hours of operation, to the City for approval, which approval shall not be unreasonably withheld. NBC agrees that all of its activities shall be held solely during approved days and hours of operation, subject to exceptions made on a case-by-case basis upon the prior written approval of the City.

6.6 NBC agrees to accept the license area in an "as is" condition, and that no representations with respect to the condition or improvements of the license area have been made except as specifically set forth in this Agreement.

6.7 Use of the license area by NBC is non-exclusive and City may permit other persons or entities to utilize portions of the license area, provided that such use does not interrupt or unreasonably interfere with the essential operation of the Project.

## **ARTICLE 7. NOTICES**

Any notice or other written instrument required or permitted by this Agreement to be given to either Party shall be deemed received when personally served or transmitted by facsimile, or forty-eight (48) hours after being deposited in the U.S. Mail, postage prepaid, 1st Class or certified, and addressed as follows:

To City:

City of Newport Beach  
Attn: Jim Houlihan, Deputy Public Works Director/City Engineer  
100 Civic Center Dr.  
Newport Beach, CA 92660

To NBC:

Newport Bay Conservancy  
Attn: Heather Cieslak, Operations Director  
2301 University Drive  
Newport Beach, CA 92660

#### **ARTICLE 8. NO ATTORNEYS' FEES**

In the event of any dispute or legal action arising under this Agreement, the prevailing Party shall not be entitled to attorneys' fees.

#### **ARTICLE 9. FORCE MAJEURE**

Except for the payment of money, neither Party shall be liable for any delays or other non-performance resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, acts of God, strike or labor dispute, war or other violence, acts of third parties not within their reasonable control or any law, order or requirement of any governmental agency or authority.

#### **ARTICLE 10. GOVERNING LAW & VENUE**

This Agreement shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court. The Parties agree to waive any and all rights to request that an action be transferred for trial to another County.

#### **ARTICLE 11. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding and agreement between the Parties and supersedes all previous negotiations between them pertaining to the subject matter thereof.

#### **ARTICLE 12. WAIVER**

A waiver of a breach of the covenants, conditions or obligations under this Agreement by either Party shall not be construed as a waiver of any succeeding breach



of the same or other covenants, conditions or obligations of this Agreement.

### **ARTICLE 13. MODIFICATION**

Alteration, change, or modification of this Agreement shall be in the form of a written amendment, which shall be signed by each Party.

### **ARTICLE 14. ASSIGNMENT**

No Party shall assign its performance of this Agreement, nor any part thereof, without the prior written consent of the non-assigning parties.

### **ARTICLE 15. CONDITIONS OF AGREEMENT**

15.1 NBC must have all permits and licenses in place prior to City awarding a successful bid to a contractor to commence the Project.

15.2 City shall provide NBC with written documentation that contractors have furnished performance bonds where required in favor of the Grants funding agency and NBC in amounts required by law and as specified in the Grants.

15.3 Prior to City's commencement of any construction pursuant to this Agreement, NBC shall provide City written evidence that NBC has complied with all conditions of the Grants, as required by the Grant funding agencies

### **ARTICLE 16. ADMINISTRATION**

16.1 This Agreement will be administered by the Public Works Department. City's Public Works Director, or designee, shall have the authority to act for City under this Agreement.

16.2 NBC shall act as lead for the administration, operation and supervision of the Project as required by the Grants.

### **ARTICLE 17. INDEMNITY AND LIABILITY FOR DAMAGES**

17.1 City shall indemnify, defend and hold NBC, its officers, agents and employees, harmless from any expense, liability or claim for death, injury, loss, damage or expense to persons or property which may arise or is claimed to have arisen as a result of any acts performed by City, its officers, agents, or employees, with respect to the performance of work on the Project, save and except to the extent such expense, liability or claim is proximately caused in whole or in part by any negligence of NBC, its officers, agents or employees, or by any act or omission for which the NBC, its officers, agents or employees are liable without fault.

17.2 NBC shall indemnify, defend and hold City, its officers, agents and employees, harmless from any expense, liability or claim for death, injury, loss, damage or expense to persons or property which may arise or is claimed to have arisen as a result of any acts performed by NBC, its officers, agents, or employees, with respect to the Project or the Grants, save and except to the extent such expense, liability or claim is proximately caused in whole or in part by any negligence of City, its officers, agents or employees, or by any act or omission for which City, its officers, agents or employees are liable without fault.

## **ARTICLE 18. INSURANCE REQUIREMENTS**

Without limiting each Party's duty to indemnify the other Party, and prior to commencement of the Project, each Party shall obtain, provide and maintain at its own expense during the term of this Agreement, or for other periods as specified in this Agreement, policies of insurance, or in the case either party is a public agency, self-insurance, of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit B, and incorporated herein by reference. All policies, endorsements, certificates, and/or binders shall be subject to approval by the other Party as to form and content. These requirements are subject to amendment or waiver only in writing by the other Party. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

## **ARTICLE 19. CONFLICT OF INTEREST**

Either Party or its officers and employees may be subject to the provisions of the California Political Reform Act of 1974 ("Act"), which: (a) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement; and, (b) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest. If subject to the Act, each Party shall conform to all requirements of the Act. Failure to conform to the requirements of the Act constitutes a material breach and is grounds for immediate termination of this Agreement by the other Party. Each Party shall indemnify and hold harmless the other Party for any and all claims for damages resulting from violation of this section.

## **ARTICLE 20. COMPLIANCE WITH ALL LAWS**

Each Party shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal whether now in force or hereinafter enacted. In addition, all work prepared by either Party shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator.



## **ARTICLE 21. POSSESSORY INTEREST TAXES**

NBC acknowledges that the Agreement granted herein may be subject to possessory interest taxes. NBC shall have the sole obligation to pay any taxes, fees and assessments, plus applicable penalties and interest, which may be imposed by law and arise out of NBC's Agreement hereunder. NBC shall indemnify, defend and hold harmless City against any and all such taxes, fees, penalties or interest assessed, or imposed against City hereunder.

## **ARTICLE 22. TERMINATION OF AGREEMENT**

Any Party may at any time prior to the commencement of the Project and without cause, terminate this Agreement, upon not less than sixty (60) calendar days' written notice to the other Party.

## **ARTICLE 23. AMENDMENTS**

This Agreement may be modified or amended only by a written document executed by both Parties and approved as to form by the City Attorney.

## **ARTICLE 24. SEVERABILITY**

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

## **ARTICLE 25. COUNTERPARTS AND AUTHORITY**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. By executing this agreement, each signer represents and certifies that they have authority to bind their respective Party and that by executing this Agreement such Party is bound hereto.

## **ARTICLE 26. RECITALS**

The Parties acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

## **ARTICLE 27. INTERPRETATION**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

## **ARTICLE 28. THIRD PARTY RIGHTS**

The Parties do not intend to create rights in or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.

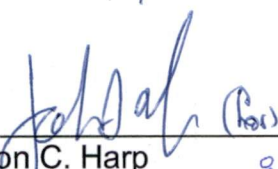
**[SIGNATURES ON NEXT PAGE]**



**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: 8/1/25

By:   
Aaron C. Harp  
City Attorney

8.1.25  
AF

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Molly Perry  
Interim City Clerk

**CITY OF NEWPORT BEACH,**  
a California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Grace K. Leung  
City Manager

**CONSULTANT: NEWPORT BAY  
NATURALISTS AND FRIENDS**, a California  
non-profit public benefit corporation doing  
business as ("DBA") NEWPORT BAY  
CONSERVANCY

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Bryan Tsu  
Chief Executive Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Susie Onate  
Secretary

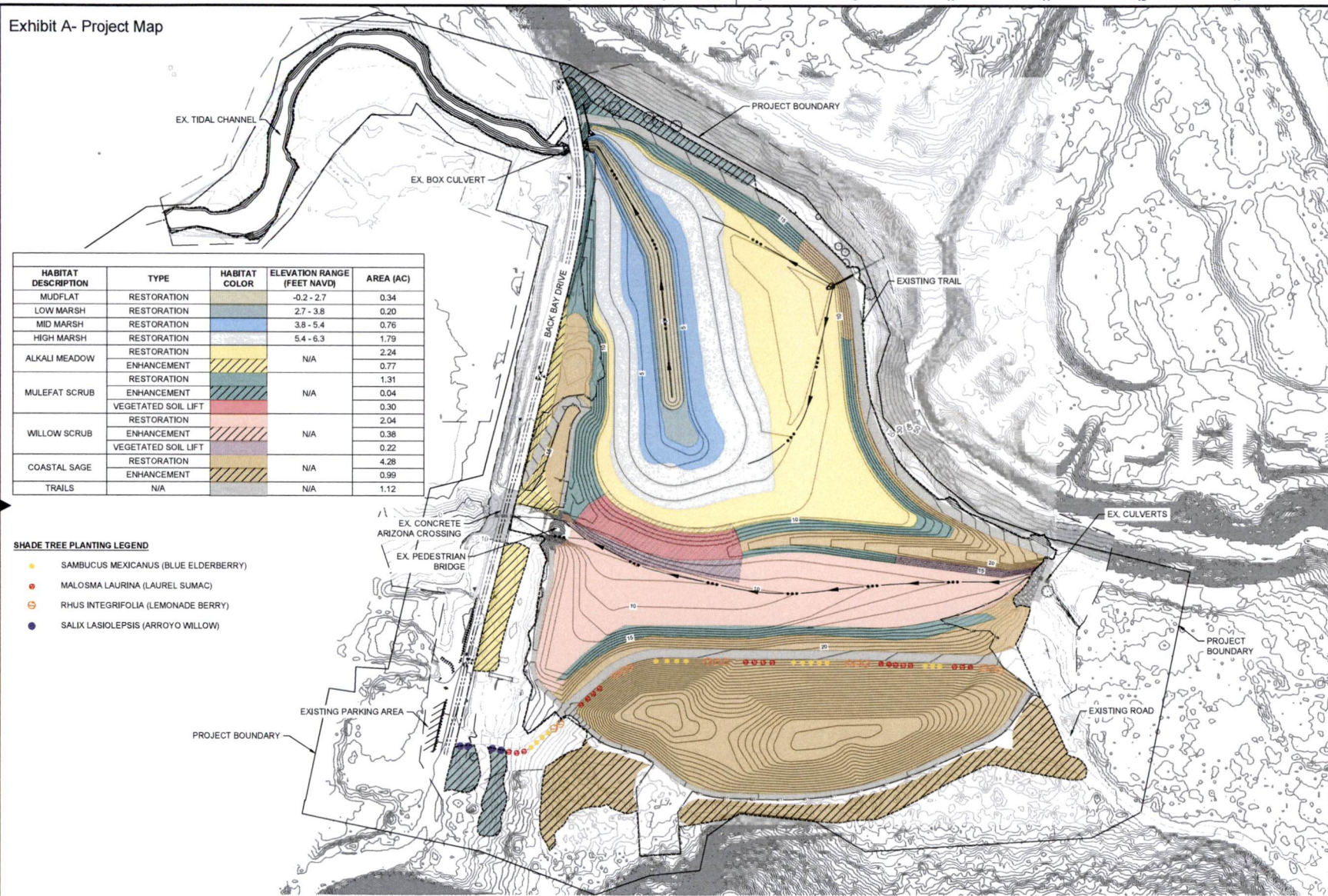
**[END OF SIGNATURES]**

Attachments: Exhibit A: Depiction of Phase 3 Restoration Area  
Exhibit B: Insurance Requirements

**EXHIBIT A**  
**DEPICTION OF THE PHASE 3 RESTORATION AREA**  
**(see attached)**



# Exhibit A- Project Map



HABITAT DESCRIPTION	TYPE	HABITAT COLOR	ELEVATION RANGE (FEET NAVD)	AREA (AC)
MUDFLAT	RESTORATION		-0.2 - 2.7	0.34
LOW MARSH	RESTORATION		2.7 - 3.8	0.20
MID MARSH	RESTORATION		3.8 - 5.4	0.76
HIGH MARSH	RESTORATION		5.4 - 6.3	1.79
ALKALI MEADOW	RESTORATION		N/A	2.24
	ENHANCEMENT			0.77
MULEFAT SCRUB	RESTORATION		N/A	1.31
	ENHANCEMENT			0.04
	VEGETATED SOIL LIFT			0.30
WILLOW SCRUB	RESTORATION		N/A	2.04
	ENHANCEMENT			0.38
	VEGETATED SOIL LIFT			0.22
COASTAL SAGE	RESTORATION		N/A	4.28
	ENHANCEMENT			0.99
TRAILS	N/A		N/A	1.12

## SHADE TREE PLANTING LEGEND

- SAMBUCUS MEXICANUS (BLUE ELDERBERRY)
- MALOSMA LAURINA (LAUREL SUMAC)
- RHUS INTEGRIFOLIA (LEMONADE BERRY)
- SALIX LASIOLEPSIS (ARROYO WILLOW)

## REVEGETATION PLAN



March 6, 2024

no.	date	by	chkd	description
A	2/25/22	JL	DP	30% DESIGN
B	12/1/22	JL	DP	60% DESIGN
C	3/6/24	JL	DP	90% DESIGN

**PRELIMINARY - NOT FOR CONSTRUCTION**



4225 Executive Square, Suite #500  
La Jolla, CA 92037  
858-320-2920

date	MARCH 2024	detailed	G MATHIASON
designed	J LEE	checked	D POHL



NEWPORT BEACH, CALIFORNIA  
BIG CANYON NATURE PARK  
PHASE 3 RESTORATION

REVEGETATION PLAN	
project	133465
contract	---
drawing	C1104
rev.	C
sheet	16 of 27 sheets
file	133465C1104.DWG

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

3. Coverage Requirements.

- A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers and employees.

- B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary excess/umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate. The policy shall cover liability arising from bodily injury, property damage, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Consultant shall submit to City, along with a certificate of insurance, additional coverage as stated in Section 4. Other Insurance Requirements.

- C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of



Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

Consultant shall submit to City, along with a certificate of insurance, additional coverage as stated in Section 4. Other Insurance Requirements.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of two million dollars (\$2,000,000) per claim and four million dollars (\$4,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.
- E. Excess/Umbrella Liability Insurance. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this contract, then said policies shall be “following form” of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this contract, including, but not limited to, the additional insured and primary & non-contributory insurance requirements stated herein. No insurance policies maintained by the City, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Consultant’s primary and excess/umbrella liability policies are exhausted.

Consultant shall submit to City, along with a certificate of insurance, additional coverage as stated in Section 4. Other Insurance Requirements.

- 4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
  - A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, employees or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
  - B. Additional Insured Status. All liability policies including general liability,

excess/umbrella liability, pollution, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, employees shall be included as insureds under such policies.

- C. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
  - D. Additional Insured Status. All liability policies including general liability, excess/umbrella liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
  - E. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
  - F. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.
  - G. Subcontractors. Consultant shall verify that all subcontractors maintain insurance meeting the minimum requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13. Limits of liability for General Liability in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) and two million dollars (\$2,000,000) completed operations aggregate; Professional Liability (Errors & Omissions) in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000); Pollution Liability Insurance in an amount not less than one million dollars (\$1,000,000) per loss and in the aggregate.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:



- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Right to Review Subcontracts. Consultant agrees that upon request, all agreements with subcontractors or others with whom Consultant enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a

given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- G. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.
- H. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.