



RANCHO PALOS VERDES

**DRAFT IMPLEMENTING AGREEMENT
FOR
NATURAL COMMUNITIES
CONSERVATION PLANNING
SUBAREA PLAN**

Prepared for
City of Rancho Palos Verdes

URS Project No. 27644296.08000

July 30, 2004

DRAFT

IMPLEMENTING AGREEMENT

by and among

UNITED STATES FISH AND WILDLIFE SERVICE

CALIFORNIA DEPARTMENT OF FISH AND GAME

CITY OF RANCHO PALOS VERDES

PALOS VERDES PENINSULA LAND CONSERVANCY

TO ESTABLISH A NATURAL COMMUNITIES CONSERVATION PLAN ("NCCP") FOR
THE CONSERVATION OF THREATENED, ENDANGERED AND OTHER SPECIES IN
RANCHO PALOS VERDES, CALIFORNIA

July 2004

This Implementing Agreement ("Agreement") is entered into as of the day of, by and among the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS"), an Agency of the United States Department of the Interior; the CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), a Subdivision of the California Resources Agency; and THE CITY OF RANCHO PALOS VERDES ("CITY"), a municipal corporation, and the PALOS VERDES PENINSULA LAND CONSERVANCY ("PVPLC"), a nonprofit public benefit (501(c)3) corporation, hereinafter collectively called the "Parties."

AGREEMENT

Based upon the recitals, definitions, mutual covenants and obligations, and other provisions set forth below, and other valuable consideration, the Parties agree as follows:

1.0 RECITALS

1.1 The Rancho Palos Verdes Natural Communities Conservation Plan ("RPV NCCP Subarea Plan") describes a cooperative federal, state and local program of conservation for a number of "Covered Species" of plants and animals. The RPV NCCP Subarea Plan is a product of lengthy study and negotiation by the Parties and other interested persons and entities, and represents coordination of private development and conservation interests with federal, state and local governments.

1.2 The RPV NCCP Subarea Planning Area is depicted on the map attached to this Agreement as **Exhibit A**. The NCCP Subregional Area includes the jurisdiction of the City of Rancho Palos Verdes. The CITY has chosen to participate in the NCCP, and upon preparing a Subarea Plan and obtaining Federal and State take authorizations, RPV will become a "Participating Local Jurisdiction."

1.3 A goal of the RPV NCCP Subarea Plan is to conserve biodiversity in the RPV NCCP Subarea Planning Area, to achieve certainty in the land development process for both private sector and public sector land development projects, and to assure public access to preserved areas is both maintained and consistent with habitat preservation goals.

1.4 Pursuant to the federal Endangered Species Act ("ESA") and the California Endangered Species Act ("CESA"), the United States and the State of California, respectively, have identified certain plant and animal species which are or may be found in the RPV NCCP Subarea Planning Area and which, pursuant to the ESA or CESA or other laws or programs, have been listed as threatened or endangered, have been proposed for listing as threatened or endangered, are candidates for listing as threatened or endangered, or which are otherwise of concern. Of such species, those which will be adequately conserved by the RPV NCCP Subarea Plan when the RPV NCCP Subarea Plan is fully implemented are referred to in this Agreement as "Covered Species." The independent and severable take authorizations issued to the CITY apply to Species Adequately Conserved (as defined herein) by the RPV NCCP Subarea Plan, ("Subarea Plan") which are listed in **Exhibit B**.

The take authorizations also apply to those species adequately conserved by the Subarea Plan within the RPV NCCP Subarea Planning Area, which are collectively referred to as "RPV Covered Species." These species are also listed in **Exhibit B**. While the take authorizations are effective as to all Species Adequately Conserved so long as the CITY properly implements the RPV NCCP

Subarea Plan, take authorizations for all other RPV Covered Species shall remain effective for so long as the CITY, and all other approved NCCP subarea plans on which the conservation of the particular RPV Covered Species depends, remain in effect and are properly implemented. Because a take of listed plant species is not prohibited under the Federal ESA and therefore is not authorized under the Section 10(a)(1)(B) Permit issued to the CITY, plant species included on the list of RPV Covered Species and Species Adequately Conserved are listed on the Section 10(a)(1)(B) Permit in recognition of the conservation measures and benefits provided for such plant species under the RPV NCCP Subarea Plan. Any reference in this Agreement or in the RPV NCCP Subarea Plan to Incidental Take or Take of RPV Covered Species or Species Adequately Conserved shall, for the purpose of incidental take authorized under the Section 10(a)(1)(B) Permit, refer solely to species other than plants on the RPV Covered Species list.

1.5 Land development within the RPV NCCP Subarea Planning Area, including both public and private projects, may result in a short-term reduction of Covered Species habitat and/or the taking of Covered Species incidental to the carrying out of otherwise lawful activities.

1.6 The CITY participated in the development of the RPV NCCP Subarea Plan to meet the requirements of the ESA, the CESA, the Natural Community Conservation Planning Act of 1991 ("NCCP Act") the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA") with respect to public and private development within the CITY and to avoid potential obstacles posed by project-by-project review under the ESA and CESA. Consistent with the NCCP Act, the RPV NCCP Subarea Plan is a broad-based planning effort intended to provide for effective protection and conservation of the City's wildlife and plant heritage while continuing to allow appropriate development and growth. Such planning is an effective tool in protecting the region's biodiversity while reducing conflicts between protection of wildlife and plants and the reasonable use of natural resources for economic development. The RPV NCCP Subarea Plan has been developed through a cooperative effort involving the USFWS, CDFG, local government agencies, property owners, development interests, environmental groups, and the public within the RPV NCCP Subarea Planning Area.

1.7 The RPV NCCP Subarea Plan is a comprehensive, long-term habitat conservation plan for the Covered Species that addresses the needs of multiple species and the preservation of natural vegetation communities. The RPV NCCP Subarea Plan addresses the potential impacts of urban growth, natural habitat loss and species endangerment, and creates a plan to mitigate for the potential loss of Covered Species and their habitat due to the direct, indirect, and cumulative impacts of future development of both private and public lands within the RPV NCCP Subarea Planning Area.

1.8 The RPV NCCP Subregional Plan as implemented through this Agreement establishes the conditions under which the CITY, for the benefit of itself and of public and private landowners and other land development project proponents within its Subarea boundaries, will receive from the USFWS and the CDFG certain long-term take authorizations (an acknowledgment that the RPV NCCP Subarea Plan satisfies the conditions established in the Section 4(d) Special Rule for the coastal California gnatcatcher) that will allow the taking of RPV Covered Species and Species Adequately Conserved incidental to land development, construction of public facilities, and other lawful land uses which are authorized by the CITY.

1.9 As more particularly described in Section 1.4 of this Agreement, the take authorizations will authorize the Incidental Take of all RPV Covered Species and Species Adequately Conserved, including those RPV Covered Species and Species Adequately Conserved that are not presently listed as threatened, endangered or candidate species under the ESA or CESA. Conserving unlisted RPV Covered Species and Species Adequately Conserved (the "taking" of which is not unlawful under the ESA or CESA) the same as listed RPV Covered Species and Species Adequately Conserved (the taking of which is unlawful in the absence of a take authorization) equally in the RPV NCCP Subarea Plan, the RPV NCCP Subarea Plan may prevent such species from ever becoming threatened or endangered and will provide certainty regarding how the subsequent listing of such species under the ESA and CESA will affect permitting and mitigation requirements for future land development within the RPV NCCP Subarea Plan.

1.10 Implementation of the RPV NCCP Subarea Plan will allow the CITY to maintain development flexibility by proactively planning a city-wide habitat reserve system that can meet future development project mitigation needs, while recognizing the independent land use planning and permitting authority of the CITY.

1.11 Preservation of natural vegetation communities and wildlife will significantly enhance the quality of life in the RPV NCCP Subarea Planning Area and set aside lands for the future use and enjoyment of the citizens of RPV, the state and the nation.

1.12 The RPV NCCP Subarea Plan was submitted to the USFWS and CDFG in support of, respectively, an application for a Section 10(a) Permit and a NCCP Act Authorization. The CDFG has approved the RPV NCCP Subarea Plan, and the USFWS has issued written concurrence that the RPV NCCP Subarea Plan meets the statutory criteria for issuance of a Section 10(a) Permit.

1.13 Any project approved by the CITY must be in conformance with the City of RPV NCCP Subarea Plan, which incorporates the requirements of the RPV NCCP Subarea Plan, including the habitat and species conservation goals and requirements found in Tables 3-1 and 3-4 of the RPV NCCP Subarea Plan.

1.14 The purposes of this Agreement are:

- A. To ensure the implementation of the CITY of Rancho Palos Verdes Subarea Plan;
- B. To contractually bind each of the Parties to fulfill and faithfully perform the obligations, responsibilities, and tasks assigned to it pursuant to the terms of the RPV NCCP Subarea Plan and this Agreement; and,
- C. To provide remedies and recourse should any of the Parties fail to perform its obligations, responsibilities, and tasks as set forth in the NCCP, the CITY of RPV NCCP Subarea Plan, and this Agreement.

2.0 DEFINITIONS

The following terms as used in this Agreement shall have the meanings set forth below:

2.1 "Additional Conservation Measures" means the conservation measures beyond those provided by the NCCP and the Subarea Plan which the

USFWS and CDFG may seek from the CITY under the circumstances described in Sections 9.2(a) and 9.3 of this Agreement.

2.2 "Agreement" means this document.

2.3 "CDFG" means the California Department of Fish and Game, a subdivision of the California Resources Agency charged with administering the California Endangered Species Act and the Natural Community Conservation Planning Act.

2.4 "CEQA" means the California Environmental Quality Act (Cal. Public Resources Code § 21000 et seq.), including all regulations promulgated pursuant to that Act.

2.5 "CESA" means the California Endangered Species Act (California Fish and Game Code § 2050 et seq.), including all regulations promulgated pursuant to that Act. CESA prohibits CDFG from authorizing any incidental take of a state-listed threatened or endangered species if that take would jeopardize the continued existence of the species.

2.6 "Changed Circumstances" means, pursuant to 50 CFR 17.3, changes to Section 4 of the RPV NCCP Subarea Plan.

2.7 "RPV NCCP Subarea Plan", "Habitat Conservation Plan" and "HCP" mean the Natural Communities Conservation Plan prepared by the CITY of Rancho Palos Verdes for the RPV NCCP Subarea Planning Area pursuant to Section 10(a) of the ESA (16 USC. § 1539(a)) and the NCCP Act, and dated as adopted by the CITY and approved by USFWS and CDFG is the approved planning document detailing the actions required by this Agreement and is a comprehensive habitat conservation planning program that addresses multiple species habitat needs and the preservation of native vegetation in the CITY of RPV in southwestern Los Angeles County, California.

2.8 "Effective Date of Agreement" means the date following execution of this Agreement by all Parties, on which the last of the required take authorizations is issued.

2.9 "Effective Date of Take Authorizations" means the date upon which the Subarea Plan becomes effective through enactment of the last of the General Plan amendments and ordinances specified in the RPV NCCP Subarea Plan.

2.10 "ESA" means the federal Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.), including all regulations promulgated pursuant to that Act.

2.11 "HLIT" means the Habitat Loss and Incidental Take Ordinance(s) of the CITY which establishes mitigation standards for biological resources and implements the RPV NCCP Subarea Plan outside of Covered Projects. Third Party Beneficiary status will be extended to persons and entities under the jurisdiction and control of the CITY through permits issued pursuant to the HLIT.

2.12 "Incidental Take" means the Take of a species which is incidental to and not the purpose of the carrying out of an otherwise lawful activity.

For purposes of the Section 10(a)(1)(B) Permit, Incidental Take refers solely to animal species.

2.13 "MBTA" means the federal Migratory Bird Treaty Act (16 U.S.C. § 701 or seq.), including all regulations promulgated pursuant to that Act.

2.14 "RPV NCCP Subarea Planning Area" consists of approximately 13.6 square miles within the CITY of RPV in southwestern Los Angeles County, The RPV NCCP Subarea Plan Area is depicted on **Exhibit A**.

2.15 "NCCP Act" means the California Natural Community Conservation Planning Act of 1991, as amended (California Fish and Game Code § 2800 et seq.), including all regulations promulgated pursuant to the Act. Amendments to the NCCP Act effective January 1, 2003 (Chapter 4, sections 1 and 2 of California statutes 2002 (S.B. 107)) expressly provides that the RPV NCCP Subarea Plan will be solely governed in accordance with the NCCP Act as it reads on December 31, 2001, and not by the other substantive provisions S.B. 107.

2.16 "NCCP Act Authorization" means the authorization issued in accordance with this Agreement by CDFG under California Fish and Game Code § 2835. The NCCP Act Authorization permits the Take of RPV Covered Species, including those species listed under CESA as threatened or endangered, species that are candidates for such a listing, and unlisted species except that the NCCP Act Authorization does not as of the Effective Date authorize Take of five fully protected birds that are listed in Fish and Game Code § 3511 (golden eagle, American peregrine falcon, bald eagle, California brown pelican and California least tern) or the mountain lion, which is protected by Fish and Game Code § 4800.

2.17 "NCCP Plan" means a plan developed in accordance with the NCCP Act that provides comprehensive management and conservation of multiple wildlife species, and which identifies and provides for the regional or area-wide protection and perpetuation of natural wildlife diversity while allowing compatible and appropriate development and growth.

2.18 "No Surprises Rule" means the rule promulgated by USFWS and currently codified at 50 CFR 17.3, 1722(6)(5) and 17.32(6)(5) that extends certain assurances regarding future mitigation obligations to permittees obtaining incidental take permits under Section 10(a) of the Federal ESA.

2.19 "Operating Conservation Program" means the totality of the conservation and management measures provided for under the RPV NCCP Subarea Plan to minimize, mitigate and monitor the impacts of take of the Covered Species, as described in Sections 4 through 6 of the RPV NCCP Subarea Plan. The Operating Conservation Program includes the CITY'S reporting obligations under the Section 10(a)(1)(B) Permit and NCCP Act Authorization and the CITY's responses to Changed Circumstance described in the Plan.

2.20 "Party" and "Parties" mean the signatories to this Agreement, namely the United States Fish and Wildlife Service, the California Department of Fish and Game, the City of Rancho Palos Verdes, and the Palos Verdes Peninsula Land Conservancy.

2.21 "Habitat Reserve" means areas within the CITY incorporated limits that have been dedicated and accepted by the CITY for permanent habitat conservation and will be managed for their biological resources.

2.22 "Preserve Manager" means the Palos Verdes Peninsula Land Conservancy, the entity responsible for overseeing the day-to-day and long-range preserve management activities within the Reserve, including, but not limited to management of resources, restoration of habitat, and enforcement of open space restrictions.

2.23 "Section 4(d) Special Rule" means the regulation concerning the coastal California gnatcatcher, published by the USFWS on December 10, 1993 (58 Federal Register 65088) and codified at 50 C.F.R. § 17.41(b), which describes the particular set of conditions under which the Incidental Take of the coastal California gnatcatcher in the course of certain land use activities is lawful.

2.24 "Section 10(a)(1)(B) Permit" means the permit issued by the USFWS to the CITY under section 10(a)(1)(B) of the ESA (16 U.S.C. § 1539(a)(1)(B)) to allow the Incidental Take of animal species on the list of Species Adequately Conserved and the list of RPV Covered Species and which identifies plant species which are adequately conserved by the RPV NCCP Subarea Plan alone or in combination with other approved NCCP Subarea Plans.

2.25 "Significantly Conserved Vegetation Communities" means those vegetation communities described in Sections 2.2 and 4 of the RPV NCCP Subarea Plan and as listed on **Exhibit C** to this Agreement, which will be significantly conserved through implementation of the RPV NCCP Subarea Plan and the approved RPV NCCP Subarea Plan.

2.26 "Species Adequately Conserved" means those species listed in **Exhibit B** and Table 1-1 of the CITY of RPV NCCP Subarea Plan that are adequately conserved by the RPV NCCP Subarea Plan

2.27 "Subarea" means the area encompassed by the RPV NCCP Subarea Planning Area, as depicted in Exhibit A.

2.28 "Sufficiently Conserved Vegetation Communities" means those vegetation communities described in Section 2 of the RPV NCCP Subarea Plan and as listed on **Exhibit C** to this Agreement, which will be sufficiently conserved through implementation of the RPV NCCP Subarea Plan.

2.29 "Take" and "Taking" have the meaning provided by the ESA and the California Fish and Game Code, including relevant regulations and case law.

2.30 "Take Authorizations" means the authority granted through the Section 10(a)(1)(B) Permit and the NCCP Act Authorization.

2.31 "Third Party Beneficiary" means any landowner or other public or private entity, including those undertaking Covered Projects, that obtains and maintains Third Party beneficiary status in compliance with Sections 10 and 17 of this Agreement.

2.32 "USFWS" means the United States Fish and Wildlife Service, an agency of the United States Department of the Interior, charged with administering the ESA.

2.47 "Wetlands" means generally those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. For purposes of the RPV NCCP Subarea Plan, Wetlands are those lands that contain one or more of the naturally occurring wetland communities listed on Table 2-1 of the RPV NCCP Subarea Plan and further described in Section 2 of the RPV NCCP Subarea Plan.

3.0 HABITAT CONSERVATION PLAN/NCCP PLAN

3.1 Pursuant to Section 10(a) of the ESA (16 U.S.C. § 1539(a)), the City of Rancho Palos Verdes has prepared a Habitat Conservation Plan known as the "RPV NCCP Subarea Plan." The RPV NCCP Subarea Plan qualifies as an NCCP Plan under the NCCP Act. The RPV NCCP Subarea Plan proposes a program of conservation for the Covered Species and protection of their habitat in perpetuity through land use regulation, acquisition, habitat restoration, and habitat management. The CITY has submitted its Subarea Plan to the USFWS and the CDFG, and the CITY has requested that the USFWS issue a Section 10(a) Permit and that the CDFG issue a NCCP Act Authorization, each of which actions will allow the Incidental Take within the Subarea of those Covered Species determined by USFWS and CDFG to be adequately conserved by the RPV NCCP Subarea Plan and the RPV NCCP Subarea Plan in accordance with this Agreement (such species are designated as RPV Covered Species and Species Adequately Conserved and are listed in **Exhibit B**). The CITY has also requested that the USFWS acknowledge that RPV NCCP Subarea Plan satisfies the conditions under the Section 4(d) Special Rule to allow the Incidental Take of the coastal California gnatcatcher within the Subarea.

3.2 This Agreement is intended to specify, in contract language, the obligations of the Parties under the RPV NCCP Subarea Plan, recognizing that the RPV NCCP Subarea Plan was not drafted as a contract document.

4.0 PHASED IMPLEMENTATION

The RPV NCCP Subarea Plan Area includes lands within the jurisdictional boundaries of the CITY of Rancho Palos Verdes. The USFWS and CDFG recognize and agree that the entire RPV NCCP Subarea Plan will not be implemented simultaneously. Implementation of the RPV NCCP Subarea Plan as a whole can and may be phased. As of the Effective Date, the USFWS and CDFG recognize and acknowledge that the CITY of Rancho Palos Verdes has an approved subarea plan. Furthermore, the CITY of Rancho Palos Verdes will receive take authorizations and will obtain the benefits of and incur the obligations imposed by those take authorizations cover only those Covered Species determined by USFWS and CDFG to be adequately covered by the RPV NCCP Subarea Plan (Species Adequately Conserved).

The CDFG has approved the RPV NCCP Subarea Plan, and the USFWS has issued written concurrence that the RPV NCCP Subarea Plan meets the statutory criteria for issuance of a Section 10(a)(1)(B) Permit for species determined by USFWS and CDFG to be adequately conserved by the RPV NCCP Subarea Plan (Rancho Palos Verdes Covered Species). These species are specifically identified in **Exhibit B** to the Rancho Palos Verdes Implementing Agreement.

5.0 SEVERABILITY

The USFWS and CDFG recognize and agree that the take authorizations received by the CITY with respect to Species Adequately Conserved are independent and severable from the other take authorizations which have been or will be issued to other potential Participating Local Jurisdictions or Participating Special Entities, except as otherwise provided in this section. Subject to other provisions of this Agreement, the CITY's take authorizations for Species Adequately Conserved will remain effective so long as the CITY fulfills its obligations under the Subarea Plan, this Agreement, and the Section 10(a)(1)(B) Permit and NCCP Act Authorization to implement the RPV NCCP Subarea Plan through the RPV NCCP Subarea Plan, including its obligation under Section 9.14 to enforce the terms of the Subarea Plan, this Agreement and the Section 10(a)(1)(B) Permit and NCCP Act Authorization as to itself and to all Third Party Beneficiaries who receive Incidental Take authorization through the CITY's Section 10(a)(1)(B) Permit and NCCP Act Authorization.

As to all other persons and entities within the CITY's jurisdiction and control, the CITY agrees to prohibit, through enforcement of its municipal code, development or other activities contrary to the Subarea Plan, whether or not those parties receive Incidental Take authorization through the CITY's take authorizations. The CITY's take authorizations with respect to Species Adequately Conserved may not be suspended, revoked or terminated without its consent due solely to the actions or inactions of any other person or entity, unless USFWS or CDFG determine that continuation of the permitted activity would appreciably reduce the likelihood of the survival and recovery in the wild of a Species Adequately Conserved or the actions or inactions of such persons or entities renders the CITY unable to implement the RPV NCCP Subarea Plan.

6.0 LEGAL AUTHORITY OF THE USFWS

The USFWS enters into this Agreement pursuant to the ESA, the Fish and Wildlife Coordination Act (16 U.S.C. § 661 - 666e), and the Fish and Wildlife Act of 1956 (16 U.S.C. § 742(f) et seq.). Section 10(a)(1)(B) of the ESA, 16 U.S.C. § 1539(a)(1)(B), expressly authorizes the USFWS to issue a Section 10(a) Permit to allow the Incidental Take of animal species listed as threatened or endangered under the ESA. The legislative history of Section 10(a)(1)(B) and the No Surprises Rule codified at 50 CFR 17.22(b)(5) and 17.32(b)(5) clearly indicates that Congress also contemplated that the USFWS may approve Habitat Conservation Plans that protect unlisted species as if they were listed under the ESA, and that in doing so the USFWS may provide Section 10(a)(1)(B) assurances for such unlisted species.

7.0 LEGAL AUTHORITY OF THE CDFG

The CDFG enters into this Agreement pursuant to the NCCP Act. CDFG may authorize the Take of RPV Covered Species pursuant to Fish and Game Code Section 2835 without respect to whether those species are listed under CESA.

8.0 SATISFACTION OF LEGAL REQUIREMENTS

In order to fulfill the legal requirements that will allow the USFWS to issue the Section 10(a)(1)(B) Permit, an NCCP must provide measures that are intended to ensure that any Take occurring within the Subarea will be incidental; that the impacts of such Incidental Take will, to the maximum extent practicable, be minimized and mitigated; that adequate funding to implement the NCCP will be provided; and that the Incidental Take will not appreciably

reduce the likelihood of the survival and recovery of the Covered Species in the wild. The USFWS has found that RPV NCCP Subarea Plan, as implemented pursuant to this Agreement, provides such measures and satisfies the legal requirements necessary for the USFWS to issue a Section 7 0(a)(1)(B) Permit authorizing the Incidental Take of Rancho Palos Verdes Covered Species, and to provide certainty in the form of specific assurances contained in the No Surprises Rule. Likewise, the CDFG finds that the RPV NCCP Subarea Plan, as implemented pursuant to this Agreement, satisfies the legal requirements necessary for the CDFG to issue a NCCP Act Authorization authorizing the Incidental Take of Rancho Palos Verdes Covered Species, and to provide certainty in the form of specific assurances contained in this Agreement.

9.0 MUTUAL ASSURANCES

9.1 Purpose The primary purpose of this Agreement is to provide for the longterm reconciliation of new land development within the RPV NCCP Subarea Plan Area with the conservation and protection of the Rancho Palos Verdes Covered Species. Based on and in consideration of this Agreement, the RPV NCCP Subarea Plan, the Parties hereby agree on and the USFWS and CDFG hereby provide assurances pursuant to their respective regulatory authorities to the CITY, Participating Special Entities, and Third Party Beneficiaries with regard to the following provisions contained in this Section 9.0.

9.2. "No Surprises" Assurances of USFWS and CDFG Assurances:

- (a) "Unforeseen Circumstances". As provided in 50 C.F.R. 17.3, the term "Unforeseen Circumstances" shall mean changes in circumstances affecting a species or geographic area covered by the RPV NCCP Subarea Plan that could not reasonably have been anticipated by the plan developers, USFWS, and CDFG at the time of the Plan's negotiation and development, and that results in a substantial and adverse change in the status of a Covered Species.
- (1) "No Surprises" Assurances". Pursuant to the No Surprises Rule at 50 C.F.R. Sections 17.3, 17.22(b)(5) and 17.32(b)(5), and provided that the CITY is properly implementing the RPV NCCP Subarea Plan, USFWS shall not require the CITY to provide additional land, water or other natural resources, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level provided for under the RPV NCCP Subarea Plan, this Agreement and the Section 10(a)(1)(B) Permit with respect to Covered Activities without the consent of the CITY. Adaptive Management modifications and plan responses to Changed Circumstances are provided for under the RPV NCCP Subarea Plan and therefore are not subject to the restrictions on additional mitigation contained in the No Surprises Rule. If USFWS makes a finding of unforeseen circumstances during the period necessary to determine the nature and location of additional or modified mitigation, the CITY will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species and will exercise its enforcement authorities as provided by law as to third persons under the CITY's jurisdiction and control that are carrying out Covered Activities, to avoid such third persons contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.
- (2) CDFG Assurances. Except as otherwise provided in this subsection or required by law, CDFG shall not require the CITY to provide, without its consent, additional land, water or financial compensation, or additional restrictions on the use of land, water, or other natural resources, for the purpose of conserving RPV Covered Species with respect to Covered Activities in the event of Unforeseen Circumstances, provided the CITY is properly implementing this Agreement and the RPV NCCP Subarea Plan. The provisions of this Agreement and the RPV NCCP Subarea Plan that address adaptive management

and Changed Circumstances, including changes to the legal status of fully protected species and non-covered species, are not Unforeseen Circumstances and therefore are not subject to these assurances.

- (3) **Unforeseen Circumstances Finding.** In the event that USFWS, CDFG or the CITY believes that Unforeseen Circumstances may exist in accordance with the "No Surprises" rule, it shall immediately notify the other Parties. Within 30 days of such notice, if USFWS believes an Unforeseen Circumstance exists, it shall provide written notice of its proposed finding of Unforeseen Circumstances to the other Parties. USFWS shall clearly document the basis for the proposed finding regarding the existence of Unforeseen Circumstances pursuant to the requirements of 50 C.F.R. §17.22(b)(5)(iii)(C) and 17.32(b)(5)(iii)(C). Within fifteen (15) days of receiving such notice, the CITY, USFWS and CDFG shall meet or confer to consider the facts cited in the notice and potential changes to the RPV NCCP Subarea Plan's Operating Conservation Program or management and operation of the Reserve lands. Pursuant to 50 C.F.R. 17.22(b)(5)(iii)(C) and 50 C.F.R. 17.32(b)(5)(iii)(C) USFWS shall make an Unforeseen Circumstances finding based on the best scientific evidence available, after considering any responses submitted by the CITY pursuant to this section. USFWS and CDFG shall have the burden of demonstrating that Unforeseen Circumstances exist.
- (4) **Effect of Unforeseen Circumstances Finding.** Pursuant to 50 C.F.R. 17.22(b)(5) and 17.32(b)(5), in the event that USFWS makes a finding of Unforeseen Circumstances and additional conservation and mitigation measures are deemed necessary to respond to such Unforeseen Circumstances, USFWS may require Additional Conservation Measures from the CITY where the RPV NCCP Subarea Plan is being properly implemented, but only if such measures are limited to modifications within the Reserve lands and the RPV NCCP Subarea Plan's Operating Conservation Program for the affected species and maintain the original terms of the RPV NCCP Subarea Plan to the maximum extent possible. Additional conservation and mitigation measures shall not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources without the consent of the CITY.
- (5) **Interim Obligations Upon a Finding of Unforeseen Circumstances.** If USFWS makes a finding of Unforeseen Circumstances during the period necessary to determine the nature and extent of additional measures required and available, if any, to address the unforeseen circumstances, the CITY will avoid appreciably reducing the likelihood of the survival and recovery of the affected species and will exercise its enforcement authorities as provided by law as to third persons under the CITY's jurisdiction and control that are carrying out Covered Activities, to avoid such third persons contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

(b) *Changed Circumstances*

- (1) **Changed Circumstances Defined.** As provided in 50 C.F.R. 17.3, the term "Changed Circumstances" means changes in circumstances affecting a species or the geographic area covered by the RPV NCCP Subarea Plan that can reasonably be anticipated by CITY, USFWS, and CDFG and that can be planned for in the RPV NCCP Subarea Plan (e.g. the listing of a new non-covered species, or a fire or other natural catastrophic event in areas prone to such events.) Changed circumstances and planned responses to those circumstances are described in Section 5 of the RPV NCCP Subarea Plan.
- (2) **CITY-Initiated Response to Changed Circumstances.** The CITY will immediately notify USFWS and CDFG upon learning that any of the Changed Circumstances listed in Section 5.7.2 of the RPV NCCP Subarea Plan has occurred, and shall provide written notice within

seven (7) days. Within 30 days, the CITY shall modify its activities and shall require affected third persons under its direct control to modify their activities, as appropriate, in accordance with Chapter 5 of the RPV NCCP Subarea Plan, to the extent necessary to minimize and mitigate the effects of the Changed Circumstances. The CITY shall report to USFWS and CDFG on its actions. Such modifications will be initiated without awaiting notice from USFWS or CDFG. Such modifications are provided for in the RPV NCCP Subarea Plan and do not constitute Unforeseen Circumstances or require amendment of the Section 10(a)(1)(B) Permit, NCCP Authorization, or the RPV NCCP Subarea Plan.

- (3) USFWS-Initiated or CDFG-Initiated Response to Changed Circumstances. If USFWS or CDFG determines that Changed Circumstances have occurred and that the CITY has not responded in accordance with Section 5 of the RPV NCCP Subarea Plan, the USFWS or CDFG will so notify the CITY and, as appropriate, direct the CITY to make the required changes. Within thirty (30) days after receiving such notice, the CITY, will make the required changes and report to USFWS and CDFG on its action. Such changes are provided for in the RPV NCCP Subarea Plan, and do not constitute Unforeseen Circumstances or require amendment of the Section 10(a)(1)(B) Permit, NCCP Authorization, or the RPV NCCP Subarea Plan. The USFWS may extend the period of time in which to implement the CITY's planned responses upon the CITY's showing of good cause, which extension will not be unreasonably withheld.

9.3. Future Listings.

- A. Consideration of the RPV NCCP Subarea Plan and Similar Plans. To the extent required and permitted by the ESA, the CESA and the NCCP Act, the USFWS and CDFG shall take into account the species and habitat conservation provided under the RPV NCCP Subarea Plan, this Agreement, and the species and habitat conservation provided through all other existing conservation efforts (including, but not limited to, other plans approved under the ESA, CESA, or NCCP Act, and any relevant conservation agreements), as well as all information and data developed in the course of these efforts which is made available to them, in any future determinations, and in any future recommendations from the CDFG to the California Fish and Game Commission, concerning the potential listing as threatened or endangered of any RPV Covered Species or any other species which is not so listed as of the Effective Date, or the potential designation of any critical habitat for any species.
- B. Rancho Palos Verdes Covered Species. If a RPV Covered Species is not listed as threatened or endangered under the ESA as of the Effective Date, and becomes so listed during the term of this Agreement, then the Section 10(a)(1)(B) Permit shall become effective with respect to such species concurrent with its listing as threatened or endangered. The NCCP Act Authorization authorizes incidental take of all RPV Covered Species except five fully protected species from the Effective Date of Take Authorizations; for that reason, the subsequent CESA listing or candidate status of a RPV Covered Species will have no effect on the scope of the NCCP Act Authorization.
- C. Non-Covered-Species. If a species that is not a RPV Covered Species is subsequently proposed for listing as threatened or endangered under the ESA or CESA or is accepted by the California Fish and Game Commission as a candidate for listing under CESA after the Effective Date, and it is determined by the USFWS or CDFG based on reliable scientific evidence that such species occurs in the Subarea, the USFWS and CDFG will (1) work with the CITY to identify, within six (6) months, the conservation measures, if any, that are necessary to adequately protect the species, and (2) determine whether such conservation measures are beyond those proscribed by the RPV NCCP Subarea Plan. Although such conservation measures may be identified after such species is proposed for listing, the CITY may choose not to approve and implement such measures

until the species is actually listed. Upon application by the CITY that meets the requirements of the ESA and the NCCP Act, and following compliance with applicable procedures, Incidental Take of a non-covered, listed species shall be authorized provided the legal standards for such authorization have been met.

1. Adequate Conservation Measures Already in the RPV NCCP Subarea Plan. If the conservation measures already contained in the RPV NCCP Subarea Plan, as implemented through the RPV NCCP Subarea Plan and other approved Subarea Plans, are adequate to fulfill the conservation measures identified pursuant to subsection 9.3.C above, then upon application by the CITY for Take Authorization for such species and following satisfaction of applicable review procedures as required by the ESA and the NCCP Act, the Parties will amend this Agreement to add such species to the list of RPV Covered Species and, if appropriate, to the list of Species Adequately Conserved and, following compliance with all applicable statutory and regulatory requirements, the USFWS and CDFG shall issue Section 10(a)(1)(B) Permit and NCCP Act Authorization for such species effective for the remaining term of this Agreement.
2. Inadequate Conservation Measures in the NCCP Subregional Plan.
 - a. Additional Conservation Measure Priorities. If the conservation measures already contained in the RPV NCCP Subarea Plan, and this Agreement, do not adequately fulfill the conservation measures identified pursuant to subsection 9.3.C above, then the USFWS and CDFG will work with the CITY to identify, and jointly implement the Additional Conservation Measures necessary to add such species to the list of RPV Covered Species or the list of Species Adequately Conserved. In developing a set of Additional Conservation Measures, the Parties will look to the following, in order of preference:
 - i. Habitat management practices and enhancement opportunities within the NCCP planning area using existing management resources, provided the redirection of such resources does not adversely affect any Covered Species.
 - ii. Habitat acquisition through the allocation of Federal, State, regional and/or local funds identified for RPV NCCP Subarea Plan implementation, provided such allocation does not adversely affect any Covered Species.
 - b. Developing Additional Conservation Measures. If the foregoing options are not adequate to fulfill the conservation measures identified pursuant to subsection 9.3.C above, then the USFWS and CDFG will work with the CITY to identify, consistent with the ESA and the NCCP Act, the Additional Conservation Measures necessary to add such species to the list of RPV Covered Species and, if appropriate, to the list of Species Adequately Conserved, including measures beyond those required by the RPV NCCP Subarea Plan. Preference will be given by the USFWS and CDFG to Additional Conservation Measures that do not require additional mitigation or dedications of land. Although the Additional Conservation Measures necessary to add such species to the list of RPV Covered Species and the list of Species Adequately Conserved may be identified at or after the time the species is proposed for listing, the CITY will not be required to approve or implement these Additional Conservation Measures until such time as the species is actually listed and take authorization for such species is granted to the CITY.
 - c. Significantly Conserved Vegetation Communities. If any species described in subsection 9.3.C, above, is dependent upon a Significantly Conserved Vegetation Community listed on **Exhibit C** to this Agreement, and if subarea plans in the subregion are in effect and are being implemented consistent with their terms, then the USFWS and CDFG will, subject to the availability of appropriated funds, contribute in partnership, to the same

extent committed within the RPV NCCP Subarea Plan for Covered Species, with the CITY toward the land acquisition, management, and monitoring required to achieve the level of conservation necessary within the Significantly Conserved Vegetation Communities, for such species to be added to the list of RPV Covered Species or list of Species Adequately Conserved once such species become listed under the ESA or CESA. The commitment of the USFWS and CDFG to contribute their proportionate share(s) to the conservation of the species shall be contingent on the CITY's commitment of its proportionate share. In addition, if the USFWS or CDFG fail to provide their proportionate contributory share(s), neither the CITY nor Third Party Beneficiaries will be obligated to provide the USFWS and/or CDFG share(s), in which case the species would not be added to the list of RPV Covered Species or list of Species Adequately Conserved.

- d. Sufficiently Conserved Vegetation Communities. If any species described in subsection 9.3.C, above, is dependent upon a Sufficiently Conserved Vegetation Community listed on **Exhibit C** to this Agreement, and if the take authorizations for The CITY and elsewhere in the subregion are in effect and are being implemented consistent with their respective subarea plans, then the USFWS and CDFG will use all of their legal authorities to provide for the conservation and management, maintenance and monitoring of the habitat of such species, within the Sufficiently Conserved Vegetation Communities, sufficient to enable the addition of such species to the list of RPV Covered Species or list of Species Adequately Conserved, and to enable the issuance of the Section 10(a)(1)(B) Permit and NCCP Act Authorization take authorizations for such species in the event they become listed under the ESA or CESA. For purposes of this paragraph, steps within the legal authority of USFWS include, but are not limited to, USFWS-funded habitat acquisition, USFWS-funded species relocation, and land exchanges to secure necessary habitat. For purposes of this paragraph, steps within the legal authority of CDFG include, but are not limited to, CDFG-funded acquisition, CDFG-funded species management and CDFG-funded species relocation. Consequently, the CITY shall not be required, without its consent, to provide any conservation or management, maintenance and monitoring for such species beyond that provided in the RPV NCCP Subarea.
- e. Application for Take Authorization. The CITY makes no representation or commitment to pursue a Section 10(a)(1)(B) Permit from the USFWS or a NCCP Act Authorization from the CDFG for non-covered species. Upon the listing of a non-covered species and until such non-covered species is added to the list of RPV Covered Species and, if appropriate, to the list of Species Adequately Conserved, the CITY shall comply with the no take/no adverse modification/no jeopardy measures identified pursuant to Section 5.7.2 of the RPV NCCP Subarea Plan with respect to such non-covered species. The USFWS and CDFG shall process any applications for take authorization which may be submitted for such species in accordance with the requirements of the ESA, CESA and/or the NCCP Act.
- f. Applicability of Significantly and Sufficiently Conserved Vegetation Communities Assurances. The assurances provided under subsections c and d above are not applicable to the Pacific pocket mouse as a currently listed species, and shall not apply to evaluated species in the RPV NCCP Subarea Plan that are not RPV Covered Species or Species Adequately Conserved and which are not dependent on Significantly or Sufficiently Conserved Vegetation Communities.

9.4. Migratory Bird Treaty Act.

- A. Migratory Birds other than Bald Eagle. The Section 10(a)(1)(B) Permit issued pursuant to this Agreement also constitutes a Special Purpose Permit under

50 C.F.R. § 21.27 for the Take of RPV Covered Species and Species Adequately Conserved that are listed as threatened or endangered under the ESA and that are also protected by the Migratory Bird Treaty Act, except for the Bald Eagle. The Take of such species in conjunction with any public or private land development project authorized and approved by the CITY in accordance with this Agreement, the RPV NCCP Subarea Plan and the Section 10(a)(1)(B) Permit will not constitute a violation of the MBTA. Such Special Purpose Permit shall be valid for a period of three years from the Effective Date, provided the Section 10(a)(1)(B) Permit remains in effect for such period. Such Special Purpose Permit shall be renewed, provided that the CITY continues to fulfill its obligations under this Agreement. Each such renewal shall be valid for the maximum period of time allowed by 50 C.F.R. § 21.27 or its successor at the time of renewal.

- B. Bald Eagle. Should the Take of the Bald Eagle occur incidental to any public or private land development project authorized and approved by the CITY in accordance with this Agreement, the USFWS will not refer such Take for prosecution under either the MBTA or the Bald Eagle Protection Act of 1940, as amended (16 U.S.C. §§ 668 - 668d).
- C. Future Environmental Documentation. In issuing any permits or other approvals pertaining to land development activities within the CITY for any RPV Covered Species, and subject to all of the requirements of NEPA, the USFWS shall rely on and shall utilize the EIR/EA prepared in conjunction with the RPV NCCP Subarea Plan as the NEPA environmental document for such permits and approvals and for any other approval process subject to its jurisdiction or involvement with regard to potential impacts on RPV Covered Species. To the maximum extent possible under CEQA, CDFG shall rely on and shall utilize the EIR/EA prepared in conjunction with the RPV NCCP Subarea Plan as appropriate CEQA documentation for any future approvals regarding potential impacts to RPV Covered Species related to land development within the Subarea. Subsequent activities will be examined in light of the Subarea Plan EIR/EA to determine whether additional environmental documentation is required under NEPA or CEQA.
- D. Use of Subarea Plan EIR/EA as "Program EIR/EA". The Parties understand and intend that the EIR/EA prepared in conjunction with the RPV NCCP Subarea Plan will operate as a "program" EIS and EA to the extent such use is consistent with applicable provisions of the NEPA and CEQA, including the Council on Environmental Quality's NEPA regulations (40 C.F.R. § 1500 et seq.) and the CEQA Guidelines (14 C.C.R. § 15000 et seq.). Accordingly, the CITY shall, consistent with the provisions of CEQA, rely on and utilize the EIR prepared in conjunction with the RPV NCCP Subarea Plan in evaluating future land use decisions, and in issuing any permits or other approvals within the Subarea. Subsequent activities will be examined in light of the program EIR/EA to determine whether additional environmental documentation is required under NEPA or CEQA.

9.5. Federal and State contributions. The USFWS and CDFG shall apply their best efforts to contribute public lands and funds to the acquisition and management, maintenance and monitoring of habitat lands within the Habitat Reserve. Habitat land acquired and added to the Reserve through such means shall not be counted as mitigation for any public or private project but will be counted towards the conservation goals of the RPV NCCP Subarea Plan. To the maximum extent appropriate after considering the location of the impacts, the USFWS and CDFG shall direct that the acquisition of land for offsite mitigation of impacts from federal and state projects within the RPV NCCP Subarea Planning Area, and lands banked for such projects, be located within the Reserve.

9.6. Public Facility Provider and Special Districts. The Parties shall cooperate to encourage regional public facility providers, and local special districts such as water districts and sewer districts, to become Participating Special Entities. However, the Parties

acknowledge that regional public facility providers and special districts may apply for separate incidental take authorization from the USFWS and CDFG separate and apart from the RPV NCCP Subarea Plan.

9.7. Special Rules Under Section 4(d). In the event that the USFWS promulgates a new special rule for a Covered Species pursuant to Section 4(d) of the ESA (16 U.S.C. § 1533(d), as implemented by 50 C.F.R. § 17.31(c)), the USFWS shall consider the RPV NCCP Subarea Plan in developing the special rule, and shall ensure that the special rule will not affect the validity or alter the terms of any take authorization for Covered Species issued in accordance with an approved subarea plan.

9.8. Contribution and Banking of Excess Conservation. Lands contributed to the Reserve by persons or public or private entities in excess of the conservation requirements imposed by the CITY in accordance with Section 10 of this Agreement may either be used by such owner as mitigation for that owner's subsequent development project(s), or it may be "banked" by those owners in accordance with Section 9.9 of this Agreement. Such banked lands can later be used to provide mitigation for future development projects of other owners within the Subarea subject to the provisions of an approved conservation bank.

9.9. Conservation Banks. The USFWS and CDFG agree that the CITY is authorized to enter into agreements with the USFWS, CDFG, and other third parties to establish and implement Conservation Banks for land contributed in perpetuity to the Reserve in excess of any conservation requirement imposed by the CITY in accordance with Section 10 of this Agreement. These Conservation Banks shall be consistent with the RPV NCCP Subarea Plan and shall comply with all applicable laws, policies and procedures existing at the time of bank approval, including but not limited to the "Official Policy on Conservation Banks" issued by the California Resources Agency (April 7, 1995) and the "Supplemental Policy Regarding Conservation Banks Within the NCCP Area of Southern California" issued by the USFWS and CDFG (January 24, 1996), as they may be modified. The Parties agree that existing Conservation Bank agreements approved by the USFWS and CDFG prior to the Effective Date shall remain in full force and effect and be honored by the Parties after execution of this Agreement. This Section 9.9 shall apply to any public lands within the Reserve banked as mitigation for future development by the CITY, in accordance with this Agreement.

9.10. Habitat Conservation Measures. Habitat conservation measures provided for in the RPV NCCP Subarea Plan, including habitat management within the Reserve, shall be implemented through the policies and local regulations established by the CITY pursuant to Section 10.0 of this Agreement.

9.11. Growth Inducing Impacts. Because the RPV NCCP Subarea Plan as implemented through the RPV NCCP Subarea Plan and other approved Subarea Plans is designed to mitigate for the direct, indirect and cumulative impacts of development within the RPV NCCP Subarea Planning Area once mitigation has been imposed upon the CITY or a Third Party Beneficiary for a proposed land development project in conformance with Sections 10 and 17.1 A of this Agreement, the CITY or a Third Party Beneficiary shall not be required by USFWS or CDFG to provide any additional mitigation for any growth inducing impacts such project may have on a RPV Covered Species and its habitats covered by the RPV NCCP Subarea Plan.

9.12. Assurances for Covered Projects. For Covered Projects set forth in Tables 3-2 and 3-3 of the RPV NCCP Subarea Plan and **Exhibit D** to this Agreement, the Parties have determined that both the design of such projects and the mitigation related to RPV Covered Species conforms to the RPV NCCP Subarea Plan. Consequently, as long as the Covered Projects comply with their respective conditions of coverage, and any additional measures as may be imposed on the projects pursuant to the RPV NCCP Subarea Plan and this

Agreement, and maintain their status as Third Party Beneficiaries in accordance with Section 17 of this Agreement, Additional Conservation Measures will not be required of those projects for purposes of Incidental Take of RPV Covered Species, and the Parties shall not seek further mitigation related to such species for these projects except as specifically provided for under the Subarea Plan and this Agreement. Incidental Take shall be granted for such projects by the CITY through the land development approval process and associated land development or clearing/grubbing permit issued to each Covered Project prior to the start of land development on the site.

9.13. Critical Habitat. The USFWS agrees that it will consider the RPV NCCP Subarea Plan in its preparation of any proposed designation of critical habitat concerning any Covered Species and agrees that, consistent with 50 C.F.R. 424.12, the RPV NCCP Subarea Plan incorporates those special management considerations necessary to manage the Covered Species and their habitats in a manner that will provide "for the conservation of the species involved" within the RPV Subarea. Consistent with the No Surprises Rule set forth in Section 9.2 of this Agreement in the event that a critical habitat designation is made for any RPV Covered Species upon a determination by USFWS that CITY is properly implementing the RPV NCCP Subarea Plan, no additional mitigation in the form of land, land restrictions or financial compensation, beyond that provided for under the RPV NCCP Subarea Plan, shall be required of the CITY or Third Party Beneficiaries to mitigate for the impacts of Take resulting from a Covered Activity within the RPV Subarea as a result of such critical habitat designation without the consent of the CITY.

9.14. Duty to Enforce. The CITY agrees to take all available and feasible actions within its legal authority to enforce the terms of the Section 10(a)(1)(B) Permit and NCCP Authorization, the Subarea Plan, and this Agreement as to itself and to all persons or entities subject to the requirements of the RPV NCCP Subarea Plan, this Agreement and the Section 10(a)(1)(B) Permit and NCCP Authorization, specifically including the land development permitting and approval requirements set forth in Section 10 of this Agreement. The CITY shall reasonably exercise its legal authority to ensure that its local share of lands identified for preservation under the RPV NCCP Subarea Plan are conserved in perpetuity. Notwithstanding any other provision of this Agreement, if at any time following the expiration, termination, or any other end of this Agreement the CITY proposes to exercise its discretionary authority to modify the regulatory protections or legal encumbrances provided for such lands under the RPV NCCP Subarea Plan, the proposed modifications must be accomplished through a public process in which the public, the USFWS and CDFG receive advance notice and the opportunity to comment, and must be consistent with the RPV NCCP Subarea Plan and the RPV NCCP Subarea Plan such that there is no net loss of habitat value or acreage for the Covered Species. The CITY must promptly notify USFWS and CDFG or their respective successor agencies of such proposed modifications in advance, and explain how they achieve such consistency.

9.15. Annexation of Lands. To the extent permitted by law, the CITY shall enforce, as set forth in this Agreement, the terms of the Section 10(a)(1)(B) Permit and NCCP Act Authorization, RPV NCCP Subarea Plan, and this Agreement as to all persons or entities owning or developing land within the RPV NCCP Planning Area that become subject to the CITY's jurisdictional authority in the event of annexation or reorganization of such land from another jurisdiction, provided an annexation agreement is reached as described herein and approved by the Wildlife Agencies and provided further, that if the lands are annexed from another Local Participating Jurisdiction, that Local Participating Jurisdiction's take authorization for the annexed lands is transferred to the CITY. In all other cases, Take shall not be authorized on any lands that are the subject of an annexation proposal unless and until an annexation agreement is reached between the CITY, USFWS, CDFG, and the other affected jurisdiction, as may be appropriate, as part of the annexation process, and the Section 10(a)(1)(B) Permit, NCCP Act Authorization, Subarea Plan and, if necessary, this

Agreement are amended to include the annexed lands to ensure that any development of the annexed lands proceeds in accordance with the conservation goals of the RPV NCCP Subarea Plan. Such annexation agreement shall set forth the resulting responsibilities pursuant to the RPV NCCP Subarea Plan for the ongoing maintenance and enforcement of the terms of this Agreement and the RPV NCCP Subarea Plan as it relates to the annexed lands.

10.0 IMPLEMENTATION -- RESPONSIBILITIES OF THE CITY

10.1 Introduction. The NCCP Subregional Plan establishes a plan to conserve the Covered Species by ultimately providing permanent protection for such species' habitat through implementation of individual subarea plans. The USFWS and CDFG agree to phased implementation of the CITY's portion of the RPV NCCP Subarea Plan based on the Agreement of the CITY to comply with and implement the RPV NCCP Subarea Plan through the RPV NCCP Subarea Plan with respect to all lands within the Subarea over which it has land use authority. In particular, the CITY agrees to take the following specific actions:

10.2 Compliance and Implementation.

- A. Lands to be Preserved. As provided in Section 3 of the RPV NCCP Subarea Plan and Section 22 of this Agreement, the CITY commits to preserve and manage in perpetuity for the benefit of the RPV Covered Species and their habitats approximately 1506.7 acres placed into the Reserve as the result of development, CITY contributions of land, or public agency acquisition of land, pursuant to the take authorizations and designated as habitat on Figure 3-2 of the RPV NCCP Subarea Plan within the CITY's current jurisdictional boundaries.
- B. Habitat Conservation Accounting. The CITY agrees that a habitat conservation accounting process shall be developed by the CITY, the USFWS, and CDFG as a tool to assess whether the CITY is meeting its obligation to ensure that habitat preservation is proceeding in rough step with development, within the context of the acreage accounting and annual reporting process set forth in Section 14 of this Agreement.

10.3 Reserve Management.

- A. Lands to be Managed. The CITY agrees that the Palos Verdes Peninsula Land Conservancy (PVPLC) shall be responsible for managing the Preserve in accordance with Section 6 and any other applicable sections of the RPV NCCP Subarea Plan, and in accordance with the terms of the AGREEMENT BETWEEN THE CITY OF RANCHO PALOS VERDES AND THE PALOS VERDES PENINSULA LAND CONSERVANCY, A NON-PROFIT ORGANIZATION, TO MANAGE THE NATURE PRESERVE CREATED BY THE RPV NATURAL COMMUNITIES CONSERVATION PLANNING SUBAREA PLAN AND TO FULFILL THE OBLIGATIONS AS PRESENTED IN THAT PLAN" dated **(Exhibit E)**.
- B. Public Use Master Plan. Within two years of the signing of this agreement, a Public Use Master Plan (PUMP) shall be developed jointly by the City and the PVPLC to address issues such as public access, trailhead locations, parking, trail use, fencing, signage, lighting (if any), fire and brush management, minimizing impacts to adjacent neighborhoods, public involvement in advisory capacities, and other issues that may arise. This section provides management guidelines and measures for the development of the PUMP, to reduce habitat impacts of land uses within and adjacent to the Reserve. A PUMP consistent with Subarea Plan guidelines and approved by the RPV City Council for the Preserve shall be submitted to the Resource Agencies within two years from the signing of this agreement. For every month after that date that the PUMP is not

submitted, the City and the PVPLC, jointly, will incur an additional obligation to restore .25 acre; to be added to the next year's restoration plan

10.4 Preserve Boundary Adjustments. Adjustments to Reserve boundaries may be made in limited circumstances as set forth in Section 5.9 of the City of RPV NCCP Subarea Plan. This Agreement need not be amended to reflect such adjustments.

10.5 Assembly and Protection of the Preserve.

A. General Conservation Methods. In general, Reserve lands will be conserved by the following methods, consistent with Section 5 of the RPV NCCP Subarea Plan:

- (1) Dedication of 322.2 acres of City-owned land to the Reserve;
- (2) The CITY, PVPLC, Los Angeles County, and the Wildlife Agencies will provide funds for the purchase in fee and dedication to the Reserve 684.5 acres of privately owned lands considered regionally important.

B. Conserved Habitat Acreage. The CITY shall permanently conserve an estimated 1,504 acres as specified in Table 3-1 of the RPV NCCP Subarea Plan.

C. Proposed Modifications to the Municipal Code

Natural Overlay Control District. The CITY shall amend the Natural Overlay Control District (Municipal Code Section 17.40.040 *et seq.*) to ensure that before the issuance of any clearing or grubbing permits that all proposed actions conform to the provisions of this Natural Community Conservation Plan

Grading Ordinance. The CITY shall amend the Grading Ordinance (Municipal Code Section 17.76.040 *et seq.*) to ensure that before the issuance of any clearing or grubbing permits that all proposed actions conform to the provisions of this Natural Community Conservation Plan.

Fire Code. The CITY shall amend the Natural Overlay Control District (Municipal Code Section 17.40,040 *et seq.*) to ensure that before the issuance of any clearing or grubbing permits that all proposed actions conform to the provisions of this Natural Community Conservation Plan. At no time, however, shall the provisions of this plan take precedence over the concerns of the public health, safety and welfare as determined by the Fire Marshall in consultation with the Wildlife Agencies. The CITY shall consult with the Fire Marshall to ensure that proposed fuel zone widths are adequate.

Site Plan Review Process. The CITY shall amend the Site Plan Review Process (Municipal Code Section 17.70.010 *et seq.*) to ensure that the provisions of this Natural Community Conservation Plan are incorporated in to the Site Plan Review evaluation process.

Coastal Permits. The CITY shall amend the Coastal Permit Process (Municipal Code Section 17.72.010 *et seq.*) to ensure that the provisions of this Natural Community Conservation Plan are incorporated into the evaluation process before the issuance of any coastal permits.

City CEQA Guidelines. The CITY shall ensure that all development identified in Sections 17.02.020 and 17.02.05? *et seq.*) shall be subject to enhanced California Environmental Quality Act. (CEQA) (Ord. 361 §5, 2000) review to comply with applicable provisions of this Plan.

General Plan Amendment. The CITY shall amend relevant sections of the RPV General Plan to:

- Identify all Reserve lands and their attendant land-use restrictions; and
- Incorporate this Subarea Plan as part of the General Plan.

F. Covered Projects. The CITY will ensure that all requirements specified in Sections 4 through 6 of the RPV NCCP Subarea Plan are included as enforceable conditions of the CITY's approvals of Covered Projects. If the CITY identifies site specific physical conditions including, but not limited to geology, slope, or location of infrastructure that make goals, criteria or other requirements in the RPV NCCP Subarea Plan infeasible, but the project could be constructed without compromising conservation of species and habitats pursuant to the Subarea Plan, the CITY may approve a deviation from the RPV NCCP Subarea Plan requirements for the project with the concurrence of USFW S and CDFG. The deviation shall be the minimum *necessary to* afford relief and accommodate the Covered Project.

G. Wetlands Protection Program. For Wetlands, impacts will be avoided to the maximum extent practicable as set forth in Section 5 of the RPV NCCP Subarea Plan. Mitigation consistent with the RPV NCCP Subarea Plan will be identified through environmental review documents prepared pursuant to CEQA and associated mitigation monitoring and reporting programs, and required by the City as legally enforceable conditions of approval (i.e., tentative maps, HLIT permits, and the CITY's Excavation, Grading and Fills Ordinance require compliance with wetlands mitigation prior to issuance of grading permits).

10.6 CITY Compliance with Subarea Plan Provisions. The City Manager of the CITY will take all actions within his authority to ensure that all CITY departments comply with the policies, regulations and management obligations established as a result of the RPV NCCP Subarea Plan on all CITY projects and day-to-day operations.

11.0 FUNDING RESPONSIBILITIES OF THE CITY and PVPLC

11.1 Introduction. The RPV NCCP Subarea Plan contains estimates for the costs of habitat acquisition, management and monitoring. To fully implement the RPV NCCP Subarea Plan, private property must be added to the Reserve within the NCCP Subarea Planning Area.

11.2 Funding. The CITY and the PVPLC commit to funding Reserve maintenance, management and monitoring as provided in Section 4.3.2.3 of the RPV NCCP Subarea Plan, which will ensure that the CITY and the PVPLC will meet the maintenance, management and monitoring requirements of the RPV NCCP Subarea Plan.

11.3 Effect of Inadequate Funding on Take Authorizations. In the event that adequate funding to implement the RPV NCCP Subarea Plan is not provided by the CITY or PVPLC, USFWS and CDFG will assess the impact of the funding deficiency on the scope and validity of the take authorizations. Unless the CITY exercises its authority to terminate pursuant to Section 22.0 of this Agreement, the Parties agree that they will then meet and confer to cooperatively develop a strategy to address the funding shortfall, and to undertake all practicable efforts to maintain the level of conservation and Incidental Take authorization afforded by the Section 10(a)(1)(B) Permit and NCCP Act Authorization until the funding situation can be remedied. Should CITY elect to terminate the Section 10(a)(1)(B) Permit and NCCP Authorization, CITY shall remain obligated to mitigate fully in accordance with the Subarea Plan for all Incidental Take authorized prior to termination of the Section 10(a)(1)(B)

Permit and NCCP Authorization, and to maintain and monitor all habitat areas restored prior to termination in perpetuity in accordance with the Subarea Plan

11.4 Performance under this Agreement, or any Permit granted under it, shall not exempt any Covered Project or person from compliance with any City, County, State, or Federal law or regulation except to the extent it may constitute compliance with the taking provisions of the ESA and the CESA.

12.0 ISSUANCE OF THE TAKE AUTHORIZATIONS

12.1 Findings - USFWS Covered Species. The USFWS has found, following opportunity for public comment, that (a) the taking of Covered Species within the RPV NCCP Subarea Plan Area will be incidental to the carrying out of otherwise lawful activities; (b) the RPV NCCP Subarea Plan will, to the maximum extent practicable, minimize and mitigate the impacts of such incidental taking; (c) the funding sources identified and provided for herein will ensure that adequate funding for RPV NCCP Subarea Plan will be provided; (d) the requested taking of Covered Species will not appreciably reduce the likelihood of the survival and recovery of such species in the wild; and (e) the RPV NCCP Subarea Plan will satisfy and fulfill all measures required by the USFWS as being necessary or appropriate for the purposes of the RPV NCCP Subarea Plan (including procedures determined by the USFWS to be necessary to address Unforeseen Circumstances).

12.2 Findings – USFWS Species Adequately Conserved Rancho Palos Verdes Covered Species. In addition to the findings in Section 12.1 above, the USFWS has found that the Species Adequately Conserved will be adequately conserved in the Subarea through implementation of the RPV NCCP Subarea Plan and this Agreement and that the RPV Covered Species will be adequately conserved in the Subarea through implementation of the RPV NCCP Subarea Plan, other approved NCCP Subarea Plans, and this Agreement. Accordingly, concurrent with the Effective Date and consistent with the Subarea Plan and the terms of this Agreement, the USFWS shall issue the Section 10(a)(1)(B) Permit to the CITY authorizing the Incidental Take of the Species Adequately Conserved and Rancho Palos Verdes Covered Species. The Section 10(a)(1)(B) Permit will be effective for 50 years, and both the Plan and the Permit may be renewed subject to and in accordance with the ESA statutory and regulatory requirements in effect at the time of renewal.

12.3 Section 10(a) Permit and Future Listings. As to any RPV Covered Species or Species Adequately Conserved that is not listed as threatened or endangered under the ESA as of the Effective Date, the Section 10(a)(1)(B) Permit shall become effective with respect to such species concurrent with its listing as threatened or endangered under the ESA.

12.4 Findings - CDFG. The CDFG has found, following opportunity for public comment, that the RPV NCCP Subarea Plan and this Agreement (1) adequately provide for the conservation and management of the RPV Covered Species and Species Adequately Conserved and their habitat within the RPV NCCP Subarea Plan Subarea, (2) satisfy all legal requirements under the NCCP Act necessary for the CDFG to issue a NCCP Act Authorization for such species, and (3) are consistent with the NCCP Process and Conservation Guidelines. The CDFG has found that the RPV NCCP Subarea Plan meets the requirements of the NCCP Act for an NCCP Plan, and has approved the RPV NCCP Subarea Plan as an NCCP Plan. The CDFG has found further that the RPV NCCP Subarea Plan and this Agreement provide adequately for the mitigation of potential "significant effects on the environment" (as defined in California Public Resources Code § 21068) to RPV Covered Species and Species Adequately Conserved and their habitat (pursuant to California Government Code § 66474) that may result from the land development activities in the Subarea.

12.5 Issuance of NCCP Authorization. CDFG will approve the RPV NCCP Subarea Plan and a issue a NCCP Act Authorization that authorizes the Take of RPV Covered Species and Species Adequately Conserved in the Subarea, subject to the terms of, and consistent with, the RPV NCCP Subarea Plan and this Agreement. The NCCP Act Authorization will take effect on the Effective Date and be effective for 50 years unless it is terminated, suspended or revoked sooner. The NCCP Act Authorization will be renewable utilizing the applicable procedures in effect at the time of renewal.

12.6 Findings-Section 4(d) Special Rule. The USFWS has found that the RPV NCCP Subarea Plan meets the standards set forth in 50 C.F.R. § 17.32(b)(2). Accordingly, the USFWS finds that the RPV NCCP Subarea Plan is consistent with and satisfies the conditions under the Section 4(d) Special Rule, and therefore the Incidental Take of the coastal California gnatcatcher resulting from Covered Activities under the jurisdiction and control of the CITY within that portion of the RPV NCCP Subarea Plan Area covered by approved the RPV NCCP Subarea Plan is lawful.

12.7 State Fully Protected Species. California law does not authorize CDFG to permit the Take of six Rancho Palos Verdes Covered Species: Fish and Game Code section 3511 prohibits Take of the golden eagle, American peregrine falcon, bald eagle, California brown pelican and California least tern. Take of these species is not authorized by the NCCP Act Authorization as of the Effective Date. CDFG acknowledges and agrees that if the measures set forth in this Agreement and the RPV NCCP Subarea Plan are complied with, Covered Activities are not anticipated to result in unauthorized Take of these species. If CDFG determines during the term of this Agreement that existing measures are inadequate to prevent the Take of a RPV Covered Species for which Take is not authorized under the NCCP Authorization, CDFG shall notify the CITY in writing of that determination and propose new, modified or alternative conservation measures that it believes are necessary to avoid Take of these species. The CITY shall implement either the measures proposed by CDFG or other measures agreed to by the Parties as adequate to avoid Take of the fully protected species resulting from Covered Activities.

CDFG has determined that the RPV NCCP Subarea Plan provides for the conservation of all Rancho Palos Verdes Covered Species. The NCCP Act Authorization therefore provides that Take of golden eagle, American peregrine falcon, bald eagle, California brown pelican and California least tern will be automatically authorized upon a written legal determination by CDFG that changes in California law provide CDFG the authority to permit the Take of these birds. The determination will only assess whether newly enacted statutes provide CDFG the legal authority to authorize Take of these species as part of an NCCP plan. CDFG will provide its legal determination promptly after enactment of any relevant legislation; the determination will be attached to the NCCP Authorization.

13.0 CONSULTATIONS WITH OTHER PUBLIC AGENCIES

13.1 Section 7 Consultations. Nothing in this agreement is intended to eliminate or modify the obligation of a federal agency to consult with the USFWS pursuant to section 7(a) of the ESA (16 U.S.C. Section 1536(a)). To the maximum extent appropriate, in any consultation under said provision involving CITY or a prospective or existing Third Party Beneficiary with regard to RPV Covered Species or Species Adequately Conserved which are listed or proposed for listing under the ESA, the USFWS shall ensure that the biological opinion issued in connection with the proposed public or private development project which is the subject of the consultation is consistent with the biological opinions issued in connection with the RPV NCCP Subarea Plan, provided that the proposed public or private development project is consistent with the RPV NCCP Subarea Plan. Any take avoidance and take minimization measures included under the terms and conditions of the Section 7 biological opinion shall, to the maximum extent appropriate, be consistent with the

requirements imposed on the development project under the RPV NCCP Subarea Plan, provided that, unless otherwise required by law, the USFWS shall not impose measures on the prospective or existing Third Party Beneficiary in excess of those that have been or will be required by the CITY pursuant to the RPV NCCP Subarea Plan, this Agreement and the Section 10(a)(1)(B) Permit and NCCP Act Authorization except in accordance with the No Surprises Rule.

13.2 Consultations by CDFG. Except as otherwise required by law, CDFG shall not recommend or otherwise seek to impose through consultation with other public agencies any mitigation, compensation or habitat enhancement requirements regarding impacts of Covered Activities on RPV Covered Species within the Subarea that are in excess of the requirements prescribed in and pursuant to the RPV NCCP Subarea Plan and this Agreement.

14.0 REPORTING. BIOLOGICAL MONITORING AND PRESERVE MANAGEMENT

14.1 Habitat Tracking. So long as this Agreement and the take authorizations remain in effect, the CITY will continually account, by project and cumulatively, for the amount and location of habitat acreage (by habitat type) lost and preserved within the Subarea, including acres conserved within the Reserve and acres committed to land development both within and outside of the Reserve. The results of such accounting will assure that adequate progress toward implementation of the RPV NCCP Subarea Plan is being achieved and that habitat preservation is proceeding in rough step with development.

14.2 Annual Reporting and Public Workshop. In accordance with Section 6.4 of the RPV NCCP Subarea Plan, using data supplied by the CITY, the PVPLC shall prepare and submit to the USFWS and the CDFG by March 1 of each year a public report containing an annual accounting, by project and cumulatively, of habitat acreage lost and conserved within the Subarea during the previous calendar year. This accounting shall specify acres conserved within the Reserve by habitat type, as well as acres committed to land development both within and outside of the Reserve. This report shall also describe how habitat preservation is proceeding in rough step with development. It will also address the impacts of public use on the reserve and make recommendations, if necessary, to minimize the impacts of those uses. The report shall include the total expenditures made toward habitat acquisition to date and over the preceding year. This report shall include an accounting of all funds received and expended during the previous year to implement the subarea plan, including the amounts received and expended on habitat acquisition, management and monitoring. It shall also report on the impacts of public uses and recommendations, if necessary, for minimizing impacts to the reserve. The report will be used by the USFWS and CDFG to evaluate whether adequate progress toward implementation of the RPV NCCP Subarea Plan is being achieved. A public workshop or meeting will be jointly conducted on an annual basis by staff from the USFWS, the CDFG, the CITY and the PVPLC to disseminate and discuss the annual report.

14.3 Annual Implementation Meeting. Once each year, the CITY and the PVPLC shall meet with the USFWS and the CDFG to review and coordinate implementation of the RPV NCCP Subarea Plan. The Parties will review the Annual Report described in Section 14.2 above for the purposes of evaluating the implementation of the RPV NCCP Subarea Plan during the preceding year and the adequacy of the overall progress being made towards reaching the conservation goals of the RPV NCCP Subarea Plan, utilizing Habitrak. Items to be considered in the evaluation include, but are not limited to, all contributions towards the preservation of habitat lands, such as public lands, private mitigation lands, land donations, land acquisitions, and management activities undertaken or proposed on habitat lands. Habitat management issues will also be discussed. No Participating Local Jurisdiction or Participating Special Entity will be subject to any annual, quantitative habitat preservation

requirement, given the uncertainties created by natural economic and land development fluctuations. If the USFWS and the CDFG determine that adequate progress towards implementation of the RPV NCCP Subarea Plan is not being achieved, CDFG and USFWS shall set forth their findings and the basis for such findings in writing; and the USFWS, the CDFG, the CITY and the PVPLC will take the actions specified in the RPV NCCP Subarea Plan and this Agreement to remedy that situation. If the USFWS and CDFG determine that adequate progress towards implementation of the RPV NCCP Subarea Plan is being achieved, but the Subarea Plan is nevertheless not providing sufficient protection to Rancho Palos Verdes Covered Species, CDFG and USFWS shall set forth their findings and the basis for such findings in writing; and then the Parties shall work cooperatively and take appropriate actions consistent with the RPV NCCP Subarea Plan (such as altering management activities or redirecting mitigation and acquisition).

14.5 Biological Monitoring. The Parties agree that biological monitoring, which involves the collection and analysis of data on specific species and habitats, is necessary to determine whether Covered Species and their habitats are being maintained by the RPV NCCP Subarea Plan as expected. Biological monitoring will be jointly funded by the CITY and PVPLC. As described in the Subarea Plan, the CITY and PVPLC will be responsible for the biological monitoring of the Reserve. Proper management of the Reserve will require ongoing and detailed analysis of the data collected through biological monitoring activities. To ensure uniformity in data gathering and analysis, the PVPLC will assume primary responsibility for coordinating the monitoring program, analyzing data, and obtaining information and technical assistance from the CITY, USFWS, and CDFG. Biological monitoring will focus on selected Covered Species and representative CSS areas. The PVPLC will prioritize specific monitoring activities based on available budget and specific needs of individual species and habitats, and will produce a summary report on monitoring activities every three years.

14.6 Audit. Once every three or more years, as needed, the USFWS and CDFG may conduct an audit of (1) all development approvals and mitigation imposed through land use regulations or otherwise within approved subareas; (2) all lands acquired by each Participating Local Jurisdiction toward meeting its habitat acquisition obligation under the RPV NCCP Subarea Plan; and (3) all monies received, invested and expended on acquisition, management and monitoring activities within approved Subareas during the previous three years or other applicable time period. The CITY and the PVPLC shall cooperate fully with USFWS and CDFG to insure a complete and accurate audit.

14.7 Private Landowners. This Agreement and the RPV NCCP Subarea Plan will not impose upon private owners of land within the Reserve who are not Third-Party Beneficiaries any additional obligations for the management or maintenance of their land.

15.0 USFWS AND CDFG OBLIGATIONS

15.1 USFWS. The USFWS shall include in its budget requests for sufficient funds to fulfill its obligations under the RPV NCCP Subarea Plan, this Agreement, and all Section 10 (a)(1)(B) Permits it issues pursuant to the RPV NCCP Subarea Plan. USFWS acknowledges that acquisition of the private lands to be included in the Reserve must be accomplished through transactions with willing sellers.

15.2 CDFG. The CDFG shall include in its annual budget requests for sufficient funds to fulfill its obligations under the RPV NCCP Subarea Plan, this Agreement, and all NCCP Authorizations it issues pursuant to the RPV NCCP Subarea Plan. CDFG acknowledges that acquisition of the private lands to be included in the Reserve must be accomplished through transactions with willing sellers.

15.3 Failure to Provide State or Federal Contribution. The USFWS and CDFG acknowledge that the RPV NCCP Subarea Plan is dependent on the acquisition of private lands and that the opportunity to establish the Reserve requires that conservation transactions be finalized as soon as possible after the plan is approved. State and federal contributions may include, but are not limited to, state and federally funded habitat acquisitions, personnel, and habitat restoration and enhancement. If, following the exercise of all available authority and utilization of all available resources, the state and/or federal contribution committed to the RPV NCCP Subarea Plan cannot be provided, the NCCP will be reevaluated by the USFWS and CDFG in consultation with the CITY to consider possible adjustments to the take authorizations of the City, in light of the extent of the state and federal contribution. Prior to such reevaluation of the RPV NCCP Subarea Plan, the USFWS and CDFG shall first attempt to address the shortfall in the state and/or federal contribution through (1) habitat management practices and enhancement opportunities within the Reserve using existing management resources, provided the redirection of such resources does not adversely affect any Covered Species, and (2) habitat acquisition through the reallocation of existing state, federal and/or regional funds identified for NCCP Subregional Plan implementation, provided such reallocation does not adversely affect any Covered Species.

16.0 REMEDIES AND ENFORCEMENT

16.1 Remedies in General. Except as set forth below each Party shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and the Section 10(a)(1)(B) Permit and NCCP Authorization, and to seek remedies and compensation for any breach or violation thereof, consistent with and subject to the following:

- A. None of the Parties shall be liable in damages to the other Parties or to any other person or entity, including Third Party Beneficiaries, for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing, each Party shall retain whatever liability it would possess for its present and future acts or failure to act apart from and independent of, this Agreement.
- B. The Parties acknowledge that the RPV Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

16.2 Federal Take Authorization.

- A. Permit Suspension. The Service may suspend the Section 10(a)(1)(B) Permit, in whole or in part, for cause in accordance with the laws and regulations in force at the time of such suspension. (See 50 C.F.R. §§ 1327-29, 17.22(6) and 17.32(6). However, except where the USFWS determines that emergency action is necessary to avoid irreparable harm to a Covered Species, it will not suspend the Section 10(a)(1)(B) Permit without first (1) requesting the CITY to take appropriate remedial actions, and (2) providing the CITY with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the CITY to demonstrate why suspension is not warranted.
- B. Reinstatement of Suspended Permit. In the event the USFWS suspends the Section 10(a)(1)(B) Permit, in whole or in part, as soon as possible but no later than ten (10) days after such suspension, the USFWS shall confer with the CITY concerning how the suspension can be lifted. At the conclusion of any such conference, the USFWS shall identify reasonable specific actions, if any, necessary to effectively redress the

suspension. In making this determination the USFWS shall consider the requirements of the ESA, regulations issued thereunder, the conservation needs of the Covered Species, the terms of the Section 10(a)(1)(B) Permit and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, the USFWS shall send the CITY written notice of any available, reasonable actions, necessary to effectively redress the suspension. Upon performance of such actions, the Service shall immediately reinstate the federal Section 10(a)(1)(B) Permit. It is the intent of the Parties that in the event of any total or partial suspension of the Section 10(a)(1)(B) Permit all Parties shall act expeditiously and cooperatively to reinstate the Section 10(a)(1)(B) Permit.

C. Permit Revocation or Termination

1. Pursuant to 50 C.F.R. section 13.28-13.29 and 50 C.F.R. 17.22(b)(8) and 17.32(b)(8), the USFWS agrees that it will revoke or terminate the Section 10(a)(1)(B) Permit, in whole or in part only (a) for a material violation of the Section 10(a)(1)(B) Permit or material breach of this Agreement by the CITY where (1) the CITY fails to cure the violation or breach after receiving actual notice of it from the USFWS and a reasonable opportunity to cure it, or (2) the USFWS determines in writing that such violation or breach cannot be effectively redressed by other remedies or enforcement action; or (b) where revocation of the Section 10(a)(1)(B) Permit, in whole or in part, is necessary to avoid the likelihood of jeopardy to a listed species.
2. The USFWS agrees that it will not revoke or terminate the Section 10(a)(1)(B) Permit, in whole or in part, for a material violation of the Section 10(a)(1)(B) Permit or a material breach of this Agreement without first (a) requesting the CITY take appropriate remedial action, and (b) providing the CITY with notice in writing of the facts or conduct which warrant the partial or total revocation or termination and a reasonable opportunity (but not less than sixty (60) days) to demonstrate or achieve compliance with the ESA, the Section 10(a)(1)(B) Permit and this Agreement. The USFWS agrees that it will not revoke or terminate the Section 10(a)(1)(B) Permit, in whole or in part, to avoid the likelihood of jeopardy to a listed species, without first notifying the CITY of those measures, if any, that the CITY may undertake to prevent jeopardy to the listed species and maintain the Section 10(a)(1)(B) Permit and a reasonable opportunity, consistent with section 16.5 of this Agreement, to implement such measures.

16.3 The NCCP Act Authorization.

- A. Authorization Suspension. In the event of my material violation of the NCCP Act Authorization or material breach of this Agreement by the CITY the CDFG may suspend the NCCP Act Authorization in whole or in part; provided, however, that it may not suspend the NCCP Act Authorization without first (1) requesting the CITY take appropriate remedial actions, and (2) providing the CITY with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the CITY to demonstrate why suspension is not warranted or to take steps necessary to cure the violation or breach.
- B. Reinstatement of Suspended Authorization. In the event the CDFG suspends the NCCP Act Authorization, as soon as possible but no later than ten (10) days after such suspension, the CDFG shall confer with the CITY concerning how the violation or breach that led to the suspension can be remedied. At the conclusion of any such conference, the CDFG shall identify reasonable specific actions necessary to effectively redress the violation or breach. In making this determination the CDFG shall consider the requirements of the NCCP Act, any regulations issued thereunder, the conservation needs of the RPV Covered Species, the terms of the NCCP Act Authorization and of this

Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, the CDFG shall send the CITY written notice of the reasonable actions necessary to effectively redress the violation or breach. Upon full or substantial performance of such necessary actions, the CDFG shall immediately reinstate the NCCP Act Authorization. It is the intent of the Parties that in the event of any suspension of the NCCP Act Authorization all Parties shall act expeditiously and cooperatively to reinstate the NCCP Authorization.

C. Authorization Revocation or Termination.

1. CDFG may revoke or terminate the NCCP Act Authorization for a material violation of the NCCP Act Authorization or material breach of this Agreement by the CITY, if the CDFG determines in writing that (a) such violation or breach cannot be effectively redressed by other remedies or enforcement action, or (b) revocation or termination is required to avoid jeopardizing the continued existence of a Covered Species and to fulfill a legal obligation of the CDFG under the CESA and/or the NCCP Act.
2. CDFG agrees that it will not revoke or terminate the NCCP Act Authorization without first (a) requesting the CITY take appropriate remedial action, and (b) providing the CITY with notice in writing of the facts or conduct which warrant the revocation or termination and a reasonable opportunity (but not less than sixty (60) days) to demonstrate or achieve compliance with the CESA, the NCCP Act, the NCCP Act Authorization and this Agreement.

16.4 Circumstances Likely to Constitute Jeopardy to Species. In the event of circumstances which appreciably reduce the likelihood of survival and recovery of a species in the wild, USFWS or CDFG may suspend the take authorizations, in whole or in part, without resorting to the procedures specified above. The period of such emergency suspension shall not last longer than 90 days. During such 90 day period, FWS shall comply with 50 C.F.R. 13.27 and Section 16.2 A and B.

16.5 The CITY's Obligations In The Event of Suspension or Revocation. In the event that the USFWS and/or CDFG suspend or revoke the Section 10(a)(1)(B) Permit and NCCP Act Authorization issued to the CITY under this Agreement, the CITY will remain obligated to fulfill its mitigation, enforcement management, and monitoring obligations, and its other RPV NCCP Subarea Plan obligations, in accordance with this Agreement and applicable statutory and regulatory requirements for all land development activities authorized for Take prior to the breach which led to the suspension or revocation.

17.0 THIRD PARTY BENEFICIARIES

17.1 Authorization. Upon execution of this Agreement by the Parties and the issuance of take authorizations by USFWS and CDFG, the CITY may allow within the Subarea the Incidental Take of RPV Covered Species by Third Party Beneficiaries under the direct control of the CITY, specifically including landowners and public and private entities undertaking land development activities in conformance with an approval granted by the CITY in compliance with this Agreement. A third party beneficiary's compliance with this Agreement and with take authorizations issued under it, shall not exempt it from compliance with any City, County, State, or Federal law or regulation, except to the extent it may constitute compliance with the taking provisions of the ESA and the CESA.

- A. Creation of Third-Party Beneficiary Status. The creation of Third-Party Beneficiary status shall occur during the CITY's permitting process at the point in time when (1) review of the project's impacts on biological resources and a determination of

necessary mitigation has occurred in compliance with this Agreement and the RPV NCCP Subarea Plan and other applicable law (e.g. CEQA), (2) the *determined mitigation* includes an immediately-effective requirement to maintain the biological values of the land committed for mitigation, and (3) the mitigation has been imposed through a condition of development (such as a development agreement or a tentative map condition) that is *recorded and* runs with the land and is enforceable against and binding upon the Third-Party Beneficiary and any successor-in-interest to the Third-Party Beneficiary, provided that within regard to projects with a federal nexus that are required to undergo consultation under Section 7 of the ESA, Third Party Beneficiary status shall not attach until the Section 7 consultation is also completed. Third-Party Beneficiary status may be attained for a project as a whole, or for a discrete phase(s) of a project so long as the mitigation for the discrete phases) is not functionally dependent in the context of the RPV NCCP Subarea Plan upon the mitigation proposed for subsequent phases.

B. Maintenance of Third-Party Beneficiary Status. Third-Party Beneficiary status will remain in effect unless, prior to the issuance of take authorization in accordance with paragraph 17.1.D below, the Third-Party Beneficiary alters the project in a manner that increases or substantially alters impacts to biological resources evaluated pursuant to Paragraph 17.1.A above or fails to maintain the biological values of the land committed for mitigation pursuant to Paragraph 17.1.A above. In such circumstance, the Third-Party Beneficiary status is automatically extinguished, and the subsequent creation of Third-Party Beneficiary status will require biological review and imposition of mitigation for the increased or altered impacts pursuant to Paragraph 17.1 A above. However, Third-Party Beneficiary status shall not be extinguished as a result of impacts to biological values resulting from natural or other causes beyond the Third-Party Beneficiary's control, as determined by the USFWS and CDFG, including fire, flood, storm, and earth movement, or from any prudent action taken by the Third-Party Beneficiary to prevent, abate, or mitigate significant injury to the land evaluated pursuant to Paragraph 17.1 .A above resulting from such causes.

C. Assurances to Third-Party Beneficiaries. For a project or portion thereof where Third-Party Beneficiary status has been attained and is effective, the Parties shall not alter existing mitigation obligations imposed by the CITY on the Third-Party Beneficiary, except as otherwise specifically allowed under this Agreement or the Subarea Plan, provided that the Third-Party Beneficiary satisfies all mitigation obligations imposed by the CITY in conformance with this Agreement. These assurances do not apply to circumstances under which this Agreement provides that USFWS or CDFG may require additional mitigation or conservation measures from the CITY; under such circumstances, the Parties may require Third Party Beneficiaries to provide any *additional* mitigation or conservation that is required.

D. Authorization for Take Conferred by Local Jurisdiction to Third-Party Beneficiary. The authorization for incidental take issued by the CITY to the Third-Party Beneficiary shall be for the length of time and run concurrent with the specific land development approval granted by the CITY. However, no grading, clearing and/or grubbing activities may be commenced by the Third-Party Beneficiary pursuant to the CITY's development approval until the mitigation established pursuant to paragraph 17.1.A above has been fully satisfied (via conservation easement, transfer of fee title, etc.) or is guaranteed (via irrevocable offer of dedication, mitigation bond, letter of credit, pledged savings account or other equivalent mechanism) to occur within a time frame approved by the CITY, which time frame shall not under any circumstance exceed one year from the date the permit for grading, clearing and/or grubbing is issued.

17.2 Effect of Take Authorization Revocation, Termination or Suspension. In the event that the USFWS and/or CDFG revoke, terminate or suspend the Section 10(a)(1)(B)

Permit and NCCP Act Authorization issued to the CITY in connection with this Agreement and provided the CITY continues to carry out its obligation under the Subarea Plan, this Agreement and the Take Authorizations with regard to Third Party Beneficiaries, the assurances provided to Third Party Beneficiaries under this Agreement and the right to Take RPV Covered Species and Species Adequately Conserved extended by the CITY to the Third Party Beneficiaries under the Permit and/or NCCP Authorization, will remain in effect as to every individual Third Party Beneficiary which fulfills the mitigation obligations imposed on it by the CITY in compliance with this Section and Section 10 of this Agreement unless USFWS or CDFG determines that continuation of the City's Permit and/or NCCP Act Authorization with regard to Take by Third Party Beneficiaries would likely jeopardize the continued existence of a listed species.

17.3 Enforcement. The Parties reserve the right to enforce all applicable federal, state or local laws against persons or entities which engage in unlawful land development activity without obtaining proper permits and approvals from the Parties. Also, the Parties reserve the right to enforce all applicable federal, state or local laws against Third-Party Beneficiaries that conduct land development activities in the Subarea which are not in compliance with land development approvals granted by the CITY in conformance with this Agreement and the RPV NCCP Subarea Plan or any other City, County, State or Federal law or regulation. .

17.4 No Right to Sue Under this Agreement. Notwithstanding the use of the term "Third-Party Beneficiary" or any other provision of this Agreement, this Agreement shall confer no right upon Third-Party Beneficiaries or any other person or entity to sue the USFWS, the CDFG, or the CITY.

18.0 ENVIRONMENTAL REVIEW

18.1 Federal Law - NEPA. Issuance of a Section 10(a)(1)(B) Permit to the CITY by USFWS is an action subject to NEPA review. USFWS is a lead agency under NEPA. The RPV NCCP Subarea Plan has been evaluated pursuant to NEPA under the RPV NCCP Subarea Plan Final EIR/EA

18.2 State Law - CEQA. Implementation and approval of the RPV NCCP Subarea Plan and each of the subarea plans are actions subject to CEQA review. The CITY is the lead agency for the RPV NCCP Subarea Plan, which has been evaluated pursuant to CEQA under the RPV NCCP Subarea Plan and CDFG is a responsible agency under CEQA for purposes of approving the RPV NCCP Subarea Plan and issuing the NCCP Act Authorization.

19.0 COOPERATIVE EFFORT

In order that each of the legal requirements summarized in Section 8.0 of this Agreement are fulfilled, each of the Parties to this Agreement must perform certain specific tasks. The RPV NCCP Subarea Plan thus describes a cooperative program by federal, state and local agencies to conserve the Covered Species.

20.0 TERMS USED

Terms defined and utilized in the RPV NCCP Subregional Plan, the ESA, the CESA, and the NCCP Act shall have the same meaning when utilized in this Agreement, except as specifically noted.

21.0 TERM OF IMPLEMENTING AGREEMENT

21.1 Fifty-year Agreement. This Agreement takes effect on the Effective Date, and shall remain in full force and effect for a period of 50 years, or until revocation or termination of tire Section 10(a)(1)(B) Permit and NCCP Act Authorization pursuant to Section 16 or Section 22 of this Agreement, whichever occurs sooner.

21.2 Fifty-year Take Authorizations. The Section 10(a)(1)(B) Permit and NCCP Act Authorization issued to the CITY shall be issued for a period of 50 years from the Effective Date, unless revoked or terminated sooner in accordance with applicable laws and regulations.

21.3 Permanent Preservation. Notwithstanding the stated term as herein set forth, the Parties agree and recognize that once Take of a Covered Species has occurred and/or their habitat modified within the Subarea, such Take and habitat modification will be permanent. The Parties, therefore, agree that the preservation and maintenance of the habitat provided for under this Agreement is likewise intended to be permanent and to extend beyond the term of this Agreement.

22.0 TERMINATION

A. Upon 90 days written notice to USFWS and CDFG, the CITY may unilaterally withdraw from this Agreement provided: (1) the CITY and all Third Party Beneficiaries have complied with all mitigation obligations incurred under the Section 10(a)(1)(B) Permit and NCCP Authorization, the RPV NCCP Subarea Plan, and this Agreement up to the date of withdrawal; the City has complied with its obligation to record all habitat losses and gains; and the CITY provides written evidence of such compliance to USFWS and CDFG; and (2) the CITY and Third Party Beneficiaries shall remain obligated to carry out all of their long term management and monitoring obligations assumed under the RPV NCCP Subarea Plan and this Agreement with respect to habitat conservation lands included in, or required to be included in, the Preserve as a result of Incidental Take associated with land development projects authorized for Take by the CITY prior to withdrawal from the Agreement.

B. Any Incidental Take associated with land development projects approved by the CITY for which mitigation has been assured as provided in Section 17 shall, subject to the limitations in Section 17, continue to be authorized under the terms of the Section 10(a)(1)(B) Permit and NCCP Act Authorization provided the CITY continues to carry out its obligations under this Agreement. Except as provided in this Section 22.B, the Take Authorizations may not qualify for Incidental Take authorization under Section 17.0 after that date.

C. Withdrawal of the CITY from this Agreement shall be deemed to constitute a surrender of the CITY's take authorizations issued pursuant to this Agreement.

23.0 AMENDMENTS

23.1 Standard Amendments and Modifications. Standard amendments to the Section 10(a)(1)(B) Permit and NCCP Act Authorization and this Agreement and modifications to the Subarea Plan may be proposed by any Party to this Agreement. The Party proposing the amendment or modification shall provide to each other Party a written statement of the reasons for the amendment or modification and an analysis of the effect of the amendment or modification on the environment, the effects on Covered Species and the implementation of the Subarea Plan, including any economic requirements associated with the amendment or modification. Any amendment shall comply with all applicable laws, including, but not limited to the ESA and implementing regulations, NEPA, the NCCP Act and any implementing regulations, and CEQA. All modifications to the Subarea Plan and all

amendments to this Agreement, except those described in Sections 5.6 and 5.9, of the RPV NCCP Subarea Plan, shall be processed as standard amendments and modifications pursuant to this paragraph.

23.2 Minor Modifications and Amendments. Any Party may propose a minor modification to the Subarea Plan or amendment to this Agreement for the changes described in Sections 5.1.3.1, 5.3.1, and 5.4 of the RPV NCCP Subarea Plan using the amendment procedures contained in those sections. All other modifications or amendments shall be standard amendments and modifications governed by Section 23.1. It is contemplated that minor modifications to the RPV NCCP Subarea Plan and minor amendments to this Agreement may be agreed to by the Parties in writing without the need for amending the Section 10(a)(1)(B) Permit and NCCP Authorization.

24.0 FORCE MAJEURE

In the event that the CITY is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the CITY ("*force majeure*"), including, but not limited to Acts of God, labor disputes, sudden actions of the elements, or unilateral actions of federal or state agencies or other local jurisdictions, the CITY shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this Section shall be deemed to authorize any Party to violate ESA or CESA, and provided further that:

- A. The suspension of performance is of no greater scope and no longer duration than is required by the force majeure;
- B. Within two weeks after the occurrence of the force majeure, the CITY gives the USFWS and CDFG written notice describing the particulars of the occurrence;
- C. The CITY uses its best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the CITY are contrary to its interest); and
- D. When the CITY is able to resume performance of its obligations, the CITY shall give USFWS and CDFG written notice to that effect.

24.1 Changed Circumstances not subject to Force Majeure. Events or causes identified as Changed Circumstances in the Subarea Plan and this Agreement are not considered unforeseeable events or Acts of God within the meaning of this Section 24 and the CITY shall be responsible for implementing the responses to Changed Circumstances provided for in Section 9.2 (b) of this Agreement.

25.0 MISCELLANEOUS PROVISIONS

25.1 No Partnership. Except as otherwise expressly set forth herein, neither this Agreement nor the RPV NCCP Subarea Plan shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

25.2 Successors and Assigns. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. The CITY may only assign its rights and obligations under this Agreement with the approval of the USFWS and CDFG, which approval shall not be unreasonably withheld. Assignment or other transfer of the Section 10(a)(1)(B) Permit or

NCCP Act Authorization shall be governed, respectively, by then-current USFWS regulations and any applicable NCCP regulations.

25.3 Notice. Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

Operations Manager, California/Nevada Operations Office
United States Fish and Wildlife Service
2800 Cottage Way, Room W-2606
Sacramento, California 95825

Field Supervisor, Carlsbad Field Office
United States Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, California 92009

Director, California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814

Regional Manager, South Coast Region
California Department of Fish and Game
4949 Viewridge Avenue
San Diego, California 92123-1662

Office of the City Manager
The City of Rancho Palos Verdes
30940 Hawthorne Boulevard
Rancho Palos Verdes, California 90275-5391

Executive Director
Palos Verdes Peninsula Land Conservancy
P.O. Box 3427
Palos Verdes Peninsula, CA 90274

25.4 Entire Agreement. This Agreement supersedes any and all prior agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters; and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other party that is not embodied herein.

25.5 Attorneys' Fees. If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs.

25.6 Duplicate Originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties.

25.7 Federal and State Appropriations. The duty of the USFWS and CDFG to carry out its obligations under the RPV NCCP Subarea Plan and this Agreement shall be subject

to the federal Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

The duty of CDFG to carry out its obligations under the RPV NCCP Subarea Plan and this Agreement shall be subject to the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge that CDFG will not be required under this Agreement to expend any State of California agency's appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

25.8 Elected Officials. No member of Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

25.9 Governing Law. This Agreement shall be governed by and construed in a manner consistent with the statutory and regulatory authority of the USFWS under the ESA, its implementing regulations and other applicable federal laws, and of the CDFG under the CESA, the NCCP Act, and other applicable state laws and regulations. Nothing in this Agreement is intended to nor shall be construed to limit or compromise the authority of the USFWS to fulfill its responsibilities under the ESA or CDFG under CESA and the NCCP Act, including, but not limited to seeking penalties against the CITY. Further, nothing in this Agreement is intended or shall be construed to limit or diminish the responsibility of the USFWS as an agency of the federal government or CDFG as an agency of the State of California. Nothing in this Agreement is intended to nor shall be construed to limit or diminish the authority of the City or private parties to enforce any City, County, State, or Federal law or Regulation except to the extent that compliance with this Agreement or a permit issued under it may be deemed compliance with the taking provisions of the ESA and the CESA

25.10 Counterparts. This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each member. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all members do not appear on the same page.

25.11 References to Regulations. Any reference in this Agreement, the RPV NCCP Subarea Plan, or the Section 10(a)(1)(B) Permit and NCCP Act Authorization to any regulation or rule of USFWS or CDFG, shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

25.12 Applicable Laws. Notwithstanding any other provisions of this Agreement, all activities covered under the RPV NCCP Subarea Plan, this Agreement and the Section 10(a)(1)(B) Permit and NCCP Act Authorization must be in compliance with all applicable state or federal laws and regulations including CESA (including § 2080) and the ESA (including the provisions of §§ 7 and 10).

25.13 Due Authorization. Each Party warrants that the signatory is authorized to execute this Agreement on behalf of that Party.

SIGNATURE PAGE TO IMPLEMENTING AGREEMENT BY AND AMONG
UNITED STATES FISH AND WILDLIFE SERVICE,
CALIFORNIA DEPARTMENT OF FISH AND GAME,
CITY OF RANCHO PALOS VERDES
AND PALOS VERDES PENINSULA LAND CONSERVANCY

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

BY: _____ Date _____

Regional Director
United States Fish and Wildlife Service
Portland, Oregon

BY: _____ Date _____

Director
California Department of Fish and Game
Sacramento, California

BY: _____ Date _____

City Manager
The City of Rancho Palos Verdes
Rancho Palos Verdes, California

BY: _____ Date _____

President
Palos Verdes Peninsula Land Conservancy
Rolling Hills Estates, California

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City Manager
The City of Rancho Palos Verdes
Rancho Palos Verdes, California

BY: _____ Date _____

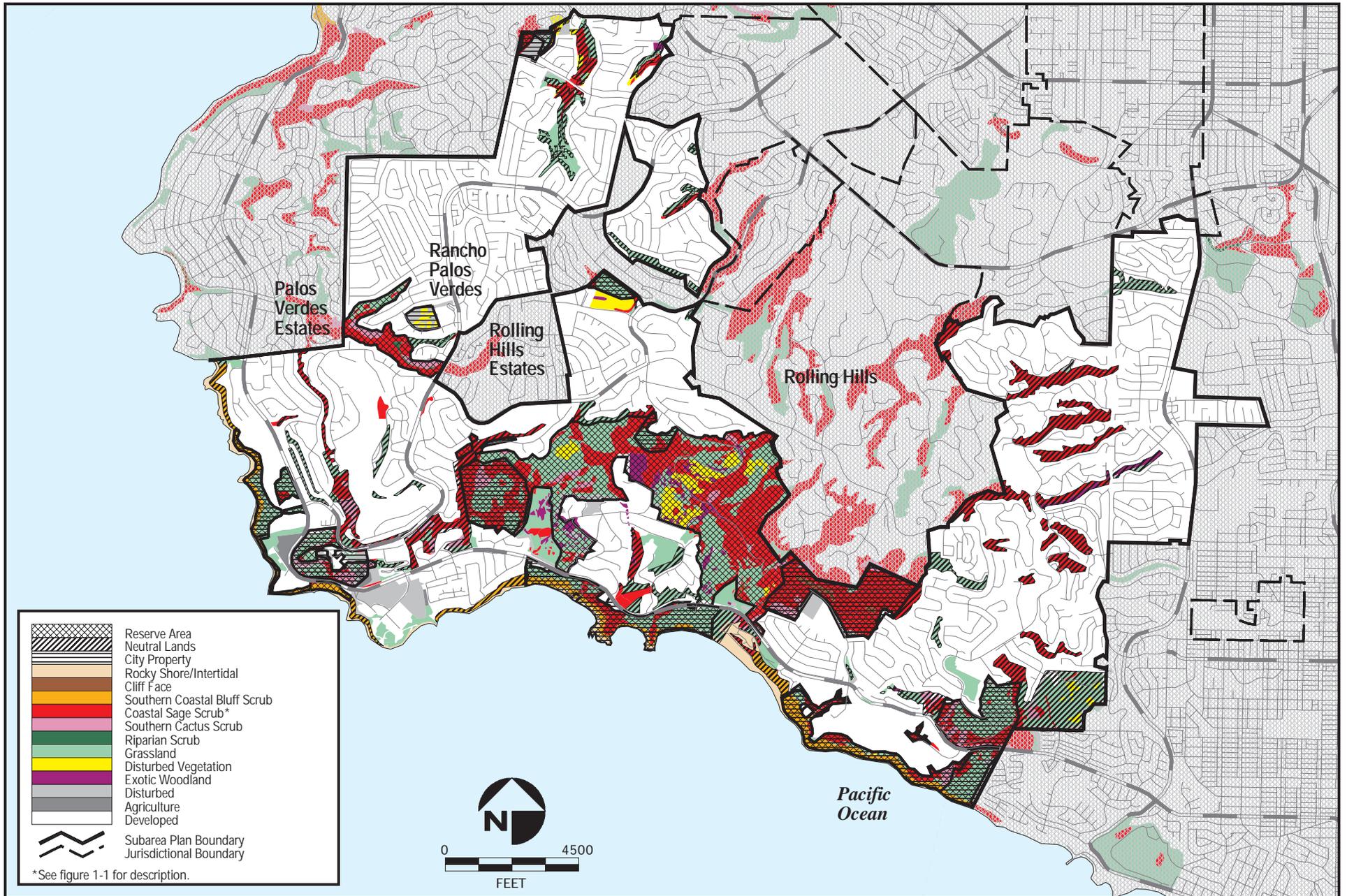
President
Palos Verdes Peninsula Land Conservancy
Rolling Hills Estates, California

List of Attachments

- Exhibit A** MAP OF RPV NCCP SUBAREA PLANNING AREA
- Exhibit B** COVERED SPECIES LIST FOR THE RANCHO PALOS VERDES SUBAREA PLAN
- Exhibit C** SUFFICIENTLY CONSERVED VEGETATION COMMUNITIES
- Exhibit D** LIST OF COVERED PROJECTS
- Exhibit E** Draft contract between City and PVPLC

Exhibit A

Map of RPV NCCP Subarea Planning Area



FIGURE

3-2

Exhibit B

**COVERED SPECIES LIST FOR
THE RPV SUBAREA PLAN**

Status	Common Name	Scientific Name
CNPS List 1B	Aphanisma	<i>Aphanisma blitoides</i>
CNPS List 1B	South Coast Saltscale	<i>Atriplex pacifica</i>
CNPS List 4	Peirson's Morning-glory	<i>Calystegia peirsonii</i>
CNPS List 1B	Southern Tarplant	<i>Centromadia parryi</i> ssp. <i>australis</i>
CNPS List 4	Catalina Crossosoma	<i>Crossosoma californicum</i>
CNPS List 1B	Bright Green Dudleya	<i>Dudleya virens</i>
CNPS List 1B	Santa Catalina Island Desert-thorn	<i>Lycium brevipes</i> var. <i>hassei</i>
FE, CE, CNPS List 1B	Lyon's Pentachaeta	<i>Pentachaeta lyonii</i>
CNPS List 4	Woolly Seablite	<i>Suaeda taxifolia</i>
FE	Palos Verdes Blue Butterfly	<i>Glaucopsyche lygdamus palosverdesensis</i>
FE	El Segundo Blue Butterfly	<i>Euphilotes battoides allyni</i>
FT	Coastal California Gnatcatcher	<i>Polioptila californica californica</i>
SSC	Cactus Wren	<i>Campylorhynchus brunneicapillus</i>

FE – Federally endangered

FT – Federally threatened

CE – State of California endangered

SSC – State Species of Concern

CNPS List 1B – Plants, rare, threatened, or endangered in California and elsewhere

CNPS List 4 – Plants of limited distribution -- a watch list

Exhibit C

SUFFICIENTLY CONSERVED VEGETATION COMMUNITIES

Coastal Sage Scrub (CSS) Sub-associations
CSS – Artemisia Dominated
CSS – Baccharis Dominated
CSS – Encelia Dominated
CSS – Eriogonum Dominated
CSS – Rhus Dominated
CSS – Salvia Dominated
CSS – Undifferentiated
Saltbush Scrub
Southern Cactus Scrub
Southern Coastal Bluff Scrub
Grassland
Riparian Scrub
Exotic Woodland
Cliff Face

Exhibit D

LIST OF COVERED PROJECTS

CITY PROJECTS
1. Altamira Canyon Drainage Project
2. Dewatering Wells (10 Wells)
3. Misc. Fissure Filling
4. Misc. Damaged Drain Repair
5. Portuguese Canyon Drainage Project
6. Sacred Cove Geologic Investigation
7. PVDS Roadway Rehabilitation
8. PVDS Emergency Washout Project
9. PVDE Drainage Improvement Project
10. Misc. Drainage Improvement Projects
11. 25th Street Road Repair (Phase 2)
12. Abalone Cove Beach Project
13. Tarapaca Sewer Line Relocation
14. Forrestal Property Trail Clearing
15. 25th Street Road Repair (Phase 1)
16. San Ramon Canyon Repair
17. McCarrell Canyon Outlet Improvement
18. RPV Trails Plan Implementation
19. Lower San Ramon Canyon Repair
20. Active Recreation Area
21. Lower Point Vicente

PRIVATE PROJECTS
1. Brush Clearance at Windport Canyon
2. Brush Clearance at 3303 Palo Vista
3. Portuguese Bend Club Slope Repair
4. Portuguese Bend Club Remedial Grading
5. Hon Geologic Investigation
6. Crestridge Development
7. Brush Clearance at Lower Filiorum
8. Lower Filiorum Development
9. Coolheights Residential Lot Development

Exhibit E

Draft Contract Between the City and PVPLC

Exhibit E

DRAFT

AGREEMENT BETWEEN THE CITY OF RANCHO PALOS VERDES AND THE PALOS VERDES PENINSULA LAND CONSERVANCY, A NON-PROFIT ORGANIZATION, TO MANAGE THE NATURE PRESERVE CREATED BY THE RPV NATURAL COMMUNITIES CONSERVATION PLANNNING SUBAREA PLAN AND TO FULFILL THE OBLIGATIONS AS PRESENTED IN THAT PLAN

This Agreement (the Agreement) is made as of this ____ day of _____ by and between the City of Rancho Palos Verdes (the City) and the Palos Verdes Peninsula Land Conservancy (PVPLC) for the purpose of defining the parties' respective rights and obligations to establish and manage the Portuguese Bend Nature Preserve (the Preserve) in accordance with the NCCP Plan (Plan) creating the Preserve.

1. Donation of Property and Grant of Easements

- 1.1. The PVPLC shall enroll the Lunada Canyon Preserve (Lunada Canyon), as defined in Exhibit 1.1 of the Agreement, into the Preserve.
- 1.2. The City shall enroll the Portuguese Bend Properties (Portuguese Bend), as described in Exhibit 1.2 of the Agreement, into the Preserve.
- 1.3. The City shall grant conservation easements in favor of PVPLC over all of the property it enrolls into the Preserve in the form of Exhibit 1.3.
- 1.4. The PVPLC shall accept the granted easements.

2. Financial Obligations

- 2.1. The PVPLC shall raise funds from public and private sources to fulfill its obligations as follows:
 - a. contribute \$6,000,000 toward the acquisition of the Portuguese Bend property;
 - b. contribute \$50,000 annually in money or contractor services for the management of the Preserve in accordance with the Plan;
 - c. contribute \$25,000 annually in volunteer or in-kind services using the most current rate as developed by *Independent Sector* for the management of the Preserve in accordance with the Plan;
 - d. contribute half of the cost to perform additional restoration, if required, by a failure to submit the Public Use Master Plan (PUMP) in a timely manner as required by the Plan;
 - d. use its best efforts to raise additional public or private funds to undertake restoration projects in the Preserve as defined in the Plan, and to establish a stewardship endowment for the Preserve.

- 2.2. PVPLC shall provide financial records as required by the Plan, to be included in the annual report on the status of the Preserve:
 - a. financial records documenting the contributions set forth in paragraph 2.1.b. of the Agreement;
 - b. records of volunteer work or contributions of in kind services as set forth in paragraph 2.1.c of the Agreement;
 - c. financial records setting forth the amount of money in each of PVPLC's endowments as of the end of the previous PVPLC fiscal year.
- 2.3. PVPLC shall pay the prevailing wage to all employees and contractors who work on the Preserve.
- 2.4. The City shall contribute \$ 1,000,000 toward the acquisition of lands required to complete the NCCP preserve.
- 2.5. The City shall pay to the PVPLC \$100,000 each year, (Annual Fee). These payments shall be made in equal quarterly payments beginning on _____ . The Annual Fee shall be adjusted annually as follows:
 - a. for inflation, based on the consumer price index;
 - b. reduced by one half of the income generated by amounts over \$1,000,000 in endowment funds owned by the PVPLC that are not prevented by restriction from being used to support the NCCP Preserve endowment.
 - c. increased by half of the cost to perform additional restoration if required by a failure to submit the PUMP as required by the Plan.
 - d. increased by the amount dedicated to habitat maintenance generated by the endowment for Oceanfront Estates for management of the Preserve areas within that tract. This payment shall begin after the bond for Oceanfront Estates is released.
 - e. The payment to the PVPLC from the City shall be for an amount no less than the amount of any donation or endowment income received by the City for maintenance of the Preserve reduced by actual costs incurred by the City for maintenance of the Preserve.

3. Preserve Management

- 3.1 The PVPLC will manage the Preserve, and any subsequently acquired lands within the Preserve, in a manner consistent with the Plan. Its management functions will include participating in the development of the PUMP, participating in the establishment of a permanent Steering Committee for the Preserve, performing habitat restoration as required by the Plan, providing site management of the Preserve as required by the Plan, and providing administrative management of the Preserve.
- 3.2. The PVPLC will participate in the development of a PUMP as follows:
 - a. chair PUMP committee meetings;
 - b. select PUMP committee members jointly with the City Manager;
 - c. nominate three PVPLC staff members to serve on the committee;
 - d. working with the PUMP committee, draft the PUMP;
 - e. revise the PUMP in response to comments from City and Resource Agency staff
 - f. submit the PUMP jointly with City staff to the City Council for review and approval.
 - g. revise and amend the plan as required by State agencies and the Plan.
- 3.3 The PVPLC will participate in the establishment of a permanent Steering Committee for the Preserve by, in conjunction with the City Manager, selecting a committee with at least nine members, including one representative each from the City's Planning, Public Works and Parks departments, whose members will have the responsibility of reviewing amenities proposed for inclusion on the Preserve; holding a yearly meeting to hear public comment on the Preserve, and making recommendations to the City Council regarding proposed changes within the Preserve.
- 3.4. The PVPLC will perform habitat restoration as required by the Plan by clearing 5 acres and restoring 5 acres of land each year, and selecting and removing exotic plants at an additional 20 sites or from 5 acres of land, and managing the habitat restoration areas within Oceanfront Estates and those areas for which the owners of the golf course formerly called Ocean Trails have responsibility including the restoration areas in and around that golf course, Shoreline Park and a portion of the Switchbacks parcel.
- 3.4 The City will require the owners of the golf course formerly called Ocean Trails to perform habitat maintenance as directed by the PVPLC and required by the Ocean Trails Development Agreement.
- 3.6. The PVPLC will perform site management functions which include: working with utility companies and the City to develop an access

protocol for permitted activities with the Preserve; reviewing proposals and providing recommendations for work within the Preserve; coordinating the use of the Preserve for recreational and educational activities; obtaining hold harmless agreements and insurance protection acceptable to the City for itself and the City from any group approved to use the Preserve; and keeping the Preserve open during daylight hours or other approved schedule.

- 3.7 The PVPLC will develop a signage program for the Preserve as required by the Plan and approved by the Steering Committee and the City and will dismantle fencing within the Preserve except as required to protect habitat or public safety.
- 3.8. The City will participate in the development of the PUMP as follows:
 - a. select PUMP committee members jointly with the Executive Director of the PVPLC;
 - b. nominate three City staff members to serve on the committee;
 - c. review the draft PUMP and work with the PVPLC and the Committee to finalize a draft document;
 - e. submit the PUMP to the City Council for review and approval.
 - f. revise and amend the plan as required by State agencies and the Plan.
- 3.9 After the PUMP is completed, the City will establish a permanent Steering Committee for the property, with at least nine members. The Steering Committee will consist of representatives of appropriate interests including one representative each from the City's Planning, Public Works and Parks departments. The Steering Committee will be chaired by the PVPLC, members will be chosen by the PVPLC Executive Director and the City Manager, with the following responsibilities:
 - a. Review amenities proposed for installation in the Preserve
 - b. Hold a yearly meeting to hear public comment on the activities of the previous year, etc.
 - c. Make recommendations regarding any proposed changes to trails, activities or uses within the preserve.
- 3.10 The City will develop an access protocol for utility companies and the City's Public Works Department for permitted activities within the Reserve.
- 3.11 The City will maintain the site, performing the following functions to the level shown in the PAR analysis:
 - a. Perform weed abatement as directed by the Fire Department

- b. Provide public safety services (Sheriff's Department) as needed
- c. Provide portable toilets
- d. Collect trash

4. Planning, Monitoring & Reporting

4.1 The PVPLC will provide the plans, documents and reports required by the Plan, as follows:

- a. Reserve Habitat Management Plan
- b. Initial plans:
 - 1) Management and Monitoring Report
 - 2) Predator Control Plan
 - 3) Habitat Restoration Plan
 - 4) Targeted Exotic Removal Plan
- c. Provide a Comprehensive Monitoring Report every three years
- d. Provide reports as required every year:
 - 1) Management and Monitoring Report
 - 2) Predator Control Plan
 - 3) Habitat Restoration Plan
 - 4) Targeted Exotic Removal Plan
 - 5) Restoration Monitoring
- e. Submit Habitat Tracking Report every year, using data provided by City. Meet with the Resources Agencies to review the report.

4.2 The City and the PVPLC will hold the required annual public workshop

4.3. The City will provide the plans, documents and reports required by the Plan.

- a. The City will review and comment on all plans prepared by the PVPLC
- b. The City will provide the required habitat tracking data to the PVPLC and assist with preparation of the Habitat Tracking Report using the Habitrak system or equivalent system acceptable to the Resource Agencies.
- c. The City will perform environmental review of all proposed projects, whether to be performed by the City or the PVPLC, within the reserve.

5. Hazardous Materials

5.1 Definition.

The term Hazardous Materials refers to any chemical, substance, material, or waste or component thereof, the presence of which requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy, or common law or which is now or hereafter listed, defined or regulated as a flammable explosive, radioactive material, hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction over Hazardous Materials, or which would trigger any employee or community right-to-know requirements adopted by such body, or for which any such body has adopted any requirements for the preparation or distribution of a material safety data sheet. Without limiting the generality of the foregoing, Hazardous Materials shall include, but be not limited to: (a) hazardous, toxic or radioactive substances as defined in California Health and Safety Code Section 25316, as amended from time to time, or a related defined term in any successor or companion statutes, and (b) crude oil or byproducts of crude oil, other than crude oil which exists on the Preserve as a natural formation.

5.2 Use.

The PVPLC may use, store, maintain and handle within the Preserve substances customarily used in connection with the services contemplated under the terms of this Agreement and approved by the City (including substances which are Hazardous Materials), provided: (a) those substances are used and maintained only in such quantities as are reasonably necessary for the authorized uses stated herein, and strictly in accordance with applicable laws and manufacturer's instructions; (b) such substances are not disposed of, released or discharged at or onto the Preserve, and are transported to and from the Preserve in compliance with all applicable laws; (c) if any applicable law or the Preserve's trash removal contractor requires that such substances be disposed of separately from ordinary trash, the PVPLC shall make arrangements at its own expense for such disposal directly with a licensed disposal company at a lawful disposal site; and (d) any remaining substances are completely, properly, and lawfully removed from the Preserve upon expiration or earlier termination of this Agreement.

5.3 Compliance With Laws

The PVPLC hereby warrants and represents that it shall comply with all federal, state, and local laws and regulations, concerning use, release, storage and disposal of Hazardous Materials at the Preserve.

5.4 Clean Up

- a. If Hazardous Materials are discovered in the preserve, and neither party released, discharged, or disposed of the Hazardous Material, then as between the City and the PVPLC, City shall have the obligation to remediate the Hazardous Material if remediation is required. Nothing herein shall be deemed to prevent the City from seeking any and all appropriate redress from any person or entity responsible for such Hazardous Materials.
- b. If any Hazardous Material is released, discharged, or disposed of by the PVPLC or the City, or their officers, agents, contractors, employees or assigns, on or about the Preserve during the term of this Agreement, the releasing party shall immediately, properly, and in compliance with applicable laws, clean up and remove the Hazardous Material from the Preserve or any affected property, and clean or replace any affected personal property.

5.5 Notice

- a. The PVPLC agrees to give the City reasonably prompt notice that any Hazardous Material has been released at the Preserve.
- b. The City agrees to give the PVPLC reasonably prompt notice that any Hazardous Material has been released at the Preserve.

5.6 Reciprocal Indemnities

- a. The PVPLC agrees to indemnify, defend and hold harmless the City, its agents, officers, and employees from or against all liability, expenses, including defense costs, legal fees and response costs imposed by law, and claims for damages of any nature whatsoever which arise out of the presence of Hazardous Materials on the Preserve caused by authorized or unauthorized action of PVPLC staff, officers, or its other assigns.
- b. The City agrees to indemnify, defend and hold harmless the PVPLC, its agents, officers, and employees from or against all liability, expenses, including defense costs, legal fees and response costs imposed by law, and claims for damages of any nature whatsoever which arise out of the presence of Hazardous Materials on the Preserve caused by authorized or unauthorized action of City staff, or its other assigns.

- c. Perpetual Indemnification. The provisions of this paragraph 6 shall survive the termination of this Agreement.

6. Compliance with City Regulations

The PVPLC and all other organizations and individuals involved in the delivery of services that are within the scope of this Agreement shall at all times abide by the rules and regulations heretofore adopted or that may hereafter be adopted by the City and shall cooperate fully with City employees in the performance of their duties. Nothing herein shall be interpreted as waiving, modifying or reducing in any manner the police powers of the City with respect to the Preserve.

7. Default

- 7.1 In the event that the PVPLC breaches, defaults or materially fails to comply with any of the provisions contained herein, the City will provide the PVPLC with written notice to cure said breach, default or non-compliance. If the PVPLC does not correct said breach, default or non-compliance within thirty (30) calendar days of said notice, or, in situations where cure reasonably requires longer than 30 days, make reasonable progress toward its correction to the satisfaction of the City within thirty (30) calendar days of said notice, the City may immediately terminate this Agreement. In situations posing a threat to persons or property, the City may require immediate correction by the PVPLC, and if such action is not taken by the PVPLC, the City may take the action necessary to correct the situation, seek to recover all costs thereof from the PVPLC, and at the City's option, terminate this Agreement consistent with Section 8. hereof.

- 7.2 In the event that the City breaches, defaults or materially fails to comply with any of the provisions contained herein, the PVPLC will provide the City with written notice to cure said breach, default or non-compliance. If the City does not correct said breach, default or non-compliance within thirty (30) calendar days of said notice, or, in situations where cure reasonably requires longer than 30 days, make reasonable progress toward its correction to the satisfaction of the PVPLC, the PVPLC shall consult with the Resource Agencies regarding enforcement options. If all options to correct such breach, default or non-compliance have been unsuccessful, , the PVPLC may immediately terminate this Agreement. In situations posing a threat to persons, the PVPLC may require immediate correction by the City, and if such action is not taken by the City, the PVPLC may take the action necessary to correct the situation, seek to

recover all costs thereof from the City, and at the PVPLC's option, terminate this Agreement, consistent with Section 8. hereof.

8. Termination

Termination of Agreement: If either party desires to terminate the agreement, that party must submit the request for termination in writing to the other party, and to the U. S. Fish and Wildlife Service and the California Department of Fish and Game. Any such submittal must include a provision for continued compliance with the terms of the NCCP.

9. Indemnifications

9.1 The PVPLC agrees to indemnify, defend, and hold harmless the City and its officers, employees, agents, and assigns from and against all liabilities, expenses, defense costs, legal fees, claims, suits, and judgments for damages which arise out of an act or omission of the PVPLC or any of its agents, employees or assigns arising from PVPLC's obligations under this Agreement.

9.2 The City Indemnifies the PVPLC. The City agrees to indemnify, defend, and hold harmless the PVPLC and its officers, employees, agents, and assigns from and against all liabilities, expenses, defense costs, legal fees, claims, suits, and judgments for damages which arise out of an act or omission of the City or any of its agents, employees or assigns arising from the City's obligations under this Agreement.

10. Insurance

The PVPLC, at its own cost and expense, prior to any possession or use of the Premises, shall obtain insurance and furnish the City with evidence of such insurance from insurers that are admitted to do business in the State of California with a minimum rating of A-VII by Best's Insurance Guide for the following coverage and minimum limits of insurance, which shall be maintained by the PVPLC at its sole cost and expense throughout the term of this Agreement and any extension thereof:

- 10.1 General Liability Insurance – During the term of this Agreement, the PVPLC shall maintain general liability insurance in an amount not less than One Million Dollars (\$1,000,000) Combined Single Limit per occurrence.
- 10.2 Automobile Liability Insurance – During the term of this Agreement, the PVPLC shall maintain automobile liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) Combined Single Limit per occurrence covering any motor vehicle that is used by the PVPLC in connection with this Agreement.

- 10.3 Worker's Compensation/Employer's Liability Insurance – By signing this Agreement, the PVPLC hereby certifies that it is aware of the provisions of sections 3700 et. seq. of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all times during the term of this Agreement. In addition, during the term of this Agreement, the PVPLC shall maintain employer's liability insurance in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000).
- 10.4 Adjustment of Insurance Levels. The City reserves the right at any time during the term of this Agreement, applying generally accepted Risk Management principles, to change the amounts and types of insurance required hereunder by giving the PVPLC ninety (90) days advance written notice.
- 10.5 Additional Insureds – The PVPLC shall include the City and its boards, officers, and employees as additional insureds in all General Liability insurance required herein.
- 10.6 Notice of Change in Insurance – All insurance policies required under this Agreement shall expressly provide that such insurance shall not be canceled or materially reduced in coverage or limits except after thirty (30) days written notice is provided by receipted delivery to the City Attorney.
- 10.7 Default – If insurance is canceled, lapsed, or reduced below the minimums required in this Section, the City may consider the PVPLC to be in default and may terminate this Agreement. Termination shall occur at the expiration of a three (3) day written notice to PVPLC. At the termination of three (3) days or sooner, the PVPLC shall vacate the Preserve, and the PVPLC shall have no right to enter the Preserve.
- 10.8 Waiver of subrogation – With respect to property damage, each party agrees to waive its rights of recovery against the other for any claim applicable to the California Standard Fire Policy with Extended Coverage and Vandalism and Malicious Mischief endorsements, to the extent that the policies so permit.

11. Assignment and Subletting and Bankruptcy

Neither party may sublet the Preserve or any portion thereof, nor allow the same to be used by any other person or organization for any other use than herein specified, nor assign this Agreement, nor transfer, assign, or in any manner convey any of the rights or privileges herein granted without the express written approval

of the other party. Neither this Agreement nor the rights herein granted shall be assignable by any process or proceeding in any court, or by attachment, execution, proceeding in insolvency or bankruptcy, either voluntary or involuntary, or receivership proceedings.

12. Inspection of Premises

Authorized representatives, agents and employees of the City will have the right to enter the Preserve at any time for the purposes of property inspection and to ascertain compliance by the PVPLC with the terms and conditions of this Agreement.

13. Forebearance Not a Waiver

13.1 The acceptance by the City or the forbearance of any act not contemplated by this Agreement or in breach of this Agreement shall not be deemed to be a permanent waiver of such term, covenant, or condition, and shall not constitute approval or a waiver of any subsequent breach of the same or of any other term, covenant, or condition of this Agreement.

13.2 The acceptance by the PVPLC or the forbearance of any act not contemplated by this Agreement or in breach of this Agreement shall not be deemed to be a permanent waiver of such term, covenant, or condition, and shall not constitute approval or a waiver of any subsequent breach of the same or of any other term, covenant, or condition of this Agreement.

14. Funds Utilization and Commingling

All funds (including fees, commissions, grants, donations, profits from the sales of merchandise, other than PVPLC membership contributions and sales of PVPLC apparel with the PVPLC logo, etc.) that are received by the PVPLC as a result of programs or activities conducted at the Preserve shall be applied to the delivery and management of such programs and activities or for the maintenance and improvement of facilities within the Preserve and will be accounted for as provided in Section 2.2. Any funds that are specifically designated by the donor for use only in connection with programs or activities conducted on the Premises shall not be commingled with other funds of the PVPLC that are unrelated to this Agreement.

15. Sale of Merchandise, Food and Refreshments

Merchandise, food and refreshments sold by the PVPLC shall conform to all Federal, State and Municipal laws, ordinances and regulations in every respect. All edible

merchandise kept on hand will be stored and handled with due regard for sanitation and in compliance with all applicable sanitation laws, rules and regulations.

16. Nonprofit, tax-exempt status

For the life of this Agreement, the PVPLC shall keep current its status as a nonprofit, tax-exempt, 501(c)(3) Corporation in the State of California, as well as similar California state non-profit charitable entity status. Loss of such status shall constitute a material breach of contract for which the City may immediately terminate this Agreement. This agreement does not create any ownership or possessory interest in the Preserve by the PVPLC. The PVPLC shall, at all times, maintain a status in the State of California that would exempt it from any property tax, possessory interest tax, or similar tax, should it be determined to have an interest in the Preserve that would otherwise be a taxable interest. If at any time the PVPLC is determined to have a taxable ownership or possessory interest in the Preserve, the PVPLC shall pay all such taxes before delinquency. Failure to pay any such tax shall constitute a material breach of contract for which the City may immediately terminate this Agreement.

17. Financial Records and Reports

The PVPLC shall maintain a system of accurate internal financial records and controls for PVPLC operations at the Preserve in accordance with generally accepted accounting procedures. The PVPLC shall maintain all financial records for the term of this Agreement and for a period of two years following the termination of this Agreement. The City shall have the right to inspect the PVPLC's records during normal business hours following at least three business days advance written notice to the PVPLC.

On or before March 1 of each year, the PVPLC shall provide the City with an audited financial statement of its operations for the previous fiscal year. This shall include, but will not necessarily be limited to, a summary of all revenues and expenditures. Financial statements shall be submitted to the City at the address identified herein.

18. Department Representative and Channels of Communication

The PVPLC shall keep the City informed of all activities at the Preserve. The PVPLC shall place the City on distribution lists to receive program schedules, newsletters and other information pertaining to its activities.

Unless otherwise notified by the City in writing, all submittals by the PVPLC to the City shall be addressed to:

City Manager

City of Rancho Palos Verdes
30940 Hawthorne Boulevard
Rancho Palos Verdes, Ca. 90275
Tel. (310) 377-0360
Fax. (310) 544-5291

Unless otherwise notified by the PVPLC in writing, all submittals by the City to the PVPLC shall be addressed to:

Executive Director
Palos Verdes Peninsula Land PVPLC
916 Silver Spur, Suite 108
Palos Verdes Peninsula, CA 90274
Tel: (310) 541-7613
Fax: (310) 541-7623

All notices and approvals required or given pursuant to this Agreement shall be in writing.

19. Non-Discrimination

The Preserve and all authorized services related thereto, as set forth herein, shall be available for use and enjoyment by the public without regard to race, religion, national origin, ancestry, gender, sexual orientation, age, or disability. The PVPLC agrees that in the performance of this Agreement it will not discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, gender, sexual orientation, age, or disability.