

## AGREEMENT FOR CONTRACT SERVICES

THIS AGREEMENT FOR CONTRACT SERVICES (the "Agreement") is made and entered into as of January 20, 2010, by and between the IRVINE COMMUNITY LAND TRUST, a California non-profit corporation ("Land Trust"), and WEST COAST ESCROW COMPANY, a California Corporation ("Contractor"). (The term Contractor includes professionals performing in a consulting capacity.)

### PART I

#### FUNDAMENTAL TERMS

**A. Location of Services:** The City of Irvine location(s) as set forth in PART IV, Scope of Services, included herein.

**B. Description of Services/Goods to be provided:** Escrow and Title services in accordance with PART IV, Scope of Services, included herein.

**C. Term:** Unless terminated earlier as set forth in this Agreement, the services shall commence on January 15, 2010 ("Commencement Date") and shall continue through January 15, 2011. The Land Trust reserves the right to extend the contract for up to four (4) additional one (1) year periods upon approval by the Land Trust Board of Directors prior to the expiration of the then applicable term of this Agreement.

**D. Party Representatives:**

D.1. The Land Trust designates the following person/officer to act on Land Trust's behalf: Mark Asturias, Executive Director

D.2. The Contractor designates the following person to act on Contractor's behalf: Nancy Closson, President

**E. Notices:** Contractor shall deliver all notices and other writings required to be delivered under this Agreement to Land Trust at the address set forth in Part II ("General Provisions"). The Land Trust shall deliver all notices and other writings required to be delivered to Contractor at the address set forth following Contractor's signature below.

**F. Attachments:** This Agreement includes and incorporates by reference the following Parts and all Attachments to this Agreement:

- F.1. Part I: Fundamental Terms
- F.2. Part II: General Provisions
- F.3. Part III: Special Provisions
- F.4. Part IV: Scope of Services
- F.5. Part V: Budget

**G. Integration:** This Agreement represents the entire understanding of Land Trust and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

**H. Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first set forth above.

**IRVINE COMMUNITY LAND TRUST, a California non-profit corporation**      **WEST COAST ESCROW COMPANY, a California Corporation**

By: \_\_\_\_\_  
Mark Asturias  
Its: Executive Director

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Nancy Donnelly  
Secretary

**Contractor Information**

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

**Address for Notices and Payments:**  
West Coast Escrow  
11900 W. Olympic Blvd. #401  
Los Angeles, CA90064

\_\_\_\_\_  
William H. Ihrke  
  
6226

**Attn: Nancy Closson, President**  
**Telephone Number: (310) 442-**  
**FAX Number: (310) 826-3895**

## PART II

### GENERAL PROVISIONS

#### SECTION ONE: SERVICES OF CONTRACTOR

**1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, Contractor shall provide to Land Trust the goods and/or services shown on Part IV hereto (“Scope of Services”), which may be referred to herein as the “services” or the “work.” If this Agreement is for the provision of goods, supplies, equipment or personal property, the terms “services” and “work” shall include the provision (and, if designated in the Scope of Services, the installation) of such goods, supplies, equipment or personal property.

**1.2 Changes and Additions to Scope of Services.** Land Trust shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by Land Trust to Contractor, incorporating therein any adjustment in (i) the Budget, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor. It is expressly understood by Contractor that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

**1.3 Standard of Performance.** Contractor agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment or personal property included within the services herein shall be of good quality, fit for the purpose intended.

**1.4 Performance to Satisfaction of Land Trust.** Contractor agrees to perform all work to the satisfaction of Land Trust within the time specified. If Land Trust reasonably determines that the work is not satisfactory, Land Trust shall have the right to take appropriate action, including but not limited to: (i) meeting with Contractor to review the quality of the work and resolve matters of concern; (ii) requiring Contractor to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to Contractor for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

**1.5 Instructions from Land Trust.** In the performance of this Agreement, Contractor shall report to and receive instructions from the Land Trust’s Representative designated in Paragraph D.1 of Part I (“Fundamental Terms”) of this Agreement. Tasks or services other than those specifically described in the Scope of Services shall not be performed without the prior written approval of the Land Trust’s Representative.

**1.6 Familiarity with Work.** By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under the Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any conditions, including any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the Land Trust of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Land Trust's Representative.

**1.7 Prohibition Against Subcontracting or Assignment.** Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of Land Trust. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Land Trust. In the event of any unapproved transfer, including any bankruptcy proceeding, Land Trust may void the Agreement at Land Trust's option in its sole and absolute discretion. No approved transfer shall release any surety of Contractor of any liability hereunder without the express consent of Land Trust.

**1.8 Compensation.** Contractor shall be compensated in accordance with the terms of Part V hereto ("Budget"). Included in the Budget are all ordinary and overhead expenses incurred by Contractor and its agents and employees, including meetings with Land Trust representatives, and incidental costs incurred in performing under this Agreement.

## **SECTION TWO: INSURANCE AND INDEMNIFICATION**

**2.1 Insurance.** Without limiting Contractor's indemnification obligations, Contractor shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, and/or subcontractors. In the event that Contractor subcontracts any portion of the work in compliance with Section 1.7 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the contractor is required to maintain pursuant to this Section 2.1.

**2.1.1 Insurance Coverage Required.** The policies and amounts of insurance required hereunder shall be as follows:

- (a) General Liability (including premises and operations, contractual liability, personal injury, independent contractors liability): One Million Dollars (\$1,000,000.00) single limit, per occurrence. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate

shall apply separately to this project, or the general aggregate limit shall be two times the occurrence limit.

(b) Automobile Liability (including owned, non-owned, leased, and hired autos): One Million Dollars (\$1,000,000.00), single limit, per occurrence for bodily injury and property damage.

(c) Workers Compensation and Employer's Liability: Workers Compensation Insurance (if Contractor is required to have) in an amount required by the laws of the State of California and Employer's Liability Insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence for injuries incurred in providing services under this Agreement.

(d) Professional Liability (covering errors and omissions): One Million Dollars (\$1,000,000.00) per claims made.

(e) Other Insurance: Such other policies of insurance as may be required in Part III hereto ("Special Provisions").

**2.1.2 General Requirements.** Contractor's insurance:

(a) Shall be issued by an insurance company which is an admitted carrier in the State of California and maintains a Secure Best's Ratings of "A" or higher; unless otherwise approved by Land Trust;

(b) General Liability, Automobile Liability and Employer's Liability shall name the Land Trust, and its officers, officials, employees, agents, representatives and volunteers (collectively hereinafter "Land Trust and Land Trust Personnel") as additional insureds and contain no special limitations on the scope of protection afforded to Land Trust and Land Trust Personnel. All insurance provided hereunder shall include the appropriate endorsements. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or equivalent) to the Contractor's insurance policy, or as a separate owner's policy.

(c) Shall be primary insurance and any insurance or self-insurance maintained by Land Trust or Land Trust Personnel shall be in excess of Contractor's insurance and shall not contribute with it;

(d) Shall be "occurrence" rather than "claims made" insurance, excluding Professional Liability;

(e) Shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(f) Shall be endorsed to state that the insurer shall waive all rights of subrogation against Land Trust and Land Trust Personnel, excluding Professional Liability;

(g) Shall be written by good and solvent insurer(s) admitted to do business in the State of California and approved in writing by Land Trust; and

(h) Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to Land Trust by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

**2.1.3 Deductibles.** Any deductibles or self-insured retention's must be declared to and approved by Land Trust prior to the execution of this Agreement by Land Trust.

**2.1.4 Evidence of Coverage.** Contractor shall furnish Land Trust with certificates of insurance demonstrating the coverage required by this Agreement which shall be received and approved by Land Trust not less than five (5) working days before work commences.

**2.1.5 Workers Compensation Insurance.** If Contractor is required to provide Workers' Compensation Insurance, Contractor shall file with Land Trust the following signed certification:

"I am aware of, and will comply with, Divisions 4 and 5 of the California Labor Code by securing, paying for, and maintaining in full force and effect for the duration of the contract, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to Land Trust before execution of the Agreement."

In the event Contractor has no employees requiring Contractor to provide Workers' Compensation Insurance, Contractor shall so certify to Land Trust in writing prior to Land Trust's execution of this Agreement. Land Trust and Land Trust Personnel shall not be responsible for any claims in law or equity occasioned by failure of the Contractor to comply with this section or with the provisions of law relating to Workers' Compensation.

**2.2 Indemnification.** Contractor shall indemnify, defend, and hold Land Trust and Land Trust Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any

person or entity arising out of the willful or negligent acts, errors or omissions of Contractor, its employees, agents, representatives or subcontractors in the performance of any tasks or services for or on behalf of Land Trust, whether or not there is concurrent active or passive negligence on the part of Land Trust and/or Land Trust Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of Land Trust or Land Trust Personnel. In connection therewith:

**2.2.1** Contractor shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.

**2.2.2** Contractor shall promptly pay any judgment rendered against Land Trust or any Land Trust Personnel for any such claims or liabilities.

**2.2.3** In the event Land Trust and/or any Land Trust Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the negligent performance or a failure to perform the work or activities of Contractor, Contractor shall pay to Land Trust any and all costs and expenses incurred by Land Trust or Land Trust Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

### **SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES**

**3.1 Compliance with Laws.** Contractor shall keep itself fully informed of all existing and future state and federal laws and all county and City of Irvine ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Contractor. When applicable, Contractor shall not pay less than the prevailing wage, which rate is determined by the Director of Industrial Relations of the State of California.

**3.2 Licenses, Permits, Fees and Assessments.** Contractor shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless Land Trust against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against Land Trust thereunder.

**3.3 Covenant Against Discrimination.** Contractor covenants for itself, its heirs, executors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the performance of this Agreement. Contractor further covenants and agrees to comply with the terms of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) as the same may be amended from time to time.

**3.4 Independent Contractor.** Contractor shall perform all services required herein as an independent contractor of Land Trust and shall remain at all times as to Land Trust a wholly independent contractor. Land Trust shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Contractor. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of Land Trust. Neither Contractor nor any of Contractor's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the Land Trust; and neither Contractor nor any of its employees shall be paid by Land Trust time and one-half for working in excess of forty (40) hours in any one week. Land Trust is under no obligation to withhold State and Federal tax deductions from Contractor's compensation. Neither Contractor nor any of Contractor's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

**3.5 Use of Patented Materials.** Contractor shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by Contractor under this Agreement. Contractor shall indemnify, defend, and save the Land Trust harmless from any and all suits, actions or proceedings of every nature for or on account of the use of any patented or copyrighted materials.

**3.6 Proprietary Information.** All proprietary information developed specifically for Land Trust by Contractor in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Contractor's underlying materials, software, or know-how, shall be the sole and exclusive property of Land Trust, and are confidential and shall not be made available to any person or entity without the prior written approval of Land Trust. Contractor agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Contractor's services under this Agreement. Contractor further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of services by Contractor under this Agreement shall be made to Land Trust, and that Contractor shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by Land Trust.

**3.7 Retention of Funds.** Contractor hereby authorizes Land Trust to deduct from any amount payable to Contractor (whether arising out of this Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate Land Trust for any losses, costs, liabilities, or damages suffered by Land Trust, and all amounts for which Land Trust may be liable to third parties, by reason of Contractor's negligent acts, errors, or omissions, or willful misconduct, in performing or failing to perform Contractor's obligations under this Agreement. Land Trust in its sole and absolute discretion, may withhold from any payment due Contractor, without liability for interest, an amount sufficient to cover such claim or any resulting lien. The failure of Land Trust to exercise such right to deduct or withhold shall not act as a waiver of Contractor's obligation to pay Land Trust any sums Contractor owes Land Trust.

**3.8 Termination By Land Trust.** Land Trust reserves the right to terminate this Agreement at any time, with or without cause, upon written notice to Contractor. Upon receipt of any notice of termination from Land Trust, Contractor shall immediately cease all services hereunder except such as may be specifically approved in writing by Land Trust. Contractor shall be entitled to compensation for all services rendered prior to receipt of Land Trust's notice of termination and for any services authorized in writing by Land Trust thereafter. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, Land Trust may take over the work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder, including costs incurred by Land Trust in retaining a replacement contractor and similar expenses, exceeds the Budget.

**3.9 Right to Stop Work; Termination By Contractor.** Contractor shall have the right to stop work only if Land Trust fails to timely make a payment required under the terms of the Budget. Contractor may terminate this Agreement only for cause, upon thirty (30) days' prior written notice to Land Trust. Contractor shall immediately cease all services hereunder as of the date Contractor's notice of termination is sent to Land Trust, except such services as may be specifically approved in writing by Land Trust. Contractor shall be entitled to compensation for all services rendered prior to the date notice of termination is sent to Land Trust and for any services authorized in writing by Land Trust thereafter. If Contractor terminates this Agreement because of an error, omission, or a fault of Contractor, or Contractor's willful misconduct, the terms of Section 3.8 relating to Land Trust's right to take over and finish the work and Contractor's liability therefor shall apply.

**3.10 Waiver.** No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing.

**3.11 Legal Actions.** Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and Contractor agrees to submit to the personal jurisdiction of such court.

**3.12 Rights and Remedies are Cumulative.** The rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**3.13 Attorneys' Fees.** In any action between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including, but not limited to, reasonable attorney's fees, expert witness fees, and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this

Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorney's fees and costs from the other party to this Agreement.

**3.14 Force Majeure.** The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Land Trust or Contractor, including, but not restricted to, acts of nature or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, if the delaying party shall within ten (10) days of the commencement of such delay notify the other party in writing of the causes of the delay. If Contractor is the delaying party, Land Trust shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of Land Trust such delay is justified. Land Trust's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against Land Trust for any delay in the performance of this Agreement, however caused. Contractor's sole remedy shall be extension of this Agreement pursuant to this Section 3.14.

**3.15 Non-liability of Land Trust Officers and Employees.** No officer, official, employee, agent, representative, or volunteer of Land Trust shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by Land Trust, or for any amount which may become due to Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

**3.16 Conflicts of Interest.**

A. No officer, official, employee, agent, representative or volunteer of Land Trust shall have any financial interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement that affects his or her financial interest or the financial interest of any corporation, partnership, association or other entity in which he or she is interested, in violation of any Federal or State statute, ordinance or regulation. Contractor shall not employ any such person while this Agreement is in effect.

B. Contractor represents, warrants and covenants that he, she or it presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement. Contractor further agrees that while this Agreement is in effect, Contractor shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement.

C. Contractor acknowledges that pursuant to the provisions of the Political Reform Act (Government Code section 87100 *et seq.*), Land Trust may determine Contractor to be a "Consultant" as that term is defined by the Act. In the event Land Trust makes such a determination, Contractor agrees to complete and file a "Statement of Economic Interest" with the Land Trust Secretary to disclose such financial interests as required by Land Trust. In such event, Contractor further agrees to require any other person doing work under this Agreement to

complete and file a "Statement of Economic Interest" to disclose such other person's financial interests as required by Land Trust.

**3.17 Compliance with California Unemployment Insurance Code Section 1088.8.**

If Contractor is a Sole Proprietor, then prior to signing the Agreement, Contractor shall provide to the Land Trust a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. Contractor understands that pursuant to California Unemployment Insurance Code Section 1088.8, the Land Trust will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

**SECTION FOUR: MISCELLANEOUS PROVISIONS**

**4.1 Records and Reports.** The Land Trust reserves the right to audit the Contractor's compliance with all of the terms and conditions of this Agreement at any time. Upon request by Land Trust, Contractor shall prepare and submit to Land Trust any reports concerning Contractor's performance of the services rendered under this Agreement. Land Trust shall have access, with 72 hours advance written notice delivered to Contractor, to the books and records of Contractor related to Contractor's performance of this Agreement in the event any audit is required. All drawings, documents, and other materials prepared by Contractor in the performance of this Agreement (i) shall be the property of Land Trust and shall be delivered at no cost to Land Trust upon request of Land Trust or upon the termination of this Agreement, and (ii) are confidential and shall not be made available to any individual or entity without prior written approval of Land Trust. Contractor shall keep and maintain all records and reports related to this Agreement for a period of three (3) years following termination of this Agreement, and Land Trust shall have access to such records in the event any audit is required.

**4.2 Notices.** Unless otherwise provided herein, all notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, by reputable document delivery service that provides a receipt showing date and time of delivery or by facsimile transmittal. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices delivered by facsimile shall be effective the next business day provided a confirmation copy of successful transmittal to the receiving party is retained. Notices to the Land Trust shall be delivered to the following address, to the attention of the Land Trust Representative set forth in Paragraph D.1 of the Fundamental Terms of this Agreement:

To Land Trust: Irvine Community Land Trust  
One Civic Center Plaza (92606) (Hand Deliveries)  
P. O. Box 19575  
Irvine, CA 92623-9575  
Phone: (949) 724-7448  
Fax: (949) 724-7458

With Copy to: Rutan & Tucker, LLP

611 Anton Blvd., Suite 1400  
Costa Mesa, CA 92626  
Phone: (714) 641-5100  
Fax: (714) 546-9035  
Attn: William H. Ihrke, Esq.

Notices to Contractor shall be delivered to the address set forth below Contractor's signature on Part I of this Agreement, to the attention of Contractor's Representative set forth in Paragraph D.2 of the Fundamental Terms of this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this Section 4.2.

**4.3 Construction and Amendment.** 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 this Agreement or any other rule of construction which might otherwise apply. This Agreement shall be construed in accordance with and governed by California law, without regard to conflict of law principles. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

**4.4 Severability.** Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall continue in full force.

**4.5 Authority.** The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

**4.6 Special Provisions.** Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

**4.7 Precedence.** In the event of any discrepancy between Part I ("Fundamental Terms"), Part II ("General Provisions"), Part III ("Special Provisions"), Part IV ("Scope of Services"), and/or Part V ("Budget"), Part III shall take precedence and prevail over Parts I, II, IV and V; Part II shall take precedence and prevail over Parts I, IV and V; Part IV shall take precedence and prevail over Parts I and V; and Part V shall take precedence over Part I.

### PART III

#### SPECIAL PROVISIONS

- 1) **Business License Requirement.** If required by City law, Contractor who provides services for the Land Trust shall obtain, within five (5) days of executing this Agreement, a City of Irvine business license and shall maintain a current business license throughout the term of this Agreement.

**PART IV**  
**SCOPE OF SERVICES**

**I. GENERAL**

The Irvine Community Land Trust (“Land Trust”) participates in acquiring and disposing of residential property in the City of Irvine. Land Trust has sought, and has retained Contractor for, combined escrow and title services for single family detached (1 to 4 units) and multifamily attached (condominium and apartments) acquisitions and sales. Land Trust will acquire and own (short and long term) units requiring a variety of escrow and title services and products. In addition, the residential properties acquired by Land Trust, when sold, will be encumbered with multiple regulatory and loan documents. Escrow services provided by Contractor will be for residential transactions that may be all cash and that will use seller escrow instructions in addition to basic escrow documents. Contractor will provide the full range of escrow services to permit the successful close of a real estate transaction, in a timely manner, when all parties to the escrow have performed their obligations.

Contractor will be required to successfully manage escrow for purchase and sales transactions, provide updates on the status of individual escrows and provide additional reporting as necessary to ensure proper implementation and completion of escrow, and submission of required closing documents. In addition, Contractor will be required to provide title insurance services and title insurance for escrows that are opened and proceed to close.

Contractor must at all times during the term of this Agreement be authorized and licensed under California law to operate as an escrow and title company, and must be in compliance with all applicable provisions of state law with regard to the performance of escrow and title services.

**II. SPECIFIC SERVICES TO BE PROVIDED**

Contractor shall provide escrow and title services on behalf of Land Trust, which include but are not limited to:

- Acting as impartial depository of documents and funds
- Processing and coordinating the flow of escrow documents, any amendments and funds
- Keeping all parties informed of the progress on escrow and any missing documentation from the parties in escrow
- Responding to lender requirements, as necessary
- Providing preliminary title reports, zone & natural hazard disclosures, etc.
- Providing property searches
- Providing title insurance policies and endorsements, as requested
- Obtaining approvals from the parties to the escrow as required
- Implementing escrow instructions prepared by the parties
- Prorating and adjusting insurance, taxes, etc. as necessary
- Recording deeds, loans, regulatory agreements and other documents

- Disbursing funds to sellers, lenders, title insurance, recording fees, commissions, lien clearances, etc.
- Maintaining security and accountability of monies deposited in escrow
- Notification of wiring instructions and confirmation of deposited funds
- Coordination with Home Owner Association documents and requirements
- Providing notification of cancellation and instructions as necessary
- Researching and resolving title issues between parties to the escrow

Land Trust reserves the right to modify the Scope of Services in accordance with the Agreement, including Section 1.2 of Part II of the General Provisions.

## PART V

### BUDGET

**Pricing:** Total aggregate costs shall not exceed \$20,000. Land Trust shall have no obligation to pay Contractor any fees that, in the aggregate, amount to more than \$20,000 during any one (1) year period for services rendered during the term of this Agreement.

Escrow Fees:

\$1.50 per thousand of sales price plus a \$200 base fee

- Contractor will waive all ancillary fees to the seller (such as demand fee, document preparation fee, HOA processing fee, etc.)
- This waiver of ancillary fees does not include any out of pocket expenses such as mobile notary, messenger and wire fees (“out of pocket expenses”); provided, however, that Land Trust shall have no obligation to pay for out of pocket expenses in excess of \$200 per escrow

Title Fees:

Contractor will charge 40% of the applicable posted rates upon execution of this Agreement (rates start at \$440), plus additional expense reimbursement requests approved pursuant to this Part V.

Title charges include, but are not limited to:

Wire fee (\$25 per wire)

Messenger Fee (\$25)

Overnight Fee (\$25)

Electronic Recording Fee (\$25)

Sub-Escrow (\$125)

Payment for escrow and title services will be made monthly on approved invoices, with payment terms of net 30 days upon receipt of invoice. Contractor shall submit invoices within fifteen (15) days from the end of each month in which services have been provided. Contractor shall provide invoices with sufficient detail to ensure compliance to pricing as set forth in this Agreement. The information required shall include but is not limited to: date(s) of work, hours of work, hourly rate(s), and material costs.

Contractor’s submittal of any expense reimbursement request to the Land Trust shall include, on each invoice, detailed information including description, date of the expense, business purpose and amount. Contractor shall attach supporting documents substantiating the expense such as itemized receipts, paid invoices, or paid credit card statements (if description has sufficient detail). Any request for expense reimbursement must be pre-approved by the Land Trust.

Pricing shall remain firm for the first one (1) year Agreement term. Thereafter, any proposed pricing adjustment for follow-on renewal periods shall be submitted to the Land Trust

Representative in writing at least thirty (30) days prior to the commencement of the extended Agreement term. No proposed pricing adjustment from Contractor shall be effective unless and until the same is approved by the Land Trust Board of Directors. Land Trust and Contractor reserve the right to negotiate any pricing adjustment not to exceed the Bureau of Labor Statistics Consumer Price Index (CPI) data as follows: Los Angeles-Riverside-Orange County, CA; All Items; Not Seasonally Adjusted; annualized change comparing the most recent month's reported data to the same month of the prior year. (This information may be found on the U.S. Department of Labor's website at [www.bls.gov](http://www.bls.gov).)

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