

ATTACHMENT A

RESOLUTION NO. 2023- 7

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING THE BIG CANYON HABITAT RESTORATION PROJECT PHASE 3, APPROVING A LICENSE AGREEMENT AND MEMORANDUM OF UNDERSTANDING WITH THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE AND AUTHORIZING SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA COASTAL COMMISSION (PA2022-034)

WHEREAS, Section 200 of the City of Newport Beach ("City") Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, Big Canyon Nature Park is an approximately sixty (60) acre park located between Jamboree Road to the east and Back Bay Drive to the west, and bounded by residential communities to the North and South along the creek bluffs, approximately one (1) mile north of Pacific Coast Highway, located within the City of Newport Beach ("Big Canyon");

WHEREAS, Big Canyon is a valuable natural resource, wildlife habitat, and recreational destination that includes coastal scrub, riparian scrub, riparian forest, alkali-saline wetland, and freshwater emergent wetland habitats native to Southern California and worthy of continuous protection, conservation, and management efforts to preserve it;

WHEREAS, large areas of the Big Canyon creek and native riparian habitat have been overtaken by non-native invasive species, and urbanization has resulted in the degradation of water quality due to upstream development and selenium laden groundwater seepage, upstream grazing and agricultural activities, year-round dry weather flows, invasive plants and insects, and decades old dredge and fill material placed within the lower canyon marsh plain and riparian areas resulting in the ponding of water and reduced floodplain connectivity;

WHEREAS, Big Canyon is listed as an impaired waterbody for selenium and is subject to a regulatory imposition of a total maximum daily load, and in 2009 the Central Orange County Integrated Regional and Coastal Watershed Management Plan listed restoration of Big Canyon as a key project for implementing restoration objectives in Upper Newport Bay;

WHEREAS, the Newport Bay Naturalists and Friends, a California non-profit public benefit corporation doing business as Newport Bay Conservancy ("Conservancy"), is the recipient of grants from, including but not necessarily limited to, the Ocean Protection Council and private corporate donor(s), which provides funds for the restoration of Big Canyon;

WHEREAS, the Conservancy has led ongoing restoration projects within Big Canyon with the cooperation of the City and the California Department of Fish and Wildlife ("CDFW");

WHEREAS, the restoration is being conducted in phases with the completion of Phase 1 taking place in July 2017 and the completion of Phase 2 in June of 2021;

WHEREAS, Phase 3 of the restoration in Big Canyon will remove existing selenium impacted saltwater, eliminate invasive plants, regrade the site to extend saltwater influence from the back bay, replant with native plants to restore riparian and upland habitats, restore historical salt marsh and establish transitional wetlands that will allow for upslope migration and resiliency to long term sea level rise, restore tidal marsh to further reduce selenium bioavailability found naturally within marine deposits in the watershed, maintain positive drainage during low flows, address mosquito breeding habitat, and incorporate fuel modification on surrounding sloping parcels to reduce fire risks to nearby homes ("Project");

WHEREAS, the Project will both conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend, and restore or provide habitat for California native fish and wildlife;

WHEREAS, the Conservancy has coordinated with the Wildlife Conservation Board, Ocean Protection Council, and the United States Fish & Wildlife Service/State Coastal Conservancy, with respect to the Project, all of whom have expressed support;

WHEREAS, the Project will be located at 1950 Back Bay Drive, Assessor's Parcel Numbers ("APN") 440-092-76, 440-092-77, 440-092-79, and 440-132-53 ("City Area"), and a portion of which is owned by CDFW, APN 440-092-75, and 440-132-27 ("CDFW Area");

WHEREAS, the Project will be conducted by CDFW, and will require access over and upon the City Area, and will require use of the City's Big Canyon access road off Jamboree Road;

WHEREAS, the City and CDFW desire to enter into a License Agreement and Memorandum of Understanding to authorize CDFW to enter upon the City Area, and to use the Big Canyon access road off Jamboree Road, to carry out the work required for the Project, and additionally, to establish the terms and conditions upon which CDFW will carry out the work;

WHEREAS, the plans for the Project are in conformance with the 2014 guidelines of the Big Canyon Resource and Recreation Management Plan and consistent with the requirements of the Natural Community Conservation Plan/Habitat Conservation Plan for the Central and Coastal sub-region of Orange County;

WHEREAS, the Project is located within the Open Space (OS) Zoning District and Coastal Zoning District and designated Open Space (OS) by the General Plan Land Use Element and Coastal Land Use Plan;

WHEREAS, the Project is consistent with the Open Space (OS) designation which provides areas to maintain and protect the community's natural open space resources;

WHEREAS, a public meeting was duly noticed and held by the City of Newport Beach Parks, Beaches, and Recreation Commission ("PBRC") on October 4, 2022, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public meeting was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act"). Evidence both written and oral, was presented to, and considered by, the PBRC;

WHEREAS, at the conclusion of the item, the PBRC recommended City Council approval of the Project;

WHEREAS, a public meeting was duly noticed and held by the City Council on January 24, 2023, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public meeting was given in accordance with the Ralph M. Brown Act. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing; and

WHEREAS, the Project site is bisected by jurisdictional boundaries between Newport Beach and the California Coastal Commission, and in accordance with Newport Beach Municipal Code Section 21.50.025 (Projects Bisected by Jurisdictional Boundaries), the City desires to assist in a consolidated application for a Coastal Development Permit to the California Coastal Commission for the Project.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council hereby approves the Big Canyon Habitat Restoration Project - Phase 3, as depicted in the plans attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 2: The City Council hereby authorizes the City Manager to execute a License Agreement and Memorandum of Understanding with the CDFW, in substantial conformance with the agreement attached hereto as Exhibit "B" and incorporated herein by this reference, subject to approval as to form by the City Attorney, to authorize CDFW to enter upon the City's portion of the Project area and carry out the Project.

Section 3: The City Council hereby authorizes City staff to, as necessary or convenient, assist in the preparation of an application and serve as applicant or co-applicant for the issuance of a Coastal Development Permit from the California Coastal Commission for the Project.

Section 4: Pursuant to Section 15051(d) of the California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"), the City is serving as the lead agency on the Project.

The City Council hereby finds that the Project is statutorily exempt under the California Environmental Quality Act ("CEQA") pursuant to Section 21080.56 of the California Public Resources Code and Sections 15307 and 15308 of the California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"). California Public Resources Code Section 21080.56 exempts projects that conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend; and projects that restore or provide habitat for California native fish and wildlife. The Project will replace existing degraded habitat and create long-term benefits to climate resiliency, biodiversity, and sensitive species recovery by restoring historic salt marsh and freshwater riparian habitat which had been filled in the 1950's and 1960's.

Additionally, the Project will restore the historic salt marsh and freshwater riparian habitat which will benefit a variety of California wildlife, including but not limited to, the California Gnatcatcher (*Polioptila californica*), yellow warbler (*Setophaga petechia*), Least Bell's vireo (*Vireo Bellii pusillus*), and the light-footed Ridgeways rail (*Rallus longirostris levipes*), Song Sparrow (*Melospiza melodia*), California Towhee (*Melozone crissalis*), and the Wrentit (*Chamaea fasciata*). As required by California Public Resources Code Section 21080.56(e), the City has obtained the written concurrence of the Director of CDFW by letter dated May 4, 2022, which is attached hereto as Exhibit "C" and incorporated herein by this reference.

Section 5: The City Council hereby directs City staff to file a Notice of Exemption for the Project in accordance with California Public Resources Code Section 21080.56(g).

Section 6: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 7: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 8: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 24th day of January, 2023.

Noah Blom
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron O. Harp
City Attorney

Attachment(s): Exhibit "A" - Project Plans for Phase 3
 Exhibit "B" - License Agreement and Memorandum of
 Understanding
 Exhibit "C" - CEQA Exemption Concurrence Letter

Exhibit “A”
Project Plans for Phase 3



Exhibit “B”

License Agreement and Memorandum of Understanding

**LICENSE AGREEMENT AND MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF NEWPORT BEACH
AND THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
FOR THE BIG CANYON COASTAL HABITAT RESTORATION AND ADAPTATION
PROJECT - PHASE 3**

This License Agreement and Memorandum of Understanding ("Agreement") is made and entered into as of this _____ day of _____, 2023 ("Effective Date"), by and between the City of Newport Beach, a California municipal corporation and charter city ("City" or "Licensor"), and the California Department of Fish and Wildlife, a State agency under the California Natural Resources Agency ("CDFW" or "Licensee"), and is made with reference to the following:

RECITALS

- A. Big Canyon Nature Park is an approximately sixty (60) acre park located between Jamboree Road to the east and Back Bay Drive to the west, and bounded by residential communities to the North and South along the creek bluffs, approximately one (1) mile north of Pacific Coast Highway, located within the City of Newport Beach ("Big Canyon").
- B. Big Canyon is owned in part by the City, and owned in part by CDFW, as depicted on Exhibit "A" attached hereto and incorporated herein by this reference.
- C. Big Canyon is a valuable natural resource, wildlife habitat, and recreational destination that includes coastal scrub, riparian scrub, riparian forest, alkali-saline wetland, and freshwater emergent wetland habitats native to Southern California and worthy of continuous protection, conservation, and management efforts to preserve it.
- D. Large areas of the Big Canyon creek and native riparian habitat have been overtaken by non-native invasive species, urbanization has resulted in the degradation of water quality due to upstream development and selenium laden groundwater seepage, upstream grazing and agricultural activities, year-round dry weather flows, invasive plants and insects, and decades old dredge and fill material placed within the lower canyon marsh plain and riparian areas, resulting in the ponding of water and reduced floodplain connectivity.
- E. Big Canyon is listed as an impaired waterbody for selenium and is subject to a regulatory imposition of a total maximum daily load, and in 2009 the Central Orange County Integrated Regional and Coastal Watershed Management Plan listed restoration of Big Canyon as a key project for implementing restoration objectives in Upper Newport Bay.
- F. The Newport Bay Naturalists and Friends, a California non-profit public benefit corporation doing business as Newport Bay Conservancy ("Conservancy"), is the recipient of grants from, including but not necessarily limited to, the Ocean Protection

Council and private corporate donor(s), which provides funds for the restoration of Big Canyon ("Grant").

- G. The Conservancy has led an ongoing restoration project within Big Canyon, the Big Canyon Coastal Habitat Restoration and Adaptation Project, with the cooperation of the City and CDFW, with the restoration being conducted in phases, Phase 1 completed in July 2017, and Phase 2 completed in June of 2021.
- H. Restoring the historic salt marsh and freshwater riparian habitat will benefit a variety of California wildlife, including but not limited to, the California Gnatcatcher (*Poliophtila californica californica*), Song Sparrow (*Melospiza melodia*), California Towhee (*Melospiza crissalis*), and the Wrentit (*Chamaea fasciata*).
- I. The Big Canyon Coastal Habitat Restoration and Adaptation Project - Phase 3 ("Project"), will remove existing selenium impacted saltwater, eliminate invasive plants, regrade the site to extend saltwater influence from the back bay, replant with native plants to restore riparian and upland habitats, restore historical salt marsh and establish transitional wetlands that will allow for upslope migration and resiliency to long term sea level rise, restore tidal marsh to further reduce selenium bioavailability found naturally within marine deposits in the watershed, maintain positive drainage during low flows, address mosquito breeding habitat, and incorporate fuel modification on surrounding sloping parcels to reduce fire risks to nearby homes.
- J. The Project will be located at 1950 Back Bay Drive, Assessor's Parcel Numbers ("APN") 440-092-76, 440-092-77, 440-092-79, and 440-132-53 ("City Area"), and a portion of which is owned by CDFW, APN 440-092-75, and 440-132-27 ("CDFW Area"), as depicted on Exhibit "B" which is attached hereto and incorporated herein by reference.
- K. The Project will be conducted by CDFW, and will require access over and upon the City Area and use of the City's Big Canyon access road off of Jamboree Road ("License Area").
- L. The City and CDFW agree that the City will serve as the lead agency for the Project under the California Environmental Quality Act ("CEQA"), and that the City will assist with the application for a Coastal Development Permit from the California Coastal Commission either by serving as the applicant, co-applicant, or otherwise as may be necessary or desirable.
- M. In consideration of the mutual promises and obligations contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, City desires to grant CDFW permission to enter and use the License Area to carry out the Project in conformance with the terms of the Grant, and CDFW desires to accept the same and to carry out the Project in conformance with the terms of the Grant on the following terms and conditions.

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

1. LICENSE

1.1 For the duration of this Agreement, City hereby grants a revocable, non-exclusive license to CDFW, including its agents, contractors, subcontractors, and consultants when acting on behalf of CDFW, to enter upon, over and under and temporarily occupy and use the License Area in order to carry out the Project in accordance with the terms and conditions of the Grant and this Agreement ("License").

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

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

1.4 Nothing herein shall be construed to give CDFW any right to hold over or to continue possession of the License Area after the expiration or termination of this Agreement.

1.5 The License granted herein is subject to the terms, covenants and conditions hereinafter set forth, and CDFW covenants, as a material part of the consideration for this License, to keep and perform each term, covenant and condition of this Agreement.

2. TERM

Unless terminated earlier as set forth herein, the term of this Agreement shall commence on the Effective Date and shall continue until completion of the Project or December 31, 2024, whichever occurs first. The City shall have the option to extend the term of this Agreement for successive periods of one (1) year each as needed to allow for completion of the Project by providing written notice to CDFW.

3. THE PROJECT

3.1 CDFW shall undertake and diligently pursue to completion the Project, the Big Canyon Coastal Habitat Restoration and Resiliency Project - Phase 3, in substantial conformance with the plans approved by City, which are on file with the City and incorporated herein by this reference.

3.2 CDFW shall comply will all applicable federal and state laws regarding public works projects, including but not limited to, competitive bidding, bonding, and prevailing wages.

3.3 CDFW shall be solely responsible for cooperating with the Conservancy to ensure the Project is conducted in full compliance with the terms and conditions of the Grant, including but not limited to, bookkeeping, reporting, deliverables, deadlines, management, operations, and all other aspects of the Grant.

3.4 CDFW shall comply with all applicable federal and state contracting requirements. All expenditures made with federal award money, if any, including subcontracts, are subject to the Uniform Guidance, Title 2 in the Code of Federal Regulations, Subtitle A, Chapter II, part 200 (2 CFR 200). Additionally, non-federal entities are subject to 2 CFR 200.317, General Procurement Standards, through 2 CFR 200.327, Contract Provisions, when expending funds under a federal award.

4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Big Canyon restoration has been conducted in successive phases through the mutual cooperation of two public agencies, the City and CDFW, in concert with a non-profit, the Conservancy, providing Grant funding for the restoration work. Pursuant to Section 15051(d) of the CEQA Guidelines, 14 Cal Code Regs §§15000-15387, City and CDFW agree that the City shall serve as the lead agency on the Project for purposes of CEQA. Furthermore, City and CDFW agree that the City is additionally authorized to serve as the lead agency for the Project pursuant to Section 15051(b)(1) of the CEQA Guidelines which states that the lead agency will normally be the agency with general governmental powers, such as a city rather than an agency with a single or limited purpose, and Section 15051(c) of the CEQA Guidelines which states that the agency which will act first on the project in question will normally be the lead agency.

5. COASTAL DEVELOPMENT PERMIT

The Project site is bisected by jurisdictional boundaries between the City and the California Coastal Commission. In accordance with Newport Beach Municipal Code Section 21.50.025 (Projects Bisected by Jurisdictional Boundaries), the City desires to assist in a consolidated application for a Coastal Development Permit to the California Coastal Commission for the Project. The parties agree that the City shall assist in the preparation of an application for a Coastal Development Permit ("CDP") to the California Coastal Commission as may be required for the Project. The parties agree that the City may be the applicant or a co-applicant with CDFW and/or the Conservancy on the application for issuance of a CDP as may be necessary for issuance of the CDP.

6. INDEPENDENT ENTITIES

This Agreement forms no partnership, joint venture, or other association of any kind. CDFW and the City are not acting as the agent of the other in any respect, and each is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement.

7. COOPERATION

Each party shall cooperate with and provide reasonable assistance to the other party to the extent consistent with and necessary to implement this Agreement. Upon the request of a party at any time, the other party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

8. CONSIDERATION

The parties agree that CDFW shall be authorized to use the License Area for the purposes set forth herein at no cost. The parties agree that the benefit that will accrue to the citizens of the City through the Project performed in accordance with the Grant is commensurate with the value to CDFW's use of the License Area.

9. USE OF THE LICENSE AREA

9.1 CDFW and its agents, contractors, subcontractors, and consultants use of the License Area shall be limited to the terms and conditions of this Agreement.

9.2 CDFW shall submit its work schedule, including intended days and hours of operation within the License Area, to the City's License Administrator for approval, which approval shall not be unreasonably withheld. CDFW agrees that all of its activities shall be held solely during approved days and hours of operation, subject to exceptions made on a case-by-case basis upon the prior written approval of the City's License Administrator in his or her sole discretion.

9.3 CDFW agrees to accept the License Area in an "as is" condition, and that no representations with respect to the condition or improvements of the License Area have been made except as specifically set forth in this Agreement.

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

9.5 CDFW shall keep the City's License Administrator informed of CDFW's use of the License Area, and such use shall be subject to the approval of the City's License Administrator which approval shall not be unreasonably withheld.

10. PURPOSE OF LICENSE

The purpose of this Agreement is to provide for the entry and temporary use and occupation of the License Area to carry out the Project in compliance with the Project plans, the terms of the Grant, and this Agreement. Except as otherwise provided in this Agreement, use of any area outside the License Area will not be allowed unless prior permission is given in writing by the City. CDFW agrees to use the License Area only for

the activities described herein, and not to use or permit the use of the License Area for any other purpose without first obtaining the prior written consent of City, which consent may be withheld in City's sole discretion. Acceptable activities include any work necessary to perform the Project consistent with the Project plans and the terms of the Grant.

11. CONDITIONS OF LICENSE

CDFW shall comply with the following conditions:

11.1 CDFW shall be solely responsible for entering into an agreement with the Conservancy for allocation of Grant funds to pay for the costs of the Project.

11.2 CDFW may delegate its duties under this Agreement to the Conservancy, subcontractors, or other agents, as necessary or convenient, to the extent authorized by law. Any such delegation shall not constitute an assignment of this Agreement, and CDFW shall remain solely responsible for all duties, covenants, conditions, and performance of this Agreement, including the completion of the Project.

11.3 CDFW shall ensure that any and all required licenses, permits and certifications are obtained and maintained.

11.4 CDFW shall work with adjacent property owners to reach agreement over the use of land outside of the License Area if such use is needed.

11.5 CDFW shall coordinate use of the License Area to avoid conflict with any other activities that may be in operation at or within the License Area during the term of this Agreement.

11.6 CDFW shall obtain the prior written approval of the City's License Administrator before undertaking any modifications in the operation of the Project which may affect allocation of space, operating hours, or the relationship with other programs operating at the License Area.

11.7 No improvements to the License Area are permitted, other than those set forth in this Agreement.

11.8 CDFW shall be responsible for maintaining the License Area during the term of this Agreement, including, but not limited to, the routine removal of any foreign material, waste, and debris.

11.9 CDFW shall use best efforts to keep and maintain the License Area in good condition, and to not cause unnecessary damage or harm to the License Area, at its sole cost and expense.

11.10 CDFW agrees that the License Area shall not be used to promote, directly or indirectly, any political party, political candidate, or political activity, except as permitted by law.

11.11 CDFW shall report in writing to City immediately after discovery of the loss or theft of any items of capital equipment. For stolen items, CDFW shall contact the local law enforcement agency and submit a copy of the police report to City.

11.12 City may, but shall not be required to, enter upon the License Area at any time for any reason, including but not limited to, inspecting the License Area for compliance with the terms of this Agreement, the terms of the Grant, and with all applicable Federal, State and local (including those of the City) government regulations. Upon reasonable request, CDFW shall provide a representative to accompany City during inspections who shall have sufficient knowledge and authority to provide information and answer questions about CDFW's activities in the License Area.

11.13 CDFW's representatives shall meet with the City upon prior reasonable request to discuss operational issues concerning use of the License Area.

11.14 CDFW shall promptly pay, when due, all bills, debts, liabilities and obligations incurred by CDFW in connection with the Project and CDFW's occupation and use of the License Area.

11.15 CDFW shall comply with all of the terms and conditions of this Agreement.

12. TERMINATION

12.1 This Agreement may be terminated during the term in the following manner:

1) By CDFW: At any time, without cause, by giving at least thirty (30) days advance written notice of termination to City, provided that CDFW shall promptly restore the License Area to its condition prior to the commencement of any work caused by CDFW in the Subject Area in furtherance of the Project, or to the reasonable satisfaction of City;

2) By City: At any time, without cause, prior to the award of any public contract by CDFW to perform work in furtherance of the Project, by giving at least thirty (30) days advance written notice of termination to CDFW; or

3) By Default: If, after written notice of default to CDFW of any of the terms or conditions of this Agreement, CDFW or its agents, contractors, subcontractors or consultants fails to cure or correct any default of this Agreement within ten (10) business days of receipt of written notice, City may immediately terminate this Agreement by delivering written notice of termination to CDFW.

12.2 Subject to acceptance by the City, all improvements located upon the License Area shall become part of, included in, and appurtenant to the License Area.

12.3 At the expiration or termination of this Agreement, all of CDFW's equipment or materials remaining in the License Area shall be removed from the License Area at CDFW's sole cost. CDFW's equipment or materials that are not removed by CDFW within thirty (30) days of the expiration or termination of this Agreement may be removed by City

and disposed of by City without any compensation due to CDFW. CDFW shall be responsible for the cost of any removal and disposal and for any repairs to the License Area caused by such removal.

13. ADMINISTRATION

13.1 This Agreement will be administered by the City's Public Works Department. City's Public Works Director, or designee, shall have the authority to act for City under this Agreement ("City's License Administrator"). The City's License Administrator or their authorized representative shall represent City in all matters pertaining to this Agreement.

13.2 CDFW shall designate in writing to City representatives who shall be responsible for the day-to-day operation of the Project, and for maintenance, cleanliness, and general order of the License Area.

14. INDEMNITY AND LIABILITY

14.1 CDFW and its agents, contractors, subcontractors, and consultants shall use due care to protect the License Area and restore it to its original condition, or to the conditions required by this Agreement, to the reasonable satisfaction of the City when the License Area is not in use by CDFW.

14.2 CDFW shall be responsible for the security, repair, and maintenance of the License Area to the extent the License Area is utilized by CDFW or its agents.

14.3 CDFW and its agents, contractors, subcontractors, and consultants shall cause all construction and maintenance activities to be conducted in a good and workmanlike manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All work shall be performed by qualified and experienced personnel. Upon completion of work, CDFW shall provide City with evidence reasonably satisfactory to City of such completion. By delivery of completed work, CDFW certifies that the work conforms to the requirements of this Agreement, the terms of the Grant, all applicable federal, state and local laws, and legally recognized professional standards.

14.4 City shall not be responsible for any Project expenses, labor, equipment, supplies, work, liens, taxes, or any other cost of any nature whatsoever incurred in furtherance of, arising out of, related to, or in connection with the Project. CDFW shall fully reimburse and indemnify City for any such costs.

14.5 Except to the extent of the City's sole negligence or willful misconduct, City shall not be liable for any injury or damage arising out of, in connection with, or related to the Project or the Grant. CDFW shall be solely responsible for all loss or damage to the License Area and to any persons, property, equipment, materials or goods that is caused by, arises out of, or is in connection with or related to the Project whether completed by CDFW or its agents, contractors, subcontractors, and consultants. CDFW shall fully

compensate and indemnify City for any loss or damage suffered by City in proportion to the extent to which CDFW or its agents caused or contributed to the loss or damage.

14.6 City shall not be liable to CDFW for any injury or damage to CDFW arising out of or in connection with acts of god such as earthquakes, floods, fire, pandemic or disease, or other natural disaster.

14.7 CDFW, on behalf of itself and its employees, agents, contractors, subcontractors, and consultants, shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement by CDFW or its agents, or any work or services performed or provided by CDFW or its agents, including, without limitation, defects in workmanship or materials, or CDFW's or its agents' presence or activities that relate in any way to this Agreement (including the negligent and/or willful acts, errors and/or omissions of CDFW, employees, vendors, agents, suppliers, and anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). Notwithstanding the foregoing, nothing herein shall be construed to require CDFW to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement.

14.8 In addition to its indemnity obligations set forth herein, CDFW shall indemnify, defend, and hold harmless Indemnified Parties from and against any Claim seeking to attack, set aside, void, or annul the approval of this Agreement or the plan or approvals for the project (including without limitation any actions taken pursuant to CEQA with respect thereto), and any subsequent approval of any agreement or permit granted in furtherance of the Project. Said indemnity obligation shall include payment of reasonable attorney's fees, expert witness fees, City staff costs (including overhead), and court costs. City shall promptly notify CDFW of any such Claim and City shall cooperate with CDFW in the defense of such Claim. CDFW shall not be responsible to indemnify, defend, and hold City harmless from such Claim until CDFW is so notified, and if City fails to cooperate in the defense of a Claim CDFW shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's reasonable defense costs for its separate counsel shall be included in CDFW's indemnity obligation, provided that such counsel shall reasonably cooperate with CDFW in an effort to minimize the total litigation expenses incurred by CDFW. In the event either City or CDFW recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, CDFW shall be entitled to retain the same (provided it has fully

performed its indemnity obligations hereunder). No settlement of any Claim against Indemnified Parties shall be executed without the written consent of both the City and CDFW.

14.9 This duties in this Section shall apply to all claims and liability regardless of whether any insurance policies are applicable. Insurance policy limits shall not act as a limitation upon the amount of indemnification to be provided by CDFW.

15. INSURANCE

Without limiting CDFW's indemnification of City, and prior to commencement of work, CDFW and its agents, contractors, subcontractors, and consultants shall obtain and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit "C," and incorporated herein by reference.

16. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

This Agreement and the License granted herein shall not be assigned or transferred without the prior written approval of City which approval may be withheld in the City's sole discretion.

17. CONFLICT OF INTEREST

CDFW and its employees, agents, contractors, subcontractors, and consultants may be subject to the provisions of the California Political Reform Act of 1974 ("Act"), which (a) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (b) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest. If subject to the Act, CDFW and its employees, agents, contractors, subcontractors, and consultants shall conform to all requirements of the Act. Notwithstanding Section 9.1.3, failure to conform to the requirements of the Act constitutes a material breach and is grounds for immediate termination of this Agreement by City. CDFW shall indemnify and hold harmless City for any and all claims for damages resulting from a violation of this Section.

18. NOTICE

18.1 All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from CDFW to City shall be addressed to City at:

Public Works Department
City of Newport Beach

Attn: Public Works Director
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

18.2 All notices, demands, requests or approvals from City to CDFW shall be addressed to CDFW at:

California Department of Fish and Wildlife
Attn: Amanda Swanson, PhD,
Orange County Reserve Manager
600 Shell maker Road, Newport Beach, CA 92660

19. EQUAL OPPORTUNITY – NONDISCRIMINATION

CDFW and its agents, contractors, subcontractors, and consultants shall comply with Title VI and VII of the Civil Rights Act of 1964, as amended; the Age Discrimination Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended, California Government Code Section 12940(c), (h), (l), (i), and (j); and other applicable federal and state laws, as well as their implementing regulations, and any other law pertaining to Equal Employment Opportunity Affirmative Action and Discrimination as each may now exist or be hereafter amended. CDFW shall not discriminate against any employee, or applicant for employment and shall not withhold any services, benefits or facilities to any participant on the basis of an ethnic group identification, race, color, national origin or ancestry, religion, age, sex, marital status, political belief, religious creed, disability, or medical condition.

20. PREVAILING WAGES

Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime work for each craft or type of workman needed to execute the Project contemplated under this Agreement shall be paid to all workmen employed on the Project to be done according to this Agreement by CDFW and any subcontractor. In accordance with the California Labor Code (Sections 1770 et seq.), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Project is to be performed for each craft, classification, or type of workman or mechanic needed to execute this Agreement. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. CDFW is required to cause wage determinations from the Department of Industrial Relations to be posted at the job site listing the prevailing rate or per diem wages. It shall be the obligation of CDFW or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations and the parties agree that the City shall not be liable for any violation thereof.

21. BONDING

For the duration of the Project, CDFW shall require the provision and maintenance of both of the following: (1) a Faithful Performance Bond in the amount of one hundred percent (100%) of the total amount to be paid for the Project; and (2) a Labor and Materials Payment Bond in the amount of one hundred percent (100%) of the total amount to be paid for the Project. The Faithful Performance Bond and Labor and Materials Payment Bond shall be issued by insurance organizations or sureties (1) currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570, and (3) assigned a Policyholders' Rating A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide: Property-Casualty.

22. LIENS

CDFW shall not permit to be imposed, recorded or enforced against the License Area or any portion thereof or any structure or improvement thereon any mechanics, materialmen's, contractors or other liens arising from, or any claims for damages growing out of, any work or repair, construction or alteration of improvements in connection with this Agreement. In the event any lien or stop notice is imposed or recorded on the License Area, and such lien or stop notice arises out of, is related to or connected with, or based on, CDFW conduct, CDFW shall pay or cause to be paid all such liens, claims or demands before any action is brought to enforce the same against the License Area. Notwithstanding the foregoing, if CDFW in good faith contests the validity of any such lien, claim or demand, then CDFW may, at its sole expense, defend against such lien, claim or demand provided that CDFW provides City full defense and indemnity therefrom, and provided CDFW shall pay and satisfy any adverse judgment that may be rendered in connection therewith before any enforcement against City or the License Area.

23. HAZARDOUS SUBSTANCES

23.1 "Hazardous Substance" means: (i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. "RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste of Concern and Public Safety Act, Health and Safety Code Sections 25169.5 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, Water

Code Sections 13000 et seq., all as they, from time-to-time may be amended or re-codified, (the above-cited statutes are here collectively referred to as the "Hazardous Substances Laws") or any other Federal, State or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; (ii) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory, including but not limited to negligence, trespass, intentional tort, nuisance, waste or strict liability or under any reported decisions of a state or federal court; (iii) petroleum or crude oil; and (iv) asbestos.

23.2 CDFW and its agents, contractors, subcontractors, and consultants shall not use, occupy, or permit any portion of the License Area to be used or occupied in violation of any Hazardous Substance laws.

23.3 CDFW does not, and shall not, authorize any third party to use, generate, manufacture, maintain, permit, store, or dispose of any Hazardous Substances in violation of applicable laws on, under, about or within the License Area.

23.4 Notwithstanding the foregoing, CDFW is not responsible or liable for any Hazardous Substances that are brought on to the License Area, through migration or other means, by third-parties not associated with CDFW or CDFW's use of the License Area.

23.5 In addition to the indemnification duties of CDFW set forth elsewhere in this Agreement, CDFW shall indemnify, defend, and hold harmless the Indemnified Parties from and against any and all Claims, including, but not limited to, any repair, cleanup, detoxification, or preparation and implementation of any remedial, response, closure or other plan of any kind or nature which the City may sustain or incur, or which may be imposed upon it, arising from or attributable to CDFW and its agents storage or deposit of Hazardous Substances in violation of applicable laws. This section is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 USC Section 9607(e), and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify City for any claim pursuant to the Hazardous Substance laws or the common law.

23.6 Upon expiration or termination of this Agreement, CDFW shall deliver possession of the License Area in compliance with Hazardous Substance laws.

23.7 If during the term of this Agreement, CDFW becomes aware of (i) any actual or threatened release of any Hazardous Substances on, in, under, from, or about the License Area in violation of Hazardous Substance laws; or (ii) any inquiry, investigation, proceeding, or claim by any government agency or other person regarding the presence of any Hazardous Substances in violation of Hazardous Substance laws on, in, under, from or about the License Area, CDFW shall give City written notice of the release or inquiry within five (5) calendar days after CDFW becomes aware or first has reason to believe there has been a release or inquiry and shall simultaneously furnish to City copies

of any claims, notices of violation, reports, warning or other writings received by CDFW that concern the release or inquiry.

23.8 If the presence of any Hazardous Substances brought onto the License Area by CDFW or its agents, or generated by same during the Term of this Agreement, results in contamination of the License Area or adjacent properties in violation of Hazardous Substance laws, CDFW shall promptly take all necessary actions, at CDFW's sole expense, to remove or remediate such Hazardous Substances in full compliance with applicable laws. CDFW shall provide notice to City prior to performing any removal or remedial action. CDFW shall not propose nor agree to any covenant of use restriction as part of any removal or remediation required as a result of this provision without City's written consent. CDFW shall pay any costs City incurs in performing CDFW's obligation to clean-up contamination resulting from CDFW's operations or use of the License Area.

23.9 Should any clean-up of Hazardous Substances for which CDFW is responsible not be completed prior to the expiration or termination of this Agreement, then CDFW shall: (i) transfer the amounts required to complete clean-up into an escrow account, together with City-approved instructions for the disbursement of such amount in payment of the costs of any remaining clean-up as it is completed, and (ii) if the nature of the contamination or clean-up required of CDFW is of such a nature as to make the License Area un-usable for its intended purposes, then CDFW shall be liable to City as a holdover licensee until the clean-up has been sufficiently completed to make the License Area suitable for its intended purposes. The estimated cost of the clean-up shall require approval of the City.

23.10 If City determines, in its reasonable discretion, that CDFW does not have insurance or other financial resources sufficient to enable CDFW to fulfill its obligations under this provision, then CDFW shall, at the request of City, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to City as is appropriate to assure that CDFW will be able to perform its duties and obligations hereunder.

24. STANDARD PROVISIONS

24.1 Recitals. City and CDFW acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

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

24.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed a waiver of any subsequent breach of the

same or any other term, covenant or condition contained herein, whether of the same or a different character.

24.4 Integrated Agreement. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

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

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

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

24.8 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

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

24.10 No Third Party Rights. The parties do not intend to create rights in or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.

24.11 No Attorneys' Fees. In the event of any dispute under the terms of this Agreement, the prevailing party shall not be entitled to attorneys' fees.

24.12 Survival. Sections 12, 14, and 23 of this Agreement shall survive the termination or expiration of this Agreement.

24.13 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

24.14 Authority. CDFW and CDFW's signatories represent that the signatories hold the positions set forth below their signatures and that the signatories are authorized to execute this Agreement on behalf of CDFW and to bind CDFW hereto.

[SIGNATURES ON NEXT PAGE]

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

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

Date: _____

CITY OF NEWPORT BEACH, a California
municipal corporation

Date: _____

By: _____
Aaron C. Harp
City Attorney

By: _____
Grace K. Leung
City Manager

ATTEST:

Date: _____

**CALIFORNIA DEPARTMENT OF FISH
AND WILDLIFE**

Date: _____

By: _____
Leilani I. Brown
City Clerk

By: _____
Amanda Swanson
Orange County Reserve Manager

ATTEST:

Date: _____

By: _____

**APPROVED AS TO FORM:
CDFW GENERAL COUNSEL**

Date: _____

By: _____

[END OF SIGNATURES]

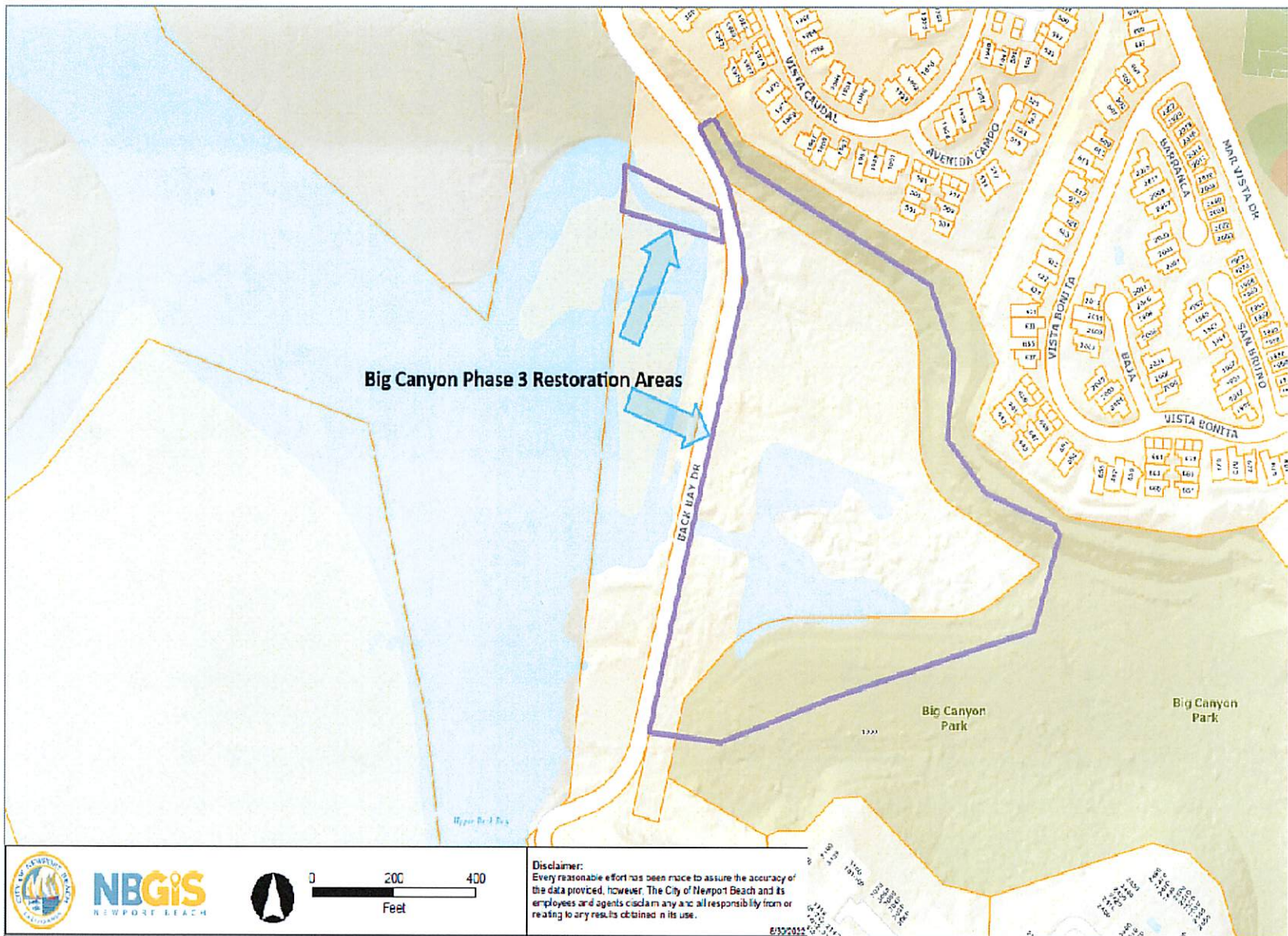
Attachments:	Exhibit A:	Depiction of Big Canyon
	Exhibit B:	Depiction of License Area
	Exhibit C:	Insurance Requirements

EXHIBIT A DEPICTION OF BIG CANYON



EXHIBIT B
DEPICTION OF LICENSE AREA





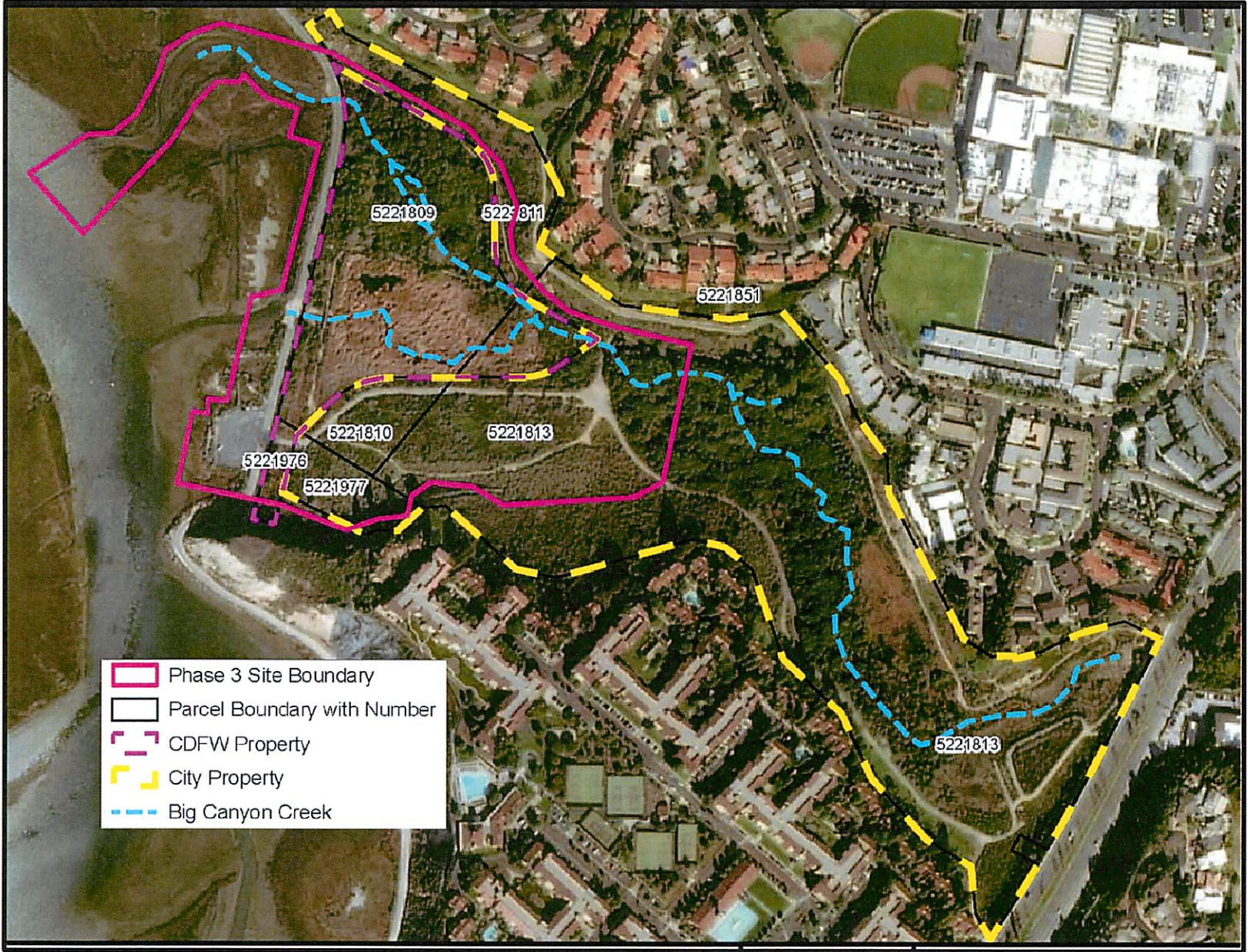


EXHIBIT C INSURANCE REQUIREMENTS

1. Provision of Insurance. Without limiting CDFW's indemnification of City, and prior to commencement of work, CDFW shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. CDFW agrees to provide insurance in accordance with requirements set forth here. If CDFW uses existing coverage to comply and that coverage does not meet these requirements, CDFW agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. CDFW shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

CDFW shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
 - C. General Liability Insurance. CDFW shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Work Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract. The commercial general liability insurance must include coverage for sexual abuse/molestation and corporal punishment.
 - D. Automobile Liability Insurance. CDFW shall maintain automobile insurance at least as broad as Insurance Work Office form CA 00 01 covering bodily injury and property damage for all activities of CDFW arising out of or in connection with work to be performed under this Agreement, including

coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- E. Pollution Liability Insurance. CDFW shall maintain a policy providing contractor's pollution liability ("CPL") coverage with a total limit of liability of no less than \$5,000,000 per loss and \$5,000,000 in the aggregate per policy period. Claims-made policies require a 10-year extended reporting period. The CPL policy shall include coverage for cleanup costs, third-party bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by contracting operations. Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-Site disposal of materials. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy
4. Worker's Compensation Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CDFW or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. CDFW hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.
 - B. Additional Insured Status. All liability policies including general liability, excess liability and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be included as insureds under such policies.
 - C. Primary and Non-Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. CDFW shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving CDFW sixty (60) calendar days advance written notice of such change.
- C. Enforcement of Agreement Provisions. CDFW acknowledges and agrees that any actual or alleged failure on the part of City to inform CDFW of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- D. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
- E. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- F. City Remedies for Non-Compliance. If CDFW or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend CDFW's right to proceed until proper evidence of insurance is provided.

- G. Timely Notice of Claims. CDFW shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from CDFW's performance under this Contract, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- H. CDFW's Insurance. CDFW shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

Exhibit “C”

CEQA Exemption Concurrence Letter



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
Post Office Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Figure 3: CEQA SERP Concurrence
Letter dated May 4, 2022

May 4, 2022

Makana Nova, Senior Planner
Planning Division
Community Development Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

**California Environmental Quality Act Statutory Exemption for Restoration Projects,
Big Canyon Coastal Habitat Restoration and Resiliency Project – Phase 3 (Request
No. 21080.56-2022-003-R5)**

Dear Ms. Nova:

I am pleased to inform you as the Director of the California Department of Fish and Wildlife (CDFW) that I concur with the Lead Agency determination by the City of Newport Beach that the Big Canyon Coastal Habitat Restoration and Resiliency Project – Phase 3 (Project) qualifies as a statutorily exempt restoration project under the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21080.56, subd. (e).) My concurrence as the CDFW Director is based on CDFW's independent review of the City of Newport Beach's request for concurrence, which CDFW received on March 24, 2022. In my opinion, informed by the best available science and described in the separate CDFW Concurrence, the Project meets all the qualifying criteria in Public Resources Code section 21080.56, subdivisions (a) to (d), inclusive.

This concurrence signifies the continued commitment by CDFW and its partners in advancing the "Cutting the Green Tape" initiative, which is a collaborative effort to increase the pace and scale of restoration projects in California in a way that protects the environment and results in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery. CDFW stands ready to continue this effort in coordination with the City of Newport Beach.

CDFW's Concurrence will be posted on our website as provided by Public Resources Code section 21080.56. If you have any related questions, please contact Brad Henderson, Cutting the Green Tape Program Manager, at (530) 351-5948, or by email at Brad.Henderson@wildlife.ca.gov.

Sincerely,

Charlton H. Bonham
Director

Makana Nova, Senior Planner
City of Newport Beach
May 4, 2022
Page 2

cc: Valerie Termini
Chief Deputy Director
California Department of Fish and Wildlife

Wendy Bogdan
General Counsel
Office of the General Counsel
California Department of Fish and Wildlife

Julie Vance
Acting Deputy Director
Ecosystem Conservation Division
California Department of Fish and Wildlife

Ed Pert
Regional Manager
South Coast Region (Region 5)
California Department of Fish and Wildlife

Christian Romberger
Senior Environmental Scientist
South Coast Region (Region 5)
California Department of Fish and Wildlife

Brad Henderson
Environmental Program Manager
Watershed Restoration Grants Branch
California Department of Fish and Wildlife

Alys Arenas
Restoration Manager
Newport Bay Conservancy