

**AMENDED AND RESTATED OPERATING AGREEMENT**  
**[Living Coast Discovery Center, Chula Vista]**

This AMENDED AND RESTATED OPERATING AGREEMENT [Living Coast Discovery Center, Chula Vista] ("Agreement"), is entered into effective as of October 1, 2014 ("Effective Date"), by and between the CITY OF CHULA VISTA, a chartered municipal corporation ("City"), and LIVING COAST DISCOVERY CENTER, a California non-profit corporation ("Operator"). Individually, the City and Operator may be referred to herein as "Party" and collectively as "Parties". This Agreement is made with reference to the following facts:

**RECITALS**

- A. The Chula Vista Nature Center ("CVNC") is a world-class zoological institution and attraction with hands-on exhibits and live animal displays, which emphasize the importance of natural coastal marsh resources and their delicate ecosystem balance. The CVNC is located at 1000 Gunpowder Point Drive, Chula Vista, CA on approximately 3.3 acres of land ("Nature Center Land") on Gunpowder Point within the Sweetwater Marsh National Wildlife Refuge on land owned by the U.S. Fish and Wildlife Service ("USFWS").
- B. The CVNC was opened to the public in July of 1987. Initially, the CVNC was operated by the Bayfront Conservancy Trust ("BCT"), a non profit corporation formed for that purpose. Thereafter, the City, Redevelopment Agency and the BCT oversaw significant improvements to the CVNC. The City ultimately assumed direct control of the CVNC, and in 2002 the City created an official Nature Center department to manage CVNC operations.
- C. The Operator was initially formed as The Environmental Legacy Fund, a California non profit corporation qualified as a tax exempt public charity for purposes of assisting with fundraising for CVNC operations and to organize and support volunteer efforts at the facility. On or about June 16, 1997, the Operator changed its name to the Chula Vista Nature Center Foundation, and then in 2012 changed its name, and the name of the CVNC to the Living Coast Discovery Center (the "LCDC").
- D. On April 28, 2009, the City Council authorized City staff to pursue a public-private partnership and operating Agreement with the Operator for the operation and management of the LCDC, along with two conceptual funding plans as a basis for negotiations.

- E. After a series of meetings, negotiations and interim agreements, effective February 6, 2010, the Parties agreed on the terms and conditions for the initial grant by City and Redevelopment Agency to Operator of a license to manage and control LCDC operations, pursuant to a formal "Operating Agreement."
- F. Since then, the Parties have agreed to modify and/or extend the Operating Agreement as follows: (1) On or about November 23, 2010, the Parties agreed to amend the Operating Agreement in order to extend the term until June 30, 2012; (2) Effective July 1, 2012 the Parties entered into a new Operating Agreement for a period of 1 year, ending June 30, 2013; (3) On June 11, 2013, the Parties entered into that certain First Amendment to extend the Operating Agreement until June 30, 2014; and (4) on or about June 19, 2014 the City Manager agreed to extend the Operating Agreement until September 30, 2014.
- G. In order to further extend the Operating Agreement, and to update certain provisions thereof, the Parties now desire to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the above Recitals, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

#### ARTICLE I. GRANT OF LICENSE

- 1.1. **Grant of License for Nature Center Operations.** As of the Effective Date, and subject to the various terms and conditions of this Agreement, City hereby grants to Operator the exclusive license to operate the LCDC (the "LCDC License"). Except as otherwise expressly provided herein and/or to the extent necessary for City to perform and satisfy its obligations under this Agreement, the LCDC License shall include exclusive access to, possession of, and control over the following LCDC assets and programs:
  - a. Land and Improvements. Operator shall have exclusive access to and control over the Nature Center Land and improvements thereon used in the operation of the LCDC (collectively, the "LCDC Land and Improvements"). A description of the LCDC Land and Improvements is attached hereto as Exhibit A. Operator's use and control of the LCDC Land and Improvements shall be subject to any and all (1) City reserved rights expressly provided for in this Agreement; and (2) leases, easements, liens, restrictions and requirements existing with respect thereto as of the Effective Date (collectively, the "LCDC Requirements").
  - b. Permits and Contracts. Operator shall have City's beneficial rights under any and all permits, agreements, grants, licenses, easements, and/or contracts related to the operation of the LCDC (the "LCDC Permit and Contracts"). To the best of their knowledge, City represents and warrants to Operator that (1) the LCDC Permits and Contracts are assignable, (2) the list of LCDC Permits and Contracts attached hereto as Exhibit B is complete and accurate in all respects, and (3) City has obtained any and all approvals from the applicable governing authorities or contracting parties that are necessary or appropriate to allow Operator's use thereof.

- c. Management of Day to Day Operations. Except as otherwise specifically provided herein, Operator shall have exclusive authority, responsibility and control over the day to day operations of the LCDC including, without limitation, the following matters: (1) Hours of Operation; (2) Staffing Levels; (3) Hiring, supervision, and termination of employees and volunteers; (4) Marketing; (5) Admissions Rates and Policies; (6) Fundraising; (7) Educational Programs; (8) Custodial Maintenance of the Land and Improvements, and other maintenance not expressly assumed by City as provided in Section 6.2, below; (9) Gift Store Operations; (10) Third-party use of LCDC facilities; (11) Food Service; (12) Concessions; (13) Third-party contracts for supplies or services; (14) Presentation, standards of care and disposition of LCDC Wildlife; (15) Arrangement, Modification and Construction of Exhibits; and (16) modification of LCDC Permits and Contracts.
- i. Marketing. Any and all marketing and advertising activities for the Living Coast Discovery Center shall contain an addition to the logo, as either a "Logo Descriptor" or "Tagline," with the words "at Chula Vista".
- d. City Assignment of Use Rights to LCDC Land and Improvements. To the extent necessary or appropriate for the operation of the LCDC by Operator, City hereby assigns to Operator respective rights to (1) use of the LCDC Land and Improvements, (2) the LCDC Permits and Contracts, and (3) the LCDC Wildlife (collectively, the "LCDC Assets"). Notwithstanding the foregoing, City shall retain a residual interest in and/or ownership of, as the case may be, the underlying rights and title to the LCDC Assets (excluding the LCDC fauna) such that upon the expiration or other termination of this Agreement, unless otherwise agreed between the parties, total ownership and control of the LCDC Assets (excluding the LCDC fauna) shall revert to the City.

## ARTICLE II. TRANSFER OF TITLE OF TANGIBLE ASSETS

- 2.1 Wildlife (Flora and Fauna). Operator shall have exclusive possession and control over any and all flora and fauna (the ownership of such fauna has been previously transferred to the Operator, pursuant to the February 6, 2010 Operating Agreement) located at the LCDC as of the Effective Date ("LCDC Wildlife"); such possession and control shall include, without limitation, the exclusive right and authority to sell, transfer, trade, loan or otherwise dispose of the LCDC Wildlife in Operator's sole discretion and consistent with practices of the National Association of Zoos and Aquariums as same may be updated from time to time. Notwithstanding the foregoing, prior to any determination that any of the fauna shall be euthanized for reasons other than terminal illness or injury, the Operator shall inform the City in writing of its intention to do so and provide the City with the option to refer the care of fauna to another agency. Funds for such disposition and transfer for care to other agency shall be drawn from the Contingency Fund identified in Article IV, Section 4.3.

- 2.2 **Fixtures, Furnishings, Equipment and Supplies.** Operator shall have exclusive possession and control over all fixtures, furnishings, inventory, office and maintenance equipment and supplies ("LCDC FF&E") that were transferred from the City to the Operator pursuant to the February 6, 2010 Operating Agreement between the City and the Nature Center Foundation. In addition, within thirty (30) days after the Effective Date, City shall take all actions necessary to transfer all right, title and interest in and to the following vehicles currently used for LCDC operations: (a) 1995 Gillig, Lic. No. E013416, with approximately 157,000 miles; and (b) 2005 El Dorado E-Z Rider II, Lic. No. 1212768, with approximately 45,000 miles. Such vehicles will be transferred to Operator at no cost in their "as is" condition with no representations or warranties of any kind.

### ARTICLE III. TERM OF AGREEMENT

- 3.1 **Term.** The initial term of this Agreement ("Initial Term") shall commence on the Effective Date and shall expire on December 31, 2015 ("Expiration Date"), unless earlier terminated pursuant to ARTICLE X, herein.
- 3.2 **Extension of Term.** Operator shall be entitled to an automatic extension of the Initial Term until June 30, 2017 (the "Extended Term") if, prior to the expiration of the Initial Term, Operator demonstrates to the City Manager, acting in his/her good faith and exercising reasonable discretion, that Operator has, since the Effective Date: (a) established and funded a separate operational reserve fund for LCDC operations with a minimum unencumbered balance of \$100,000; (b) established and documented 27 new partnerships, collaborations, and/or programs that increase, in the aggregate, LCDC net revenues; (c) maintained or augmented LCDC Board membership; (d) over a 12 month period, increased LCDC general attendance by two percent (2%) or greater as compared to the previous 12 month period; and (e) complied with all material terms and conditions of this Agreement. The Initial Term may also be extended by mutual written agreement of the Parties.

### ARTICLE IV. FUNDING AND USE OF REVENUE

- 4.1 **LCDC Revenues.** Any and all revenues generated through LCDC operations and/or fundraising ("LCDC Revenue") during the Term shall be retained by Operator and solely applied to LCDC operational costs and/or development.
- 4.2 **Operator Management and Funding.** During the Initial Term or any extension thereof, the Operator shall manage and finance all of the LCDC operations in a manner consistent with and that fully satisfies Operator's obligations under the terms of this Agreement. In the event that LCDC Revenue is insufficient by itself to cover the operation of the LCDC under this Agreement, the Operator shall be responsible for funding any operational deficit out of its own funds.
- 4.3 **Operator's Special Reserve for Disposition of Fauna.** Operator shall maintain throughout the Term of this Agreement a special contingency reserve account in the minimum amount of \$10,000. This account shall be dedicated exclusively towards

funding any and all activities Operator deems necessary for the transfer, or other appropriate disposition, of the LCDC fauna to the extent such disposition becomes necessary pursuant to the terms of Article X hereof. Operator shall not withdraw funds from the contingency reserve account for any purpose other than that identified above and shall obtain prior written consent from the City to withdraw such funds. An inventory of the LCDC fauna at the LCDC as of the Effective Date is attached hereto as Exhibit "C". Operator agrees to update this Exhibit and provide a copy to City from time to time, as warranted, no less frequently than every 12 months.

- 4.4 **Joint Fundraising Efforts.** The Parties agree to exercise their combined best efforts to solicit and secure additional funding to support LCDC operations and development. Fundraising efforts shall be coordinated through Operator's Director of Development pursuant to Operator's approved fundraising plans and policies.

#### ARTICLE V. ADDITIONAL OPERATOR COVENANTS

- 5.1 **Use Covenant.** During the Initial Term and any mutually agreed upon extension thereof, Operator covenants and agrees for itself, and its successors and assigns, that Operator shall operate the LCDC as a zoological institution and attraction with hands-on exhibits and live animal displays, which emphasize the importance of natural coastal marsh resources and their delicate ecosystem balance. To the extent practical, and to the extent consistent with both the LCDC Requirements and the LCDC Permits and Contracts, Operator shall also operate the LCDC consistent with the standards established by the National Association of Zoos and Aquariums as same may be updated from time to time (collectively, the "Nature Center Use"). Without City's prior written approval, Operator shall not seek entitlements or permits for the operation or redevelopment of the LCDC property for other than the Nature Center Use. Operator shall conduct the Nature Center Use in compliance with any and all applicable federal, state and local laws and regulations and the LCDC Permits and Contracts and consistent with the purpose of the LCDC License.
- 5.2 **Operator's Non Profit Status and Management Ownership Structure.** During the Initial Term of this Agreement (and thereafter if extended), unless otherwise approved by the City, the Operator shall continue to operate as a California non profit corporation that is qualified as a tax exempt public charity pursuant to Internal Revenue Code Section 501(c)(3) and California Revenue and Taxation Code Section 23701d. City shall have the right to appoint one (1) Director to Operator's Board whenever the Board is comprised of fifteen (15) Directors or less, and two (2) Directors whenever the Board is comprised of sixteen (16) Directors or more; provided however, City agrees not to exercise its appointment right(s) hereunder in any manner that triggers application of the Ralph M. Brown Act to Operator's Board meetings.
- 5.3 **City Access for Special Events.** Operator shall grant City free access to and use of LCDC facilities for up to sixteen (16) separate events (including meetings) per calendar year. City events shall be scheduled in accordance with Operator's normal scheduling procedures so as not to interfere with normal LCDC operations or other scheduled events. Events shall be for a maximum of one day each. Operator shall waive its standard facility

charges for City events covered by this Section, but reserves the right to charge for any special services provided or costs incurred (for example, staff overtime or charges for extended bus service hours).

- 5.4 **Admissions.** Operator shall provide City with fifty (50) admission passes per year for use by City in any manner consistent with City policies and law.
- 5.5 **No Modifications Without City Approval.** Operator shall not make any modifications to the LCDC Improvements without City's prior written approval, which such approval shall not be unreasonably withheld or delayed. This shall include even minor modifications (e.g., sink faucets) as such modifications can raise issues with ongoing maintenance. Any modifications to the LCDC Improvements exceeding \$10,000 in cost (excluding the installation or removal of temporary exhibits) shall require City's prior written approval, which such approval may be granted or denied in City's sole discretion.

#### ARTICLE VI. ADDITIONAL CITY COVENANTS

- 6.1 **Approvals of Other Agencies.** City has obtained any and all approvals from the applicable governing authorities or contracting parties that are necessary or appropriate to allow Operator's use of the LCDC Permits and Contracts.
- a. City's Failure to Obtain Approval of Related Agencies. In the event that after City's good faith efforts to obtain approvals of Related Agencies for the transfer of City obligations with respect to the LCDC, which failure would subject the City to financial or other liability, this contract shall be deemed invalid, and the Parties shall reenter good faith negotiations to establish a method to accomplish the goals of this Agreement.
- 6.2 **City "In-Kind" Services and Supplies.** City agrees to provide certain "in-kind" services and supplies to Operator to assist with LCDC operations during the Initial Term either at no cost or at an agreed upon rate of reimbursement. A list of such services and supplies, corresponding reimbursement rate(s), if any, standards of performance, and schedules for delivery, is attached hereto as Exhibit D. Additional "in kind" services not listed may be provided by City on terms to be negotiated.
- 6.3 **Compliance with Permits and Contracts.** City shall take no action with respect to the LCDC Permits and Contracts that would cause any violation thereof or default thereunder, or that would cause the LCDC to lose its accreditation with the American Association of Museums. City shall immediately notify Operator in writing of any notice of violation or default under any LCDC permit or contract, with sufficient notice to allow Operator to take the necessary steps to cure same.
- 6.4 **Deferred Maintenance Items.** Parties agree to ongoing discussions regarding the condition of the LCDC improvements, and those items of Deferred Maintenance agreed to by the Parties shall be included in the City's Capital Improvement Program, as same may be updated from time to time (the "Deferred Maintenance Work"). City intends to

implement Deferred Maintenance Work as funding allows and following consideration of City priorities, as determined in City's sole discretion. Any such work implemented by the City shall be done in accordance with industry standards and shall be subject to Operator's prior reasonable approval and acceptance.

**6.5 Payment of Debt Service on LCDC Improvements.** City shall continue to pay debt service to Bank of New York to finance amounts loaned to City for construction of certain of the LCDC Improvements, and shall strictly comply with any and all covenants and agreements entered into in connection therewith.

**6.6 Payment of Utilities and Shuttle Bus Fuel.** Upon receipt of utility bills for electric, water, and telecommunications, City shall remit payment for such utilities directly to the utility operator in the amount of the invoice for the utility services used for the operation and maintenance of the LCDC during the term of this Agreement. In addition, City shall pay for Shuttle Bus fuel costs. Operator shall be responsible for all other utility costs, including propane gas and wastewater removal. City's commitment to pay Utilities and Shuttle Bus fuel costs as provided in this Section shall not exceed \$79,228 per year ("Maximum Payment Amount"). Any costs/expenses in excess of this Maximum Payment Amount shall be the obligation of Operator.

## ARTICLE VII. INSURANCE

**7.1 Insurance. Operator's Obligation.** Prior to the execution of this Agreement, Operator shall (i) obtain, and upon the City's request provide to the City, insurance certificates reflecting evidence of all insurance required in Section 7.1(a); (ii) obtain City approval of each company or companies; and (iii) confirm that all policies contain the specific provisions required by section 7.1

a. Types of Insurance. At all times during the term of this Agreement, Operator shall maintain insurance coverage as follows:

- i. **Commercial General Liability.** Operator shall provide at its expense a policy or policies of Commercial General Liability [CGL] Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability including, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Operator shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following termination of this Agreement. All costs of defense shall be outside the policy limits. The Policy shall provide for coverage in amounts not less than three million dollars (\$3,000,000) general aggregate limit, one million (\$1,000,000) per occurrence for Bodily Injury, Personal Injury, or Property Damage, and five hundred thousand (\$500,000)

submit for "Damage to Rented Premises," one million (\$1,000,000) of liquor liability coverage, and a \$5 million excess liability policy;

- ii. Commercial Automobile Liability. For all of Operator's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Operator shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars (\$1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles ["Any Auto"]. All costs of defense shall be outside the policy.
  - iii. Excess Liability. Operator shall provide Excess Liability Insurance affording three million dollars (\$3,000,000) or any other amount agree to and approved by the City's Risk Management Department, in excess of General Liability and Employer's Liability limits afforded on primary policies. The coverage will be subject to the same terms, conditions, and exclusions found in the primary policies.
  - iii. Worker's Compensation. For all of Operator's employees who are subject to this Agreement and to the extent required by the State of California, Operator shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Operator against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Operator to comply with the requirements of this section. That policy shall provide at least the statutory minimums of one million (\$1,000,000) for Bodily Injury by Accident for each accident, one million dollars (\$1,000,000) for Bodily Injury by Disease each employee, and a one million dollars (\$1,000,000) for Bodily Injury by Disease policy limit.
- A. Prior to the execution of the Agreement by the City, the Operator shall file the following signed certification:

"I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of the Contract."

- b. Rating Requirements. Except for State Compensation Insurance Fund, all insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "V" rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.



- i. **Non-Admitted Carriers.** The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers [LESLI list] with a current AM BEST rating of no less than A:X.
- c. **Endorsements Required.** Each policy required under Section 7.3 of this Agreement shall expressly provide, and an endorsement shall be submitted to the City, that:
  - i. **Additional Insureds.** Except as to Workers Compensation, the City and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds.
  - ii. **Primary and Non-Contributory.** The policies are primary and non-contributing to any insurance or self-insurance that may be carried by the City of Chula Vista, its elected officials, officers, employees, agents, and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of Chula Vista and its elected officials, officers, employees, agents, and representatives shall be in excess of Operator's insurance and shall not contribute to it.
  - iii. **Waiver of Subrogation.** Operator's insurer will provide a Waiver of Subrogation in favor of the City for each required policy providing coverage for the term required by this Agreement.
  - iv. **Written Notice.** Except as provided for under California law, the policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Operator to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten (10) Calendar Days notice shall be provided.
    - A. The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.
- d. **Additional Insurance.** Operator may obtain additional insurance not required by this Agreement. If the contractor maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor.

**Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Operator. Deductibles and self-insurance retentions shall be disclosed to and approved by the City at the time the evidence of insurance is provided. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Operator shall provide a financial guarantee

satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- e. Policy Changes. Operator shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.
- f. Reservation of Rights. The City reserves the right, from time to time, to review the Operator's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City.
- g. Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Operator's obligations under this Agreement, including Indemnity.
- h. Material Breach. Failure to maintain, renew, or provide evidence of renewal during the term of this Agreement may be treated by the City as a material breach of contract.

## 7.2 Insurance – City's Obligation.

- a. Self Insure: City is self-insured and will provide evidence to the extent requested by the Operator.

## ARTICLE VIII. INDEMNITY

- 8.1 **Indemnity Defense and Hold Harmless.** To the maximum extent allowed by law, Operator shall defend, indemnify, protect and hold harmless the City its elected and appointed officers, employees, volunteers, and agents (collectively "Indemnified Parties"), from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Operator, its officials, officers, employees, agents, and contractors, arising out of or in connection with the operation of LCDC. This indemnity provision does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence or sole willful misconduct of one or more of the Indemnified Parties. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Indemnified Parties, which may be in combination with the active or passive negligent acts or omissions of the Operator, its employees, agents or officers, or any third party.
- 8.2 **Costs of Defense and Award.** Included in the obligations in Section 8.1 is the Operator's obligation to defend, at Operator's own cost, expense and risk; any and all aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Indemnified Parties. Operator shall pay and satisfy any judgment, award or decree that may be rendered against the Indemnified Parties, for any and all legal expense and cost incurred by each of them in connection therewith.

- 8.3 **Insurance Proceeds.** Operator's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Indemnified Parties.
- 8.4 **Enforcement Costs.** Operator agrees to pay any and all costs Indemnified Parties incur enforcing the indemnity and defense provisions set forth in this Article VIII.
- 8.5 **City's Indemnity Obligation.** City shall have reciprocal obligations to defend, indemnify and hold Operator, its officers, employees, and agents harmless with respect to claims, damages, liability, costs and expenses (including without limitation, attorneys' fees) arising from the sole negligence or sole willful misconduct of the Indemnified Parties), including the related obligations contained in Sections 8.2 through 8.4.
- 8.6 **Survival.** A Party's obligations under this Article VIII shall survive the termination of this Agreement.

#### ARTICLE IX. REPORTING

- 9.1 **Periodic Reports and Meetings.** Operator shall provide City with quarterly periodic financial reports and shall meet and confer with City staff from time to time to review operational issues not specifically addressed by this Agreement. In the event that Operator anticipates an operating deficit that may affect the continued operation of the LCDC, Operator shall immediately arrange to meet and confer with the City to determine how such deficits may be appropriately addressed.
- 9.2 **Accounting Requirements and Financial Reports.**
- a. **Books and Records.** At all times during the term, Operator shall maintain full and adequate records and accounts for any and all LCDC revenues and expenditures in a manner that complies with Generally Accepted Accounting Principles. Such records, and any and all related ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents shall be made available to the City, or its designees, upon five (5) days prior written notice. City to keep all donors and grant information confidential. Operator shall provide such assistance as may be reasonably required in the course of such inspection. The City further reserves the right to examine and re-examine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, and Operator shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever during that time period
- b. **Financial Reports.** Commencing on March 1, and quarterly thereafter, Operator shall provide City with a report of its financial condition in a form reasonably satisfactory to the City's Finance Director. The reports should include Profit and Loss Statement, Balance Sheet and Statement of Cash Flows. The quarterly financial reports should include year-to-date information for the quarters ending on September 30, December 31, March 31 and June 30 of each fiscal year. In addition, Operator shall notify the City manager within

thirty (30) days of the occurrence of any event that has or is expected to have a material impact on LCDC operations or Operator's financial condition.

c. Required Audits. By no later than 30 days after the Effective Date, and thereafter, by no later than October 1, of each year of the Term, Operator shall engage an independent, licensed, certified public accountant, to conduct a financial audit of Operator's books and records. City agrees to contribute \$10,000 towards the cost of the initial audit; this audit shall be completed and a copy thereof provided to the City by no later than October 1, 2014. Thereafter, the required annual audit shall be prepared at Operator's cost and provided to City by no later than October 1 of each year.

## ARTICLE X. TERMINATION

- 10.1 Termination for Breach.** Either party may terminate this Agreement earlier than the natural expiration date if the other party has materially defaulted in its obligations and the terminating party has provided the defaulting party with written notification of such determination, and the defaulting party has refused to cure the default within thirty (30) days of such notice. If the default is such that the cure will require longer than 30 days, the time for cure will be extended for the period of time reasonably necessary to complete the required work, provided, however, the defaulting party must promptly begin the required cure and diligently prosecute same to completion.
- 10.2 Natural Termination of this Agreement.** In the event that either party elects **not** to extend this Agreement past the Initial Term, upon thirty (30) days written notice from City, Operator, at its sole cost, shall take all necessary and appropriate steps necessary to transfer LCDC fauna to another qualified institution for continued care and maintenance. LCDC fauna that Operator determines cannot reasonably be transferred shall be otherwise disposed of as Operator deems appropriate and in a manner that is consistent with industry standards, provided, however, in no event shall Operator euthanize any animals, unless and until the Operator has informed the City in writing of its intention to do so and provided the City with the option of taking control of the care thereof. Title to LCDC FF&E transferred from the City to Operator pursuant to the February 6, 2010 Operating Agreement shall be transferred back to the City.
- 10.3 Injunctive Relief.** If the Operator commits a breach or actions that suggest an anticipatory breach of any of the covenants contained in this Agreement, and such occurrence or actions remain uncorrected for a period of thirty (30) days or more following written notice describing such breach, City and its successors and assigns, without regard to whether City or its successors and assigns are an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Operator of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief

against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

- a. Additional Time for Cure. In the event that the breach cannot be cured within the 30 day timeframe identified above, Operator shall immediately notify City in writing of its inability to cure, describing the reason for the inability to cure, and provide a date by which the cure shall be accomplished. If the City deems such explanation of the delay reasonable, it shall provide Operator with additional time to cure such breach and a second notice with the date by which the cure shall be accomplished.

10.4 **Additional Remedies**. In addition to the termination rights contained in Sections 10.1, 10.2, and 10.3 hereof, City and Operator shall each have any other remedies available at law, equity, or other proper proceedings.

#### ARTICLE XI. NOTICE

11.1 **Notices**. Unless otherwise specifically permitted by this Agreement, all notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered; sent by registered or certified mail, postage prepaid, return receipt requested; or sent by facsimile, provided that the telecopy cover sheet contain a notation of the date and time of transmission, and shall be deemed received: (a) if personally delivered, upon the date of delivery to the address of the person to receive such notice, (b) if mailed in accordance with the provisions of this paragraph, two (2) business days after the date placed in the United States mail, (c) if mailed other than in accordance with the provisions of this paragraph or mailed from outside the United States, upon the date of delivery to the address of the person to receive such notice, or (d) if given by facsimile during business hours when delivered can be confirmed, when delivered. Notices shall be given at the following addresses:

If to City:                   The City of Chula Vista  
                                  Attn: City Manager  
                                  276 Fourth Avenue  
                                  Chula Vista, CA 91910  
                                  Fax: (619) 409-5884

With a copy to:           City Attorney [same address]

If to OPERATOR:       Living Coast Discovery Center  
                                  Attn: Executive Director  
                                  1000 Gunpowder Point Drive  
                                  Chula Vista, CA 91910-1201  
                                  Fax: (619) 409-5910

With Copy to:           William L. Fischbeck, Esq.

Fischbeck & Oberndorfer  
5464 Grossmont Center Drive, Suite 300  
La Mesa, CA 91942  
Fax: (619) 464-6471

## ARTICLE XII. MISCELLANEOUS PROVISIONS

- 12.1 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 12.2 **Gender & Number.** Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.
- 12.3 **Reference to Paragraphs.** Each reference in this Agreement to a section refers, unless otherwise stated, to a section in this Agreement.
- 12.4 **Incorporation of Recitals.** All recitals herein are incorporated into this Agreement and are made a part hereof.
- 12.5 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Operator, shall be deemed to be both covenants and conditions.
- 12.6 **Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 12.7 **Severability.** If any portion of this Agreement shall be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law if enforcement would not frustrate the overall intent of the parties (as such intent is manifested by all provisions of the Agreement, including such invalid, void or otherwise unenforceable portion).
- 12.8 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

**12.9 Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

**12.10 Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.

**12.11 Good Faith Performance.** The parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

**12.12 Further Assurances.** City and Operator each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.

**12.13 Exhibits.** Each of the following Exhibits is attached hereto and incorporated herein by this reference:

Exhibit A – LCDC Land and Improvements

Exhibit B – LCDC Permits and Contracts

Exhibit C - LCDC Fauna Inventory

Exhibit D – City “In-Kind” Services

**12.14 Conflict of Interest.**

a. No member, official or employee of City or Operator shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests, those of his/her immediate family, or the interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

b. Operator warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

**12.15 Non-liability of City Officials and Employees.** No member, official or employee of City shall be personally liable to Operator or any successor in interest in the event of any default or breach by City or for any Agreement which may become due to Operator or successor or on any obligation under the terms of this Agreement.

- 12.16 **Compliance with Law.** City and Operator agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the ownership and operation of the LCDC all improvements constructed thereon and all operations conducted thereon.
- 12.17 **Jurisdiction and Venue.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.
- 12.18 **Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 12.19 **Attorneys' Fees.** Should any litigation (including any proceedings in a bankruptcy) or arbitration be commenced between the parties hereto or their representatives concerning any provision of this Agreement or the rights and duties of any person or entity hereunder, the party or parties prevailing in such litigation or arbitration shall be entitled, in addition to such other relief as may be granted, to the attorneys' fees and court or arbitration costs incurred by reason of such litigation or arbitration, including attorneys' fees and experts' fees incurred in preparation for or investigation of any matter relating to such litigation or arbitration.
- 12.20 **Administrative Claims Requirements and Procedures.** No suit or arbitration shall be brought arising out of this agreement, against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the City in the implementation of same. Upon request by City, Operator shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.
- 12.21 **No Third Party Beneficiaries.** The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of City and Operator and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.
- 12.22 **Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 12.23 **No Partnership.** Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other similar relationship between the parties hereto or cause City to be responsible in any way for the debts or obligations of Operator or any other person.



12.24 **Approval.** Except as otherwise expressly provide in this Agreement, where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld.

12.25 **Assignments.**

- a. City Approval Required. The qualifications and identity of the Operator are of particular concern to City. Operator recognizes that it is because of such qualifications and identity that City is entering into this Agreement with Operator. Therefore, no voluntary or involuntary successor in interest of Operator shall acquire any rights or powers under this Agreement except with the prior written approval of City in its sole discretion. Any purported assignment in violation of this Section shall be void.
- b. Permitted Transfers. Notwithstanding anything in this Agreement to the contrary, Operator may, without the prior written approval of City, assign or otherwise transfer its interest in this Agreement and its rights and powers under this Agreement (a "Permitted Transfer") to any holding company, corporation, association or entity which is or becomes a parent, subsidiary or affiliate of Operator provided that Operator retains substantial management and control thereof, or to any successor of Operator by reason of change of name, merger, consolidation, reorganization, dissolution, lender acquisition or sale of Operator interests or assets, provided that, the transferee assumes the rights and powers of Operator under this Agreement.

12.26 **Condition Precedent.** It is understood that as a condition precedent to any action to approve this Agreement, City must consider and adopt the appropriate resolution. Said resolution must contain the findings required by law. City agrees to use due diligence in processing the matter to hearing before the City Council.

12.27 **No Waiver.** No failure of either Party to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

12.28 **Signing Authority.** Each party represents that the persons executing this Agreement on behalf thereof have full authority to do so and to bind such parties to perform pursuant to the terms and conditions of this Agreement. Concurrently with Operator's submission of this Agreement to the City for execution, Operator will submit to City a copy of documents evidencing the due formation and nature of Operator and the signatory's authority to sign on behalf of Operator.

12.29 **Counterparts.** This Agreement may be signed in multiple counterparts with the same force and effect as if all original signatures appeared on one copy; and in the event this Agreement is signed in counterparts, each counterpart shall be deemed an original and all of the counterparts shall be deemed to be one Agreement.

[NEXT PAGE IS SIGNATURE PAGE]

**SIGNATURE PAGE**  
**TO AMENDED AND RESTATED OPERATING AGREEMENT**  
**[Living Coast Discovery Center, Chula Vista]**

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

CITY:

THE CITY OF CHULA VISTA

By: \_\_\_\_\_  
Cheryl Cox, Mayor

Attest:

APPROVED AS TO FORM:

\_\_\_\_\_  
Donna Norris, City Clerk

\_\_\_\_\_  
Glen R Googins  
City Attorney

OPERATOR:

LIVING COAST DISCOVERY CENTER

By: Susan Fuller  
Susan Fuller  
Susan Fuller, Chairman

By: Ben Vallejos  
Ben Vallejos  
Ben Vallejos, Executive Director

Exhibit "A"

LCDC Land and Improvements

[to be inserted]

EXHIBIT "A"

RECORDING REQUESTED BY 1633  
REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA

80-26750E

When Recorded, Please Mail  
This Instrument To:

RECORDED  
OF PUBLIC RECORDS  
for SAN DIEGO COUNTY  
85 JAN 30 AM 8:05  
VERA L. LYLE  
COUNTY RECORDER

REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA  
City of Chula Vista  
P.O. Box 1007  
Chula Vista, CA 92012

NO TRANSFER TAX DUE

Assessor's Parcel No.:

Space above this line for Recorder's use only

NO FEE

EASEMENT FOR NATURE INTERPRETIVE CENTER AND  
A LICENSE FOR ACCESS AND UTILITY LINE PURPOSES

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, SANTA FE LAND IMPROVEMENT COMPANY, a corporation organized under the laws of the State of California hereby grants to the REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA an easement, to be used for the purpose specified herein and no other, upon, over and across the real property located in the city of Chula Vista, County of San Diego, State of California, more particularly described in Exhibit A attached hereto and initialed and by this reference incorporated herein.

This easement is granted solely for the construction, operation, maintenance, repair, renewal and replacement from time to time of a Nature Interpretive Center open to the public containing approximately ten thousand (10,000) square feet under roof, in addition to associated and ancillary parking facilities, landscaping, within the area above described in Exhibit A. In addition, this easement is granted for all Phase 1 and Phase 2 on and off-site grading work for said Nature Interpretive Center, including, but not limited to, off-site drainage and utility facilities required to serve the subject Center project shown on Exhibit "A" attached hereto and incorporated herein by reference and more particularly described on City of Chula Vista Plan Nos. 86-59 through and including 86-64 revised April 28, 1986.

In addition to the above-referenced easement, Grantor hereby grants to Grantee a license over and across the land hereinafter described for vehicular and pedestrian ingress and egress to and from the Nature Interpretive Center area. Grantor also grants a license to Grantee for the purpose of installing a water line to serve the Nature Interpretive Center site, the nature and type of which to be determined by Grantee. Grantor shall have the right to relocate said access and water line in the event that said

RA 668

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

access and water line obstructs or interferes with the development of adjacent and/or underlying property owned by the Grantor, provided that reasonable alternative access and water line relocation are thereafter allowed to and for the Nature Interpretive Center. The cost of moving the water line or other utilities serving the Nature Interpretive Center shall be borne equally by the Grantor and Grantee. Grantor further grants to Grantee A license to install utility lines that Grantee may require for the Nature Interpretive Center site.

The initial location of the above-referenced license for roadway and utility lines is as designated on Exhibit A attached hereto and incorporated herein by reference.

Grantee, by accepting this covenant and license, agrees to the following:

1) Grantee agrees to indemnify, defend and hold harmless Grantor from all liability arising from actions of Grantee or its agents and contractors, and persons using, visiting and in transit to or from Grantee's facilities over the property described in Exhibits A and B.

2) Grantee shall, prior to beginning any grading or other work on or related to construction of the Nature Interpretive Center project, install sand bags at the limits of grading as shown on City of Chula Vista Plan No. 86-50 through and including 86-64 referenced hereinabove, said limits having been established and clearly marked on the ground by a Registered Civil Engineer authorized to practice land surveying or a licensed land surveyor who shall work for and at the expense of Grantee. Grantee shall also, prior to beginning construction of the Nature Interpretive Center project, install a fence around the perimeter of Parcel A, as described in Exhibit A, of a type reasonably designed to prevent unauthorized persons from going onto or leaving the site during construction. Grantee hereby warrants to Grantor that it shall not permit or suffer any debris or demolition materials or other waste of any kind to be placed, buried, stored or abandoned within any area subject to this covenant in favor of Grantee, or subject to control or use by Grantee for purposes of grading or construction.

3) Grantee shall, prior to beginning any grading or other work on or related to construction of the Nature Interpretive Center project, submit to Grantor for its review any and all contracts for grading or other construction work on or related to the Nature Interpretive Center project. Grantor's review shall be solely for the purpose of assuring itself that job specifications and contract documents adequately protect Grantor and Grantor's property from damage or nuisance.

RA 668

EXHIBIT A  
SITE PLAN  
NATURE INTERPRETIVE CENTER  
CHULA VISTA, CALIFORNIA

Grantor shall have the right of reasonable access to and over any of these areas, burdened by the easement or subject to the license, for ingress and egress to and from the real property of Grantor.

Grantor hereby further grants to the City of Chula Vista the privilege and right to extend reasonable drainage structures and excavation and embankment slopes beyond the limits of the right-of-way described in Exhibit B where required for the construction and maintenance of said access road, RESERVING unto Grantor of the above-described parcel of land, its successors or assigns, the right to eliminate such slopes and/or drainage structures or portions thereof, when in the written opinion of the City Engineer of Grantee, the necessity therefor is removed by substituting other protection, support and/or drainage facility, provided such substitution is first approved in writing by said City Engineer.

Grantor hereby further grants to Grantee all trees, growths (growing or that may hereafter grow), and road building materials within the real property described in Exhibits A and B, including the right to take water, together with the right to use the same in such manner and at such locations as said Grantee may deem proper, useful or necessary, in the construction, reconstruction, improvement or maintenance of said Grantee's improvements.

In addition, Grantor anticipates allowing a license to continue for roadway, drainage, and utility line purposes until such time as a permanent road is built to serve the Nature Interpretive Center area, which road shall be dedicated as permanent public, city street and which shall contain those utilities requisite for service of the Nature Interpretive Center facility.

This Grant of Easement shall exist until such time as there is an agreement entered into between Grantor and Grantee and the Chula Vista Redevelopment Agency and City of Chula Vista relating to the Bay Front Project, and through which it is anticipated the area shown in Exhibit A will be conveyed to Grantee in fee. In addition, Grantor anticipates allowing a license to continue for roadway and utility line purposes until such time as a permanent

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

RA 668

1630

road is built to serve the Nature Interpretive Center area, at which time said road will be dedicated as a permanent public city street.

Dated this 29<sup>th</sup> day of July, 1966.

SANTA FE LAND IMPROVEMENT COMPANY,  
a California corporation

By: [Signature]  
Title [Signature]

The terms of this Reasonable and Close Agreement are accepted by the City of Chula Vista

REDEVELOPMENT AGENCY OF THE  
CITY OF CHULA VISTA

By: [Signature]  
Title [Signature]

WITNESSES:  
[Signature]  
CITY CLERK

(Acknowledgement)

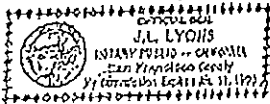
STATE OF CALIFORNIA }  
COUNTY OF San Diego } ss

On July 29, 1966, before me, the undersigned, a Notary Public in and for said State, personally appeared [Signature]

personally known to me or proved to me to be the person whose name subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal,

Signature [Signature]  
Name J. L. Lyons  
(Typed or Printed)



R7668

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1637

CHULA VISTA INTERPRETIVE NATURE CENTER

Being a portion of Quarter sections 173 and 180 of the Rancho De La Nacion, in the City of Chula Vista, County of San Diego, State of California as shown on Record of Survey No. 9039 on file in the Office of the Recorder of said County, said portion being more particularly described as follows:

PARCEL "A"

Beginning at the Southeastern corner of said Quarter Section 173 as shown on said Record of Survey No. 9039; thence

1. South 72°13'27" West 170.00 feet to a point on the Easterly boundary of said Record of Survey No. 9039;
2. thence continuing South 72°13'27" West 516.51 feet to the beginning of a tangent 30.00 foot radius curve concave Northerly;
3. thence Westerly along said curve through a central angle of 92°47'01" an arc distance of 18.50 feet;
4. thence tangent to said curve north 14°59'32" West 651.90 feet to the beginning of a tangent 50.00 foot radius curve concave Southerly;
5. thence Westerly along said curve through a central angle of 93°22'11" an arc distance of 81.48 feet;
6. thence tangent to said curve South 71°30'16" West 1644.42 feet to the beginning of a tangent 300.00 foot radius curve concave Northwesterly;
7. thence Southwesterly along said curve through a central angle of 17°10'07" an arc distance of 19.00 feet;
8. thence tangent to said curve South 00°48'23" West 163.76 feet to the beginning of a tangent 40.00 foot radius curve concave Northerly;
9. thence Westerly along said curve through a central angle of 51°38'54" an arc distance of 14.06 feet;
10. thence tangent to said curve North 39°11'43" West 49.16 feet to the beginning of a tangent 320.00 foot radius curve concave Northeasterly;
11. thence Northwesterly along said curve through a central angle of 22°50'56" an arc distance of 120.36 feet to the TRUE POINT OF BEGINNING of the herein described Parcel "A";

thence leaving said curve along a nontangent line north 00°12'58" West 39.05 feet; thence North 00°15'26" East 194.13 feet; thence North 08°36'54" West 58.28 feet; thence North 50°52'22" East 271.67 feet; thence North 34°33'00" East 159.09 feet; thence North 72°44'57" East 75.74 feet; thence South 46°08'50" East 283.08 feet; thence South 24°46'10" East 191.52 feet to a point on the arc of a nontangent 900.00 foot radius curve concave Northwesterly, a radial line to said point bears South 71°55'52" East; thence Southwesterly along said curve through a central angle of 11°11'34" an arc distance of 101.05 feet; thence along a nontangent line South 47°52'37" West 793.90 feet; thence North 80°12'50" West 24.98 feet to the TRUE POINT OF BEGINNING.

Containing 3.370 acres

RA 668

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

1638

EXHIBIT "A"

PARCEL "B"

A 30.00 foot Easement for ingress, egress, public improvements and public utilities over a portion of Quarter Sections 172, 173, and 180 of the above described Rancho, said easement lying 15.00 feet on either side measured at right angles in the following described centerline:

Beginning at the beginning of course no. 2 in parcel "A" above thence retracing courses 2 through 11 in Parcel "A" to the TRUE POINT OF BEGINNING of Parcel "A" above being the terminus of the herein described centerline, the sidelines of said 30.00 foot easement to be lengthened or shortened so as to terminate in the Eastern boundary of Record of Survey No. 9039 at the point of beginning and in the boundary of Parcel "A" above at the point of terminus.

RA 668.

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYIE, RECORDER

1639

EXHIBIT "A"

PAGE, "C"

A 30.00 foot Easement for ingress, egress, public improvements and public utilities over portions of Quarter Sections 172 and 173 of Rancho De La Nacion in the City of CHULA VISTA, County of San Diego, State of California as shown on Record of Survey No. 9039 on file in the Office of the Recorder of said County, said easement being 30.00 feet in width, 15.00 feet on either side measured at right angles to the following described centerline:

Beginning at the Southeast corner of Quarter Section 173 as shown on said Record of Survey No. 9039; thence South 72°13'27" West 20.00 feet to the Westerly line of the San Diego and Arizona Eastern Railroad right-of-way as shown on said Record of Survey, said point being the TRUE POINT OF BEGINNING; thence continuing South 72°13'27" West 150.00 feet to a point in the boundary of said Record of Survey No. 9039 and the point of terminus of the herein described centerline.

The sideline of said easement to be lengthened or shortened so as to terminate on the Westerly line of the railroad right-of-way at the TRUE POINT OF BEGINNING and the Easterly boundary of Record of Survey No. 9039 at the point of terminus.

RA 668

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

1640

EXHIBIT "A"

PARCEL "D"

A 30.00 foot Easement for ingress, egress, public improvements and public utilities over portions of Quarter Sections 161, 162, 172 and 173 of Rancho De La Nacion in the City of Chula Vista, County of San Diego, State of California as shown on Record of Survey No. 9039 on file in the Office of the Recorder of said County, said easement being 30.00 feet in width, 15.00 feet on either side measured at right angles to the following described centerline:

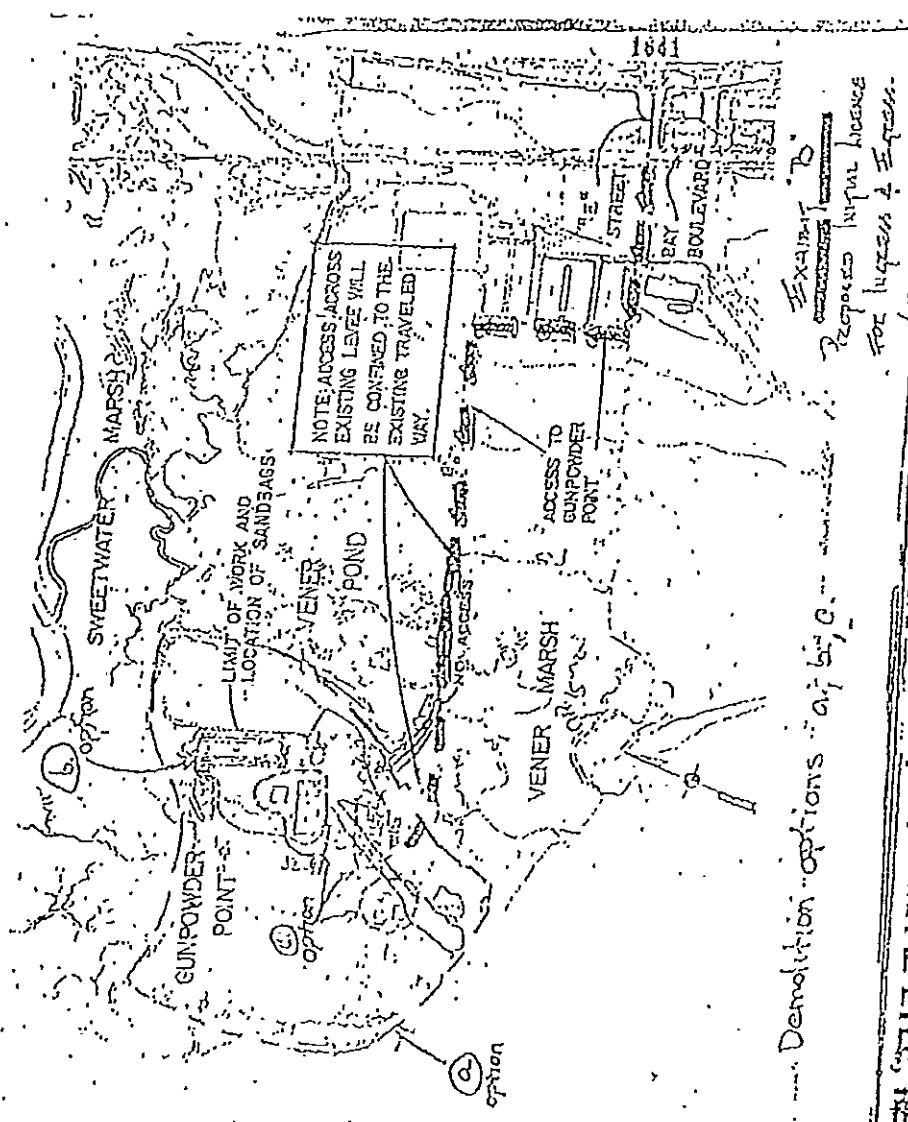
Beginning at the Southeast corner of Quarter Section 173 as shown on said Record of Survey No. 9039; thence South 72°13'27" West 20.00 feet to the Westerly line of the San Diego and Arizona Eastern Railroad right-of-way as shown on said Record of Survey, said point being the TRUE POINT OF BEGINNING; thence North 72°13'27" East 40.00 feet to a point on the Easterly right-of-way of said railroad and the point of terminus of the herein described centerline.

The sidelines of said easement to be lengthened or shortened so as to terminate on the Westerly line of the railroad right-of-way at the TRUE POINT OF BEGINNING and the Easterly line of the railroad right-of-way at the point of terminus.

Page 4 of 4

RAC68

ORIGINAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER



RA668

Demolition options  
 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L LYLE, RECORDER

Exhibit - "B"

LCDC Permits and Contracts

**State of California Coastal Conservancy**

Grants/Funding Agreements:

- Grant Agreement # 84-67
- Grant Agreement # 84-83
- Grant Agreement # 87-035
- Grant Agreement # 95-012
- Grant Agreement # 05-073

**United States Fish and Wildlife Service**

Easements

Grants/Funding Agreements

- Agreement # 801817M292
- Agreement # 816806J219
- Agreement # 816807G1060
- Agreement # 816807G1094
- Agreement # 816809J031

**San Diego Unified Port District**

Grants/Funding Agreements

- Agreement – Document 53847
- Agreement – Document 53889

**State of California – Department of Parks and Recreation**

Grants/Funding Agreements

- Project # GF-37-018; Contract # 50-13-016
- Project # WC-37-001; Contract # C2009415
- Project # UC-37-003; Contract # C2011022
- Project # GF-37-084; Contract # C5028015

Exhibit - "C"

LCDC Fauna Inventory

[to be inserted]

LIVING COAST DISCOVERY CENTER  
ANIMAL INVENTORY 2014

EXHIBIT C

**AQUATIC ANIMALS**

**SHARK AND RAY EXHIBIT** **QTY**

Main Pool	
Leopard Shark	10
Smoothound Shark	2
Horn Shark	2
	2
Guitarfish	3
Halibut	1
White Sturgeon	1
Garibaldi	1
Rockfish	1
Black Surf Perch	18
Touch Pool	
Diamond Ray	2
Bat Ray	4
Round Ray	14
Guitar Fish	3
Horn Shark	1
Sardine/Mackerel School	lot

**GALLERIA AQUARIUM**

Fish	
Moray Eel	2
Pacific Seahorse	4
Moon Jellies	lot
Plainfin Midship Man	1
Sarcastic Fringehead	1
Leopard Shark	6
Horn Shark	2
Swell Shark	1
Kelpfish	1
Kelp Bass	11
Staghorn Sculpin	3
Opaleye	2
Sargo	5
Spotted Sand Bass	5
Barred Sand Bass	1
Garibaldi	1
Black Surfperch	9
Shiner Surfperch	21
Invertebrates	
Giant Pacific Octopus	1
Two Spot Octopus	1
Decorator Crab	1
Assorted Tidepool Invertebrates	lot

**OFF EXHIBIT HOLDING TANKS**

Moray Eel	1
Bat Ray	5
Round Ray	4
Diamond Ray	1
Swell Shark	4
Horn Shark	1



LIVING COAST DISCOVERY CENTER  
ANIMAL INVENTORY 2014

**BIRDS**

RAPTOR ROW	
Golden Eagle	1
Bald Eagle	1
Ferrugenous Hawk	1
Barn Owl	1
Short Eafed Owl	1
Turkey Vulture	1
Great Horned Owl	1
Peregrine Falcon	1
Coopers Hawk	1
Red Shouldered Hawk	2
Osprey	1
Red Tail Hawk	1
Red Tail Hawk	1
American Kestrel	1
American Kestrel	1
Western Screech Owl	2
Burrowing Owl	6

**SHOREBIRD EXHIBIT**

Great Egret	1
Snowy Egret	1
Black Crowned Night Heron	1
Mallard Duck	1
Rouan Duck	1
Oyster Catcher	1
Red Breasted Merganser	1
Ruddy Duck	2
White Faced Ibis	1
Cinnamon Teal	1
Gadwall	2
Clapper Rail (Putnam)	1
Clapper Rail (Amelia)	1

**REPTILES / AMPHIBIANS / INVERTEBRATES**

GALLERIA AND CLASSROOM EXHIBITS	
California King Snake	1
Banded King Snake	1
Albino Striped King Snake	1
Rosy Boa	3
Striped Rosy Boa	1
Gopher Snake	2
Coastal Glossy Snake	1
Desert Glossy Snake	1
Desert Tortoise	3
Green Sea Turtle	4
Spiny Softshell Turtle	1
Alligator Lizard	1
Chorus Frog	2
Tarantula	2

LIVING COAST DISCOVERY CENTER  
ANIMAL INVENTORY 2014

**SEASONAL EXHIBIT ANIMALS**

<b>Birds</b>	
Lovebirds	12
Red Crowned Amazon Parrots	2
Rainbow Lorikeet	1
African Grey Parrot	1
Red Crested Turaco	1
<b>Reptiles</b>	
Arboreal Alligator Lizards	2
Spiny Tailed Iguana	1
Panther Chameleon	1
Mexican Musk Turtles	12
Ornate Horned Toad	2
<b>Terrestrial Invertebrates</b>	
Halloween Crabs	2
Harlequin Bugs	lot
<b>Aquatic Animals</b>	
Assorted tropical fish	lot
Assorted tropical invertebrates	lot
Assorted Coral	lot
Assorted Sea Anemone	6
Discus	5
Cardinal Tetra	14
Corydora Catfish	4
Bushynose pleco	2
Assorted Cichlids	15
Blind Cave Tetras	30
Freshwater Snails	5
Ghost Shrimp	lot

\*ANIMALS ON LOAN AND NOT PART OF PERMANENT COLLECTION

## Exhibit - "D"

### City "In Kind" Services

#### Maintenance of Facilities

City, through its Public Works Department, at its sole cost, shall provide maintenance services and materials for LCDC facilities, infrastructure, built-in exhibits, and life support equipment in order to keep such items in operating condition in a manner commensurate with the provision of such services and materials to other City facilities, with a target of maintaining the LCDC in accordance with industry standards for similar facilities or better ("Routine Maintenance"). City's obligations hereunder shall exclude the maintenance and repair work required for (a) temporary exhibits, (b) custodial maintenance and repair of any and all exhibit exteriors, and exhibit contents; (c) the coded entrance gate; and (d) any new improvements or facilities installed by Operator during the term except where Operator's installation and City's maintenance thereof is approved in writing by City in advance in accordance with Section 5.5 of the Agreement.

In addition to Routine Maintenance, City's obligations hereunder shall include the obligation to repair or replace, as necessary, any failed infrastructure or life support equipment item necessary for the full and lawful operation of the LCDC and the preservation and exhibit of LCDC Wildlife ("Key Facility Repair or Replacement"). City commits to expending up to \$40,000 annually in labor and materials toward Key Facility Repair or Replacement during the term of the agreement, with any additional City funding subject to City approval in its sole discretion. Operator shall be responsible, subject to City's prior reasonable approval, for any Key Facility Repair or Replacement work it decides is necessary above and beyond City's commitment hereunder.

With the exception of the Key Facility Repair or Replacement obligation, the above described services and standards may be subject to modification in the event City budget related issues materially affect the standards upon which such services are delivered to City's other facilities. Prior to implementing any such modifications in services, including any initial modification of service required below the standard of services existing as of the Effective Date, City agrees to provide Operator reasonable notice of such change and to reasonably consider Operator's input regarding same, with the shared objective of maintaining the highest possible LCDC physical appearance, condition and functionality.

#### Transit Services

City, through its contact with MTS, shall continue to provide bus transit services to Operator for LCDC operations, in accordance with standards existing under the MTS contract as of the Effective Date. City shall be responsible for the cost of fuel for the shuttle vehicles during the term of the agreement, subject to the Maximum Payment Amount. Operator shall be responsible for any and all other costs associated with such service, either through direct payment to the transit provider or reimbursement to the City. Notwithstanding the foregoing, City's support for transit services hereunder shall terminate effective as of the termination of

its contract with MTS, which is expected to occur on or about December 21, 2014. Thereafter, Operator shall be solely responsible for the provision of transit services at the center.

#### IT Services

City, through its IT Department, at its sole cost, shall provide Operator support services for LCDC telecommunications and computing systems (excluding telephone and data transmission services provided by outside vendors or contractors) at the same level provided other City's facilities.

The above described services may be subject to modification in the event City budget related issues materially affect the standards upon which such services are delivered to City's other facilities. Prior to implementing any modifications in services, including any initial modification of service required below the standard of services as the Effective Date, City agrees to provide Operator reasonable notice of such change and reasonably consider Operator's input regarding the same.

#### CPR Training

City shall continue to provide CPR training to LCDC employees and volunteers, but at the discounted rate of \$10 per trainee.

City's Annual Financial Contribution to LCDC

Payment of Debt Service on LCDC Improvements	\$164,000
Payment of Utilities and Shuttle Bus Fuel	\$79,228
City "In-Kind" Services and Supplies (combined maintenance & IT support)	\$80,000
<u>City commits to repair or replacement of failed infrastructure or life support equipment</u>	<u>\$40,000</u>
<b>Total =</b>	<b>\$363,228</b>