



DATE: February 23, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Economic & Community Development Department

SUBJECT: **LEASE AGREEMENT WITH BUENA VISTA AUDUBON SOCIETY, FOR THE PREMISES AT 2202 SOUTH COAST HIGHWAY**

SYNOPSIS

Staff recommends that the City Council approve a twenty-year lease agreement with the Buena Vista Audubon Society for the premises at 2202 South Coast Highway, with educational programs and services about nature and wildlife provided to the community as valuable consideration in lieu of market rent, and authorize the City Manager to execute the agreement

BACKGROUND

In July 1982, the City leased property to Buena Vista Audubon Society (BVAS) to operate and construct a public nature center building. BVAS has continually operated and maintained the nature center and has provided educational programs, services and activities to the general public since completion of the building. The current lease agreement, dated July 14, 1982, terminated on July 13, 2007, with BVAS occupying the property on a month-to-month basis. BVAS has requested a new lease agreement to continue to occupy and operate a nature center at the property.

ANALYSIS

The new lease agreement is for a twenty-year term to commence retroactive to July 7, 2009, and terminate June 30, 2029. Under the prior lease agreement, in lieu of paying fair market rent, BVAS provided educational programs, services and activities to the public, and operated the nature center on the property. In addition, BVAS was also responsible for the maintenance and upkeep of the building and the property. Under the new lease agreement BVAS will continue the same arrangement with the City for the use and occupancy of the property as a nature center.

FISCAL IMPACT

The fiscal impact of the new lease agreement shall remain the same as under the old lease agreement as BVAS will continue to pay monetary rent in the amount of \$1.00 dollar per year for the 3,600 square foot building, in addition to providing the invaluable consideration of educational programs, services and activities to the public. Provided,

however, BVAS will be providing an annual report that is required to include the receipt of any operating grants or taxable profit from operations. Should BVAS reflect an operating grant or taxable profit from operations, BVAS would be required to pay additional proportionate monetary rent up to fair market value.

INSURANCE REQUIREMENTS

BVAS will be required to maintain the City's standard insurance requirement over the term of the new lease agreement.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

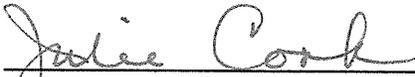
The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

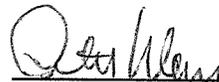
Staff recommends that the City Council approve a twenty-year lease agreement with the Buena Vista Audubon Society for the premises at 2202 South Coast Highway, with educational programs and services about nature and wildlife provided to the community as valuable consideration in lieu of market rent, and authorize the City Manager to execute the agreement

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LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

THE BUENA VISTA AUDUBON SOCIETY

FOR THE LEASE OF REAL PROPERTY

LOCATED AT

2202 SOUTH COAST HIGHWAY,

OCEANSIDE, CA

DATED

**LEASE AGREEMENT BETWEEN
THE CITY OF OCEANSIDE
AND THE BUENA VISTA AUDUBON SOCIETY**

THIS LEASE AGREEMENT, herein after called "Lease", dated as of _____, 2011 is executed between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "City", and the **BUENA VISTA AUDUBON SOCIETY**, hereinafter called "Lessee". Notwithstanding the date set forth above, the effective date of this Lease shall be the date the Oceanside City Council approves the Lease ("Effective Date").

RECITALS

WHEREAS, City is the lawful owner of that certain real property commonly described as 2202 South Coast Highway, located in the City of Oceanside, County of San Diego, State of California;

WHEREAS, Lessee is a recognized California non-profit agency providing management and operation of a nature center, educational programs, services and activities to the general public, including the citizens of the City of Oceanside;

WHEREAS, City and Lessee have previously entered into an agreement where Lessee has maintained and operated a public nature center and its offices from 2202 South Coast Highway, Oceanside, California, since July 14, 1982; and

WHEREAS, City and Lessee are desirous of entering into this agreement so that Lessee can continue to provide said educational programs, service and or activities.

NOW THEREFORE, the parties in consideration of the terms, conditions, covenants and provisions contained herein do mutually agree as follows:

AGREEMENT

SECTION 1: USES

1.01 Premises. City hereby leases to Lessee and Lessee hereby leases from City, in accordance with the terms, conditions, covenants, and provisions of this Lease, all that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as **the Buena Vista Audubon Nature Center**. Said real property is hereinafter called the "Premises."

1.02 Uses. It is understood that the building facility was constructed by Lessee and expressly agreed that the Premises are leased to Lessee solely and exclusively for the purpose of maintaining and operating a nature center facility together with related activities open to the general public, and for such other related or incidental purposes as may be first approved in writing by the City Manager of the City of Oceanside (“City Manager”) and for no other purpose whatsoever.

Lessee covenants and agrees to actively and continuously use and operate the Premises for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the term of this Lease, except for failure to so use caused by reasons or events beyond the reasonable control of Lessee including acts of God.

Said active and continuous use and operation enhances the value of the public's asset, provides needed public services, additional employment, taxes and other benefits to the general economy of the area. In the event that Lessee fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, Lessee shall be deemed in default under this Lease. Lessee shall not use the Premises in any manner which disrupts the quiet enjoyment of surrounding property owners' use of their property.

1.03 Related Discretionary Actions. By the granting of this Lease, neither City nor the City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

1.04 Quiet Possession. Lessee, performing the covenants and agreements herein, shall at all times during the term hereof peaceably and quietly have, hold and enjoy the Premises.

If City for any reason cannot deliver possession of the Property to Lessee at the commencement of the term of this Lease, or if during the term hereof Lessee is temporarily dispossessed through action or claim of a title superior to the City of Oceanside, then and in either of such events, this Lease shall not be voidable nor shall City be liable to Lessee for any loss or damage resulting therefrom. In the event that such dispossession causes an extraordinary economic burden on Lessee, Lessee shall have the option to terminate this Lease by submitting to the City Manager a thirty (30) days written notice together with its justifications for such termination. The City shall have the right to approve such termination and shall provide Lessee with a written determination thereof. Said approval shall not be unreasonably withheld.

1.05 Reservation of Rights. City shall not unreasonably or substantially interfere with Lessee's use of the Premises while Lessee is in possession of the Premises; however the City specifically retains the following rights:

a. Subsurface Rights. City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.

b. Easements. City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. Right to Enter. City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights.

SECTION 2: TERM

2.01 Commencement. The term of this Lease shall be for a period of twenty (20) years retroactive to July 7, 2009 and terminating on June 30, 2029.

2.02 Holdover. Any holding over by Lessee after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease, including rental adjustments, shall continue in full force and effect. In the event of any holding over, Lessee shall continue to the rent as set forth in this Lease or the fair market value for similar operations in the Southern California area, whichever is higher during the holdover period.

2.03 Abandonment by Lessee. Even if Lessee breaches the Lease and abandons the Premises, this Lease shall continue in effect for so long as City does not terminate this Lease, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover any amounts owing under the Lease as said amount becomes due, plus damages.

2.04 Quitclaim of Lessee's Interest. On termination of this Lease for any reason, at City's sole discretion, City shall provide Lessee with and Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. Lessee or its successor in interest shall deliver the same within five (5) days after receiving written demand thereof. City may record such deed only on the expiration or earlier termination of this Lease. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this Lease provision and the notice will be conclusive evidence of the

termination of this Lease and all Lessee's rights to the Premises.

2.05 Surrender of Premises. At the expiration or earlier termination of this Lease, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances created by Lessee, except those liens and encumbrances which existed on the date of the execution of this Lease by City. The Premises, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Lease, absent normal wear and tear.

2.06 Time is of Essence. Time is of the essence of all of the terms, covenants, conditions and provisions of this Lease.

SECTION 3: CONSIDERATION

3.01 Rent. City hereby agrees that the programs, services and activities provided by Lessee at the Premises are valuable consideration received from Lessee, that the provision of such programs, services and activities shall constitute the consideration to be paid by Lessee for its use of the Premises in accordance with the terms, covenants, conditions and provisions of this Lease. Lessee shall not be required to make any monetary payments to City for its use and occupation of the Premises, so long as such use is pursuant to Section 1.02 herein, except as hereinafter set forth.

3.02 Utilities. Lessee shall be solely responsible for obtaining and paying for all utilities (e.g. electricity, water, sewer, etc.), refuse collection and other services (e.g. telephone, cable television, telecommunications services, etc.) installation and service in connection with the use, occupation and operation of the Premises or any improvements thereto.

3.03 Annual Meeting with City. Notwithstanding Section 3.01 above, City and Lessee acknowledge that Lessee may have the opportunity throughout the Lease term to seek grants to provide operating funds. Lessee agrees to make reasonable efforts to apply for available grants which would specifically allow or not restrict Lessee from utilizing a portion of the grant funds for operations on the Premises (the "Operating Funds Grants") rather than solely on Lessee's programs.

With respect to any Operating Funds Grants actually received by Lessee, Lessee agrees to meet with City annually, within one hundred twenty (120) days after the end of Lessee's fiscal year, to discuss and provide information to the City on the Operating Funds Grants obtained by Lessee and Lessee's utilization of the funds provided by the Operating Funds Grants (the "Annual Meeting"). In the Annual Meeting, City and Lessee shall reasonably determine whether there are excess or sufficient funds in the Operating Funds Grants for the imposition of a fair and reasonable rental amount under this Lease during the period of time that funds are provided under the Operating Funds Grants. As part of the Annual Meeting, Lessee

shall specifically indicate to City the allocation of any Operating Funds Grants to the Premises and to other operations of Lessee, as reasonably determined by Lessee.

Although not currently Lessee's intention, Lessee may, during the term of this Lease term, generate significant taxable profit from the operations on the Premises. Additionally, Lessee agrees that in the event that Lessee at any time during the Lease term generates significant taxable profit from operations on the Premises under the Lease, as indicated on Lessee's Form 990-T return filed with the Internal Revenue Service, Lessee and City shall also discuss, at the Annual Meeting, the negotiation of a fair and reasonable rent for the Premises under the Lease based upon the taxable income from operations on the Premises.

The Annual Meeting and other obligations of Lessee as set forth in this Section 3.03 are newly imposed City obligations on non-profit tenants ("Non-Profit Obligations"). City agrees that if at any point during the Lease term the City adopts a policy to not require the Non-Profit Obligations in other existing or new City leases with non-profit tenants, then Lessee shall be relieved of its obligations under Section 3.03 during the time said City policy is effective.

SECTION 4: INSURANCE RISKS/SECURITY

4.01 Indemnity. Lessee shall indemnify and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the Lessee or its employees, agents, or others in connection with its use and occupation of the Premises under this Lease, except only for those claims arising from the sole negligence or sole willful misconduct of the City, its officers, agents, or employees. Lessee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, Lessee at its own expense shall, upon written request by the City, defend any such suit or action brought against the City, its officers, agents, or employees.

4.02 Insurance. Lessee shall take out and maintain at all times during the term of this Lease, commencing the Effective Date of the Lease, the following insurance at its sole expense:

- a. Lessee shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000

b. All insurance companies affording coverage to the Lessee shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Lease.

c. All insurance companies affording coverage to the Lessee shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide thirty (30) days written notice to the City should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. Lessee shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Lease.

f. Lessee shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the Lessee to provide such a substitution and extend the policy expiration date shall be considered a default by Lessee and may subject the Lessee to a termination of this Lease.

g. Maintenance of insurance by the Lessee as specified in this Lease shall in no way be interpreted as relieving the Lessee of any responsibility whatever and the Lessee may carry, at its own expense, such additional insurance as it deems necessary.

h. If Lessee fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Lessee shall reimburse City for the premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid; the names of the insurer(s); and the rate of interest. Said reimbursement and interest shall be paid by Lessee on the first (1st) day of the month following the notice of payment by City.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by Lessee to take out or maintain insurance as required in this Lease, or failure to provide the proof of insurance, shall be deemed a default under this Lease.

i. **Modification.** City, at its discretion, may require the revision of amounts and coverage at any time during the term of this Lease by giving Lessee sixty (60) days prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Lessee also agrees to

obtain any additional insurance required by City for new improvements, in order to meet the requirements of this Lease.

4.03 Accident Reports. Lessee shall, within seventy-two (72) hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved; a statement of the circumstances; the date and hour; the names and addresses of any witnesses; and other pertinent information.

SECTION 5: IMPROVEMENTS/ALTERATIONS/REPAIRS

5.01 Acceptance of Premises. Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises, including but not limited to an environmental assessment and/or geotechnical analysis of the Premises. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. Lessee further acknowledges that Premises are in the condition called for by this Lease and that Lessee does not hold City responsible for any defects in the Premises which were not directly caused by City.

5.02 Waste, Damage, or Destruction. Lessee shall give written notice to City of any fire or other damage that occurs on the Premises within seventy-two (72) hours of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

5.03 Maintenance. As part of the consideration for the Lease, Lessee agrees to assume full responsibility and cost for the operation, maintenance and repair of the Premises, including without limitation, the City Improvements and the Lessee improvements throughout the term of this Lease and without expense to City. Lessee will perform all maintenance, repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to City and in compliance with all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Premises free and clear of

rubbish and litter, or any other fire hazards. Lessee waives all right to make repairs at the expense of City as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

For the purpose of keeping the Premises in a good, safe, healthy and sanitary condition, City shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in, the Premises. In the event that City finds that the Premises are not in a decent, safe, healthy, and sanitary condition, Lessee must perform the necessary maintenance, repair or replacement work within ten (10) days after written notice from City. In the event Lessee fails to perform such work, City shall have the right, upon written notice to Lessee, to have any necessary maintenance work done at the expense of Lessee, and Lessee shall promptly pay any and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Lessee shall make payment no later than ten (10) days after City's written demand therefor. City shall not be required at any time to perform maintenance or to make any improvements or repairs whatsoever, on or for the benefit of the Premises. The rights reserved in this section shall not create any obligations or increase obligations for City elsewhere in this Lease.

5.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without prior written approval by the City Manager. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. City shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

5.05 Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, and encumbrance or claim on or with respect to all or any portion of the Premises for which Lessee does not have the prior written consent of the City Manager.

5.06 Encumbrance. Upon receiving prior consent by the City Manager, Lessee may encumber this Lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of Lessee, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the Premises. However, a reasonable portion of the loan proceeds

may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by City; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the Premises or on any permanent improvements thereon shall also have prior approval in writing of City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises or otherwise to the benefit of the City at the discretion of the City Manager. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this Lease and shall not amend or alter any of the terms, covenants or conditions of this Lease.

5.07 Taxes. Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other Lessee activities related to the Premises, including any licenses or permits.

Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes.

5.08 Signs. Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City Manager and any such device(s) shall conform to all City of Oceanside ordinances and regulations. If any such unauthorized item is found on the Premises, Lessee shall remove the item at its expense within twenty-four (24) hours of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

5.09 Ownership of Improvements and Personal Property.

a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises constructed on the Premises by Lessee, excepting such improvements and operating equipment placed on the Premises by Lessee which may be removed without causing damage to the Premises, shall at Lease expiration or termination be deemed to be part of the Premises and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Lease.

b. If City elects not to assume ownership of all or any improvements, trade

fixtures, structures and installations, City shall so notify Lessee in writing thirty (30) days prior to expiration or termination of this Lease, and Lessee shall remove all such improvements, structures and installations as directed by City at Lessee's sole cost and expense on or before Lease expiration or termination. If Lessee fails to remove any improvements, structures, and installations as directed, Lessee agrees to pay City the full cost of any removal.

c. Lessee owned machines, appliances, equipment (other than trade fixtures), and other items of personal property, except as described as Lessee Improvements shall be removed by Lessee by the date of the expiration or termination of this Lease. At City's election, any said items which Lessee fails to remove will be considered abandoned and become City's property free of all claims and liens, or City may, at its option, remove said items at Lessee's expense.

d. If any removal of such personal property by Lessee results in damage to the remaining improvements on the Premises, Lessee shall repair all such damage.

5.10 Eminent Domain. If all or part of the Premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of City and Lessee (or beneficiary or mortgagee) will be as follows:

a. **Total Taking.** In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. **Partial Taking.** In the event of a partial taking, if, in the opinion of Lessee, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

In the event of a partial taking, if, in the opinion of Lessee, the remainder of the Premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.

c. **Award.** All monies awarded in any such taking of the Premises shall belong to City, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, Lessee shall be entitled to any award attributable to the taking of or damages to Lessee's then remaining leasehold interest in the installations or improvements of Lessee. City shall have no liability to Lessee for any award not provided by the condemning authority.

d. Transfer. City has the right to transfer City's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, Lessee shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this lease.

e. No Inverse Condemnation. The exercise of any City right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation so long as such rights do not unreasonably or substantially interfere with Lessee's operations.

SECTION 6: GENERAL PROVISIONS

6.01 Notices. All notices, demands, requests, consents or other communications which this Lease contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY:

CITY OF OCEANSIDE
Property Management Division
300 North Coast Highway
Oceanside, CA 92054
Attention: Real Estate Manager

To LESSEE:

Buena Vista Audubon Society
P.O. Box 480
Oceanside, CA 92049-0480

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of: i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.02 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Lease. The City Manager may delegate authority in connection with this Lease to the City Manager's designee(s).

6.03 Nondiscrimination. Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, familial status, sex, religious creed, color, ancestry, national origin, age, disability, medical condition or sexual orientation in Lessee's use of the Premises.

6.04 Equal Opportunity. Lessee shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, religious creed, color, religion, sex or national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Lessee shall certify in writing to City that Lessee is in compliance and throughout the term of this Lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State and Local law, regulation and policy (including without limitation those adopted by City) related to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this Lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default of this Lease and City may exercise any right as provided herein and as otherwise provided by law.

6.05 Entire Agreement. This Lease Agreement contains the entire understanding between the City and Lessee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself.

6.06 Interpretation. The interpretation, validity and enforcement of the Lease shall be governed by and construed under the laws of the State of California. The venue of any judicial action brought to enforce any condition, covenant or provision of this Lease shall be in San Diego County, California. The Lease does not limit any other rights or remedies available to City.

The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Lease shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Lease are severable.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

6.07 Agreement Modification. This Lease may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.08 Waiver. Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of any amounts associated with this Lease is not a waiver of any default preceding the amount payment. City and Lessee specifically agree that the property constituting the Premises is City owned and held in trust for the benefit of the citizens of the City of Oceanside and that the failure of the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

6.09 Attorney's Fees. In the event a suit is commenced by City against Lessee to enforce payment of amounts due, or to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for forfeit of this Lease, and the possession of the Premises, provided City effects a recovery, Lessee shall pay City all costs expended in any action, together with a reasonable attorney's fee to be fixed by the Court.

6.10 Assignment and Subletting - No Encumbrance. A major consideration for this Lease is the unique expertise of Lessee in the operation and management of a nature facility at a municipally owned facility. Accordingly, notwithstanding anything herein to the contrary, Lessee shall not assign to, contract for and/or allow another individual or entity to operate and/or manage the nature facility operation at the Premises. Further, this Lease and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City. Any attempt to assign or delegate this Lease without the express written consent of City shall be void and of no force or effect. Consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

6.11 Defaults and Termination. It is mutually understood and agreed that if any default be made in the payment of amounts as herein provided or in the performance of the covenants, conditions, or agreements herein (any covenant or agreement shall be construed and considered as a condition); or should Lessee fail to

fulfill in any manner the uses and purposes for which the Premises are leased as stated in this Lease, and such default is not cured within five (5) days after written notice thereof if default is in the submittal of amounts due as required in this Lease; or ten (10) days after written notice thereof if default is in the performance of the failure to use provisions pursuant to Section 1.02 of this Lease; or thirty (30) days after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), City shall have the right to immediately terminate this Lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from the Premises and shall have no further right to claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate City for all the detriment proximately caused by the Lessee's failure to perform its obligations under the Lease or which in the ordinary course of things would be likely to result there from.

In the event City consents to an encumbrance of the Lease for security purposes in accordance with Section 5.06 of this Lease, it is understood and agreed that City shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within five (5) days, if the default is for the failure to submit rent as required, or within fifteen (15) days following the expiration of the period within which Lessee may cure such default, provided, however, City shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this Lease pursuant to the provisions of this section, City shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provisions of this Lease.

6.12 Bankruptcy. In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

The conditions of this section shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised Premises which is of record with City and has been consented to by resolution of the City Council, or to said beneficiary's successors in interest consented to by resolution of the City Council, as long as there remains monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to City all rent due or coming due under the

provisions of this Lease and the Premises are continuously and actively used in accordance with Section 1.02 of this Lease.

6.13 Gender/Singular/Plural. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

SECTION 7: SPECIAL PROVISIONS

7.01 Standards of Operation. Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner.

7.02 Hours of Operation. The Lessee agrees that it shall conduct business on the Premises to conform to the published hours and days of operation as established, and in the best interest of the public, unless otherwise approved in writing by the City.

7.03 Manner of Providing Service. Lessee shall provide an experienced and well qualified "on-site" supervisor to oversee all operations conducted by Lessee on the Premises. Said supervisor shall be empowered with authority to act on behalf of Lessee in response to reasonable requests from City to perform maintenance, repairs, and replacements on the Premises to insure the public's health, safety, and welfare. Lessee shall ensure that its employees shall at all times conduct themselves in a creditable and dignified manner, and they shall conform to all laws, rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the City. Lessee shall maintain a staff in adequate size and number, to City's satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

7.04 Merchandise and Equipment. City retains the right to require the Lessee to discontinue the sale or use of those items that are of a quality unacceptable to the City.

7.05 Continued Occupancy. Lessee covenants and agrees to, and it is the intent of this Lease that the Lessee shall, continuously and uninterrupted during the term of the Lease, occupy and use the Premises for the purposes hereinabove specified, except while Premises are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, City shall be promptly notified by Lessee.

7.06 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous;

and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon said or other premises and the improvements thereon.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Lessee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City.

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SECTION 8: SIGNATURES

8.01 Signature Page. The individuals executing this Lease represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Lease on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Lease Agreement be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

Date _____

By: _____
City Manager

APPROVED AS TO FORM:

By: *Richard Samuelson, 1987.*
City Attorney

LESSEE

BUENA VISTA AUDUBON SOCIETY

Date January 14, 2011

By: *David A. Billings*

Name: David A. Billings

Title: President

Date January 14, 2011

By: *J. Dennis Huckabay*

Name: J. Dennis Huckabay

Title: Vice President

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

On 1/14/11 before me, Curtis Jackson, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared James Dennis Huckabay and David Allen Billings
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/her/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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.

Place Notary Seal Above

Signature [Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

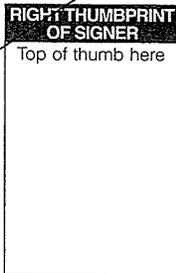
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

