

**LEASE AND CARETAKER AGREEMENT BETWEEN  
THE CITY OF CUPERTINO  
AND  
THE SANTA CLARA VALLEY AUDUBON SOCIETY  
FOR THE McCLELLAN RANCH HOUSE**

This Lease and Caretaker Agreement ("AGREEMENT"), is entered into as of July 1, 2018("Effective Date"), by and between the City of Cupertino ("CITY") and the Santa Clara Valley Audubon Society, a California corporation ("LESSEE").

RECITALS

A. City is the owner of certain real property commonly known as the "McClellan Ranch House" located 22221 McClellan Road, McClellan Ranch Park, City of Cupertino, County of Santa Clara, State of California (the "Property").

B. Lessee is a 501(c)(3) nonprofit organization that offers educational and informational programs to the community that promote the goal of preserving, enjoying, restoring and fostering public awareness of native birds and their ecosystems.

B. City and Lessee desire to enter into an agreement to lease a portion of the Property that includes two offices within the ranch house totaling of 738 square feet, together with the non-exclusive use of hallways, restrooms, and outside parking facilities (the "Premises").

NOW, THEREFORE, in consideration of the promises, covenants and conditions contained in this Agreement and for other good and valuable consideration, the parties hereby agree as follows

1. PURPOSE OF LEASE.

LESSEE and CITY are entering into this Lease and Caretaker Agreement with two goals: enhancing the quality of environmental programs for City's community, and providing a natural area for the conduct of some of LESSEE's ongoing activities. As such, both the CITY and LESSEE, agree to work together throughout the term of this AGREEMENT to develop a program of activities mutually beneficial to CITY and LESSEE. In consideration for City allowing Lessee to use the Premises, Lessee agrees to conduct the activities/programs/events and/or provide the services, as provided in the Scope of Work, attached hereto and incorporated by this reference as Exhibit A.

2. DESCRIPTION OF PROPERTY TO BE LEASED.

City leases to Lessee and Lessee leases from City a portion of the property located at 22221 McClellan Road, Cupertino, California, (the "Property"), consisting of 588 square feet within the ranch house, which includes the 308 square foot front office, the 180 square foot middle office, the 100 square foot office adjacent to the kitchen within, and 150 square foot storage in the basement together with the non-exclusive use of hallways, restrooms, and outside parking facilities (the "Premises").

3. LEASE TERM.

a. Initial Term. The term of this Lease shall be for a period of one (1) year commencing on July 1, 2018 ("Effective Date") and ending June 30, 2019.

b. Option to Renew. Upon mutual agreement of City and Lessee, the initial term of this Lease may be extended for up to one year, on the same terms, covenants, and conditions of this Lease, except for the Rent, which shall increase by three percent (3%) during the period of the extended term. To exercise the Option to renew, Lessee must give written notice (the "Option Notice") of its interest in extending the term to the City at least two (2) months but not more than three (3) months before the expiration of the initial term, and Lessee must not be in default under this lease, either on the date of the Option Notice or at the time the extension period commences. City shall review the Option Notice and approve or deny the request prior to expiration of the Initial Term. If the City denies the request this Lease shall expire at the end of the initial term. Lessee shall have no other rights to extend the term beyond the Extension Period.

4. RENT.

In consideration for the lease of the Premises, Lessee shall pay City as follows:

a. Rent. Lessee shall pay monthly rent to the City, without deduction or setoff, based upon the rate of one dollar (\$1.06) per square foot per month, for a total of seven hundred and eighty-two dollars (\$782.00) per month. Rent shall be payable in on or before the first (1st) day of each calendar month without notice or demand of any kind by City. In addition to providing services in Exhibit A. All payments shall be submitted to City of Cupertino, Attn: Director of Finance, 10300 Torre Avenue, Cupertino, CA 95014.

b. Late Charges. In the event that any installment of rent or any other sum due by Lessee is not received by City within ten (10) days after the due date, rent is deemed late and delinquent and a late charge equal to \$20.00 plus interest at the rate of 10% per annum of the overdue amount shall be assessed as additional rent. LESSEE further agrees to pay \$20.00 for each dishonored bank check.

5. HOLDING OVER.

If Lessee remains in possession of the Property with City's consent after the expiration of the term of this lease, such possession by City shall be construed to be a tenancy from month to month, terminable upon thirty (30) days written notice given at any time by either party. The same terms and conditions contained in this Lease shall apply to any month-to-month tenancy, provided that the monthly base rent shall be one and one-half times the monthly rent payable immediately preceding the termination date of this Lease.

6. SECURITY DEPOSIT.

A security deposit of \$205.00, not applicable toward the last month's rent payment, has been paid by the LESSEE.

7. UTILITIES.

CITY shall be responsible for the payment of all utility bills applicable to the PREMISES, including water, electrical services, garbage and janitorial services for said PREMISES. LESSEE shall be responsible for its own telephone, internet and similar service and shall provide for its own office equipment and furnishings.

8. TAXES.

LESSEE shall be responsible for payment of any and all possessory interest property taxes.

9. LESSEE'S USE OF THE PROPERTY.

a. Allowed and Required Uses. Lessee shall continuously use and occupy the Premises as office space for running educational and informational programs to the community that promote the goal of preserving, enjoying, restoring and fostering public awareness of native birds and their ecosystems as set forth in Exhibit B. Lessee shall not use the property for any other purpose without the written consent of City, which consent may be withheld in City's sole and absolute discretion. Lessee, at Lessee's sole cost and expense, shall comply with all applicable municipal, state and federal statutes, ordinances, rules and regulations in effect during the term of this Lease regulating the use by Lessee of the Premises. The Lessee's use of the premises is subject to the following restrictions and requirements:

1. Hours of Operation. LESSEE shall maintain an office facility during normal hours of operation. LESSEE shall determine its own hours of operation provided that said hours are between 8:00 a.m. and 10:00 p.m.

2. Security. LESSEE shall be responsible for securing the facility and setting of the burglar alarm at the end of each day.

3. Common Areas. LESSEE may utilize the hallways and restrooms of the ranch house and the adjacent parking facilities without additional rent, provided, however, that if LESSEE wishes to utilize other areas of McClellan Park for which CITY normally charges a user fee, LESSEE shall be responsible for payment of said fee. Common areas include conference room, hallways, kitchen and restrooms. CITY shall be entitled to utilize all common areas for program activities upon giving LESSEE one (1) days advance written notice.

4. Parking. CITY retains the right to designate exclusive parking for LESSEE, or any other user or Lessee of the PREMISES, in the event that City, in its sole discretion, determines that the parking lot is over-utilized. It is estimated that LESSEE's need for parking shall not exceed 12 spaces. Lessee understands and agrees that Lessee's use of the parking area includes the right to use that Area jointly with the City, and acknowledges that Lessee does not have exclusive use of the Area. City shall not be liable in any manner for any inconvenience, disturbance, losses, personal injury, or other damage arising out of lessee's shared use of the parking lot for parking or any other City use.

5. Animals. No animals shall reside in or on the PREMISES without prior written consent of the CITY.

6. Compliance with Law. LESSEE shall comply with all Cupertino Municipal Ordinances and all State and Federal Statutes now in force or which may hereafter be in force pertaining to the use of the PREMISES.

b. Caretaker Responsibilities. Lessee shall complete the following caretaker responsibilities:

1. Ensure that Lessee's employees who regularly operate at the PREMISES obtain training from the CITY's Naturalist and become familiar with the McClellan Park Rules and Title 13 of the Cupertino Municipal Code which governs the use of City's parks and buildings.

2. Report to CITY's code enforcement any violations of the above referenced regulations found by LESSEE.

3. Notify the CITY's Recreation and Community Services office prior to any absence from the PREMISES for any extended period of time beyond two weeks.

4. Promptly report incidents, such as park misuse and vandalism, and any emergencies, such as burglaries, to the McClellan Ranch Staff, or if the Staff is unavailable, to the County Sheriff. In the event the Sheriff's office is involved, report the incident to the Director of Recreation and Community Services. (CITY shall furnish LESSEE with a list of contact numbers prior to occupancy of the Premises.)

c. Prohibited Uses. Lessee shall not use nor permit the use of the Property in any manner that will tend to create waste or nuisance or disturb other Lessees and members of the public. No use shall be made or permitted to be made of said Property, nor acts done, which will increase the existing rate of insurance upon the building in which the Property may be located once said rate is established or cause a cancellation of any insurance policy covering said building or any part thereof, nor shall Lessee sell or permit to be kept, used or sold in or about the Property, any article which may be prohibited by a standard form of fire insurance policies. Lessee shall, at his sole cost, comply with any and all requirements, pertaining to the use of the Property, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering said building and appurtenances.

10. MAINTENANCE, ALTERATIONS AND FIXTURES.

a. Alterations by Lessee. Lessee shall not paint, paper, or make any other alterations of the Property, or any part thereof, without the prior written consent of City. Any additions to, or alterations of, the Property, except movable furniture and equipment, shall become at once a part of the realty and belong to City. Any such alterations shall be in conformance with the requirements of all municipal, state and federal authorities. All fixtures that Lessee attaches to the Property shall become at once a part of the realty and belong to City on expiration or sooner termination of this Lease.

b. Alterations by City. City has the right, in its sole discretion to modify, reconfigure and renovate the Property at any time. The CITY shall provide signage as it deems appropriate designating the Premises and organizations utilizing the Property.

c. Repairs. Except for damage caused by any negligent or intentional act or omission of Lessee, Lessee's agents, employees, or invitees in which event Lessee shall repair the damage, City, at City's expense, shall keep in good order, condition and repair the foundations, exterior walls and the exterior roof of the Property, including all plumbing and electrical equipment located between the exterior and interior walls of the Property. City shall not, however, be obligated to maintain the interior walls, ceilings, windows, doors or plate glass. City shall have no obligation to make repairs under this Section until a reasonable time after receipt of written notice from Lessee of the need for such repairs. Lessee expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Lessee the right to make repairs at

City's expense or to terminate this Lease because of City's failure to keep the Property in good order, condition and repair.

d. Lessee's Maintenance Obligations. Other than those obligations of the City described in this section, Lessee, at Lessee's expense, shall keep in good order, condition and repair the Property and every part thereof including, without limiting the generality of the foregoing, all plumbing, electrical and lighting facilities, and equipment within the Property, interior walls, ceilings, windows, doors, and glass, located within the Property. LESSEE shall be responsible for damages caused by the negligence of its employees, invitees or guests.

e. Failure to perform Lessee's Obligations. If Lessee fails to perform Lessee's obligations under this Section or under any other section of this Lease, City may at City's option enter upon the Premises after ten (10) days' prior written notice to Lessee (except in case of emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf and put the Property in good order, condition and repair, and the cost thereof together with interest thereon at the maximum rate then allowable by law shall be due and payable as additional rent to City together with Lessee's next rental installment.

11. CONDITION OF PROPERTY; SURRENDER.

a. Lessee accepts the Property and the leased fixtures and equipment as being in good and sanitary order, condition and repair, and agrees to surrender the Property in as good condition as received, except for normal wear and tear, clean and free of debris. Lessee further agrees to remove all of Lessee's property that is not a fixture of or permanent attachment to the Property, or that is owned and was installed by Lessee during the term of this Lease. Lessee shall repair any damage to the Premises occasioned by the installation or removal of its furnishings and equipment.

b. If upon expiration or termination of this Lease, Lessee fails to remove any personal property belonging to Lessee from the premises, such property shall at City's option at any time after thirty (30) days from the date of expiration or termination be deemed to have been transferred to City, and City shall have the right to remove and dispose of such property without liability to Lessee.

12. ABANDONMENT OF PERSONAL PROPERTY.

Lessee shall not vacate or abandon the Premises at any time during the term of this Lease; and if Lessee shall abandon, vacate or surrender the Premises or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned, at the option of City.

13. ENTRY AND INSPECTION.

The City and its authorized representatives shall have the right to enter the Property at all reasonable times with reasonable notice for any of the following purposes: (1) to inspect the Property and determine whether the Property is in good condition and whether Lessee is complying with its obligations under this Lease; (2) to do any acts that may be necessary to protect City's interest in the Property; or (3) to perform any of City's duties under this lease, including making any necessary or agreed on repairs or alterations. Such acts by City may include the erection and maintenance of scaffolding, canopy, fences and similar props as may be required, or for the purpose of posting notices of non-liability for alterations, additions or repairs. City shall be permitted to do any of the above without any rebate of rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. Further, the City retains the right to enter upon and show the Property to persons considering purchase, rental or lease of the Property and to display the usual notices and signs, "For Sale," "For Lease," or "For Let," upon the Property for sixty (60) days prior to the expiration of the Lease term. Such signs shall be allowed without diminution of rent or hindrance by Lessee. City shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage resulting from the acts or omissions of City or its authorized representatives.

14. INSURANCE.

a. Lessee shall, at its own expense, maintain in full force and effect during the term of this Lease, and during any hold-over, insurance in amounts not less than the amounts specified in Exhibit B.

b. Lessee shall furnish to the City Certificates of Insurance evidencing the insurance coverage set forth above, the name and policy number of each carrier and policy, and that the insurance is in force and will not be cancelled or modified without thirty (30) days written notice to the City. If Lessee does not maintain the above-required insurance, the City may, at its option, pay for the necessary insurance, and the repayment thereof shall be added to any subsequent installment of rent, and shall be collectible, as additional rent in the same manner, and with the same remedies as if it had been originally reserved. Based on the fact that the City retains sole occupancy and control of that certain portion of the Property designated as a gift shop, appropriate exclusionary endorsements may be provided to remove said designated area from the insurance maintained by Lessee.

15. INDEMNIFICATION.

To the fullest extent allowed by law, Lessee, its officers, employees, agents and subcontractors (collectively, "Lessee") agrees to and shall indemnify, defend, and hold

harmless the City, its City Council, boards and commissions, officers, officials, employees, agents, servants and volunteers (collectively "Indemnitees"), from and against any and all liability, loss, damage (including consequential damages), costs and expenses, claims and actions, regardless of nature or type ("Liabilities"), arising out of or in connection with Lessee's performance under this Lease, its business operations, and its failure to comply with any of its obligations in connection with this Lease, except for loss or damage caused by the sole negligence or willful misconduct of the City.

Liabilities for which Lessee agrees to indemnify, defend and hold harmless the City/Indemnitees include without limitation, property damage, injury, or death occurring in or about the premises or related to the use of the parking lot by Lessee or Lessee's guests or invitees, resulting from Lessee's failure to keep the Property in good condition and repair, or from any act or omission by Lessee, its agents, contractors, invitees, or employees. Lessee shall also be responsible for all damages, liability, fines, penalties and any other consequences arising from any noncompliance or violation of any laws, ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act and the Americans with Disabilities Act. Litigation costs and expenses include without limitation, reasonable attorneys' fees, the costs of legal counsel of the City's choice, expert fees, and all other costs and fees incurred in investigating, defending, or prosecuting litigation or similar proceedings and the threat thereof.

Lessee hereby expressly waives all claims against the City for damages to goods, wares and merchandise in, upon or about the Property, and for injuries to persons in, upon or about the Property, from any cause arising at any time during the Lease term.

16. PROPERTY UNINHABITABLE; REMEDY.

If the Property is wholly or partially destroyed by fire, earthquake or any other cause whatsoever, renting the Property totally or partially inaccessible or unusable, or if the Property is injured by any cause which necessitates an expenditure of more than forty (40%) percent of its fair market value to repair and restore it, or if more than forty percent (40%) of the floor area, measured in square feet, is destroyed, the City may, at its option, elect to terminate this Lease by giving notice to Lessee within sixty (60) days from the date of the destruction or injury. If the City does not terminate the Lease, Lessee's rent shall be abated, from the date of destruction until restoration is completed, in an amount proportionate to the extent to which destruction interferes with Lessee's use of the premises. In no event shall City be under an obligation or duty to restore the Property. If the City elects to restore the Property, it shall proceed with reasonable diligence, but shall not be liable for any delay, other than an abatement of rent during the time that the Property remains uninhabitable. The words "restore" and "restoration", shall not include or apply to any fixture, equipment or additions of any kind, or any Property whatever placed in or upon the Property by Lessee or anyone acting on their



behalf. In making restorations, the City may use similar and/or changed workmanship and/or architecture. Immediately upon completion of repairs, the full amount of rent hereunder reserved shall be due and payable. For the purposes of this Lease, the Property shall be deemed "uninhabitable" if it cannot be used as an office facility or if any public agency deems it unsafe or unhealthy for human habitation or use as an office facility.

If the City does not elect to terminate the Lease, and does not commence restoration of the Property within one hundred twenty (120) days from the date of destruction or injury, Lessee may, at its option, terminate this Lease upon written notice to the City.

17. EMINENT DOMAIN.

a. Total Condemnation. In the event of a total condemnation of the Property during the Lease term, this Lease shall terminate as of the date actual physical possession of the Property is taken by the condemner. All compensation and damages awarded for such total condemnation shall belong to, and be the sole Property of the City, and Lessee shall have no claim thereto, and hereby irrevocably assign and transfer to the City any right to compensation or damages they may become entitled, provided however, the Lessee shall be entitled to receive any award that may be made for the taking of or damage to Lessee's trade fixtures and any improvements made by Lessee to the Property which Lessee would have had, but for the condemnation, the right to remove upon expiration or termination of this Lease.

b. Rent Due on Total Condemnation. On termination of this Lease by a total condemnation of the Property, all rent and other charges payable by Lessee to or on behalf of the City pursuant to this Lease shall be paid up to the date on which actual physical possession of the Property is taken by the condemner, and the parties hereto shall thereafter be released from all further liability under this Lease.

c. Partial Condemnation. In the event of a partial condemnation of the Property during the Lease term, this Lease shall terminate as to the portion of the Property so taken on the date when actual physical possession of said portion is taken by the condemner; and the parties hereto shall each have the option to terminate this Lease by giving written notice to the other, within thirty (30) days after actual physical possession of said portion is taken by the condemner. If neither party terminates this Lease as herein provided, then this Lease shall continue in full force and effect as to the remainder of the Property not condemned; provided, however, that the rent payable by Lessee for the balance of the Lease term shall be abated in the ratio that the square footage of enclosed floor space of the Property bears to the total floor space of the Property upon such condemnation. Upon partial condemnation, all compensation and damages awarded for such condemnation shall belong to and be the sole Property of the

City; and Lessee shall have no claim thereto and hereby irrevocably assign and transfer any right they may have had to share in the award to the City; provided, however, that Lessee shall be entitled to receive any, award made for the taking of, or damage to, Lessees' trade fixtures and any improvements made by Lessee to the Property which Lessee would have had, but for the condemnation, the right to remove upon expiration or termination of this Lease.

d. Rent on Partial Condemnation. Upon termination of this Lease in part, as herein provided, all rent and other charges payable by Lessee to or on behalf of the City pursuant to this Lease, shall be paid up to the date on which actual physical possession is taken by the condemner of that part of the Property being condemned; and Lessee shall thereafter be liable only for that portion of rent required for the balance of the Lease term as herein provided.

18. DEFAULT.

a. The occurrence of any of the following shall constitute a default by Lessee:

1. Failure to pay rent when due, if the failure continues for ten (10) days after the due date.

2. Abandonment and vacation of the premises (failure to occupy and operate the premises for twenty (20) consecutive days unless excused by the City shall be deemed an abandonment and vacation).

3. The making by Lessee of any general assignment or general arrangement for the benefit of creditors; the filing by or against Lessee of a petition to have Lessee adjudged bankrupt or a of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee the same is dismissed within sixty (60) days); the apportionment of a trustee or receiver to take possession of substantially all of Lessee's assets, where possession is not restored to Lessee within forty-five (45) days; or the attachment, execution, or other judicial seizure of substantially all of Lessee's assets, where such seizure is not discharged within thirty (30) days.

4. Failure to perform any other provision of this Lease if the failure to perform is not cured within fifteen (15) days or the time stated in City's notice to Lessee. If the default cannot reasonably be cured within the period specified in the notice, Lessee shall not be in default of this Lease if Lessee commences to cure the default within the period and diligently and in good faith continues to cure the default.

b. Notices given under this section shall specify the alleged default and the applicable Lease provisions, and shall demand that Lessee perform the provision of this lease or pay the rent or other payment that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this lease unless City so elects in the notice.

19. CITY'S REMEDIES IN THE EVENT OF DEFAULT.

City shall have the following remedies if Lessee commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

a. Lessee's Right to Possession Not Terminated. City can continue this lease in full force and effect, and the lease will continue in effect as long as City does not terminate Lessee's right to possession, and Lessee shall have the right to collect rent when due. During the period Lessee is in default, City can enter the Property and relet it, or any part of it, to third parties for Lessee's account. Reletting can be for a period shorter or longer than the remaining term of this Lease. Lessee shall pay to City the rent due under this lease on the dates the rent is due, less the rent City receives from any reletting. No act by City allowed by this paragraph shall terminate the Lease unless City notifies Lessee that City elects to terminate the Lease. After Lessee's default and for so long as City does not terminate Lessee's right to possession of the Property, Lessee shall have the right to assign or sublet its interest in this Lease if Lessee obtains City's consent, but Lessee shall not be released from liability.

If City elects to relet the Property as provided in this section, rent that City receives shall be applied to the payment of: First, any indebtedness from Lessee to City other than rent due from Lessee; second, all costs, including maintenance costs, incurred by City in reletting; third, rent due and unpaid under this lease. After deducting the payments referred to in this paragraph, any sum remaining from the rent City receives for reletting shall be held by City and applied in payment of future rent as rent becomes due under this lease. In no event shall Lessee be entitled to any excess rent received by City. If, on the date the rent is due under this lease, the rent received from the reletting is less than the rent due on that date, Lessee shall pay to City, in addition to the remaining rent due, all costs, including for maintenance, City incurred in reletting that remain after applying the rent received from the reletting as provided in this paragraph.

b. Termination of Lessee's right to possession. City can terminate Lessee's right to possession of the Property at any time. No act by City other than giving notice to Lessee shall terminate this lease. Acts of maintenance, efforts to relet the Property, or the appointment of a receiver on City's initiative to protect City's interest under this Lease shall not constitute a termination of Lessee's right to possession. On termination, City has the right to recover the following from Lessee:

1. the worth, at the time of award, of the unpaid rent that had been earned at the time of termination of this lease;

2. the worth, at the time of award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of loss of rent that Lessee proves could have reasonably been avoided;

3. the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Lessee proves could have reasonably been avoided; and

4. any other amount, and court costs necessary to compensate City for all detriment proximately caused by Lessee's default.

c. Appointment of Receiver. If Lessee is in default of this Lease City shall have the right to have a receiver appointed to collect rent and conduct Lessee's business. Neither the filing of a petition for appointment of a receiver nor the appointment itself shall constitute and election by City to terminate this Lease, nor shall such petition or appointment as initiated by City be construed as default of this lease by Lessee.

d. City's Right to Cure. City, at any time after Lessee commits a default, can cure the default at Lessee's cost. If City at any time, by reason of Lessee's default, pays any sum or does any act that requires payment of any sum, the sum paid by City shall be due immediately from Lessee at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by City until Lessee reimburses City. The sum, together with all interest on it, shall be the additional rent

20. ASSIGNMENT AND SUBLETTING.

Lessee shall not, without City's prior written consent, which consent may be withheld in City's sole and absolute discretion, sublet the Premises or any part thereof or assign this Lease.

21. RETURN OF KEYS.

Upon termination of this AGREEMENT, the keys to the PREMISES, including all duplicated sets, are to be hand delivered to CITY's Director of Recreation and Community Services or an authorized representative.

22. NONDISCRIMINATION.

Lessee shall not discriminate against any person or employee because of race, color, religion, ancestry, age, sex, national origin, disability, sexual preference, housing status, marital status, familial status, or other protected classifications. If Lessee is found to be in violation of the State of California Fair Employment and Housing Act or any similar provision of state or federal law in the conduct of Lessee's activities under this Lease, it shall be found in default under this Lease and such default shall constitute a material breach of the Lease, entitling the City to all available remedies in this Lease or by law.

23. BINDING EFFECT.

The provisions of this Lease shall, subject to Section 20 on assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto.

24. NOTICES.

All notices must be in writing and shall be delivered by hand, by nationally recognized overnight express delivery service or by U.S. registered or certified mail, to the addresses set forth below:

LESSEE: Santa Clara Audubon Society  
Attention: , Executive Director  
22221 McClellan Road  
Cupertino, CA 95014

CITY: City of Cupertino  
Attn: Office of the City Manager  
10300 Torre Avenue  
Cupertino, CA 95014

25. GENERAL PROVISIONS.

a. Entire Agreement. This document comprises the entire and integrated agreement of the parties concerning the lease of the Property and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this document shall be effective only if in writing and signed by the City and Lessee.

b. Attorneys' Fees. If legal action is commenced to enforce or to declare the effect of any provision of this Lease, the prevailing party shall be awarded attorneys' fees and costs incurred by such party in the action. Service mailed to the address of Lessees set forth herein shall be adequate service for such litigation. If City is involuntarily made a

party defendant to any litigation concerning this Lease or the Premises by reason of any act or omission of Lessee, then, Lessee shall hold harmless City from all liabilities by reason thereof, including reasonable attorneys' fees and all costs incurred by City in such litigation. City shall be entitled to recover all collection costs including reasonable attorney's fees incurred by it as a result of Lessee's default as herein provided.

c. Severability. If any term, provision, covenant or condition of this Lease is held by a court to be invalid, void or unenforceable, the rest of this Lease shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

d. Time. Time is of the essence of this Lease.

e. Waiver. No delay or failure to exercise any right or remedy of City on any default by Lessee shall impair such a right or remedy or be construed as a waiver. Additionally, the subsequent receipt and acceptance of rent by the City shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rent so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance of such rent. Any waiver by City of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.

f. Remedies Cumulative. The remedies provided herein shall be cumulative, therefore, the exercise of any one remedy shall not be to the exclusion of any other remedy.

g. Binding on Heirs; Joint and Several Liability. All of the terms, covenants and conditions of this Lease shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto; and the parties hereto shall be jointly and severally liable hereunder.

h. Governing law. The laws of the state of California shall govern this Lease. In the event any legal action is commenced regarding this Lease, venue shall be in Santa Clara County.

i. Recordation. Neither Lessee nor City shall record this Lease.

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j. Authority. The individuals signing this Lease on behalf of the Parties have the authority to sign on behalf of their respective entities.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed.

**LESSEE**

Santa Clara Valley Audubon Society

By 

Name RALPH SCHARDT

Title EXECUTIVE DIRECTOR

Date 06/21/2018

Tax I.D. No.: 94-6081420

**CITY OF CUPERTINO**

A Municipal Corporation

By 

Name David Beard

Title City Manager

Date 6/27/18

**APPROVED AS TO FORM:**

\*

 7/6/18

ROCIO V. FIERRO

Cupertino Acting City Attorney

**ATTEST:**



GRACE SCHMIDT

City Clerk

7-9-18

Attachments

Exhibit A: Services to the Community

Exhibit B: Insurance Requirements

\* Awaiting No Employer Affidavit. It was not received, therefore signed pending submission of Workers Compensation insurance.

## Exhibit A: Services to the Community

The Santa Clara Valley Audubon Society takes part in collaborative programs with the City and other community partners to enhance the outdoor education for park users at McClellan Ranch Preserve. Below is a list of community benefits:

- The front office is open from 10:00 a.m. to 4:30 p.m. Mon-Friday and 10:00 a.m. to 2:00 p.m. on Saturdays. This includes the nature store. Although these are the official hours, there are many nature events after hours.
- At the nature store, there's printed information on the McClellan Ranch and often visitors to the Ranch drop in and ask for information on the Ranch and the Museum. The information includes a history of the ranch, a map, the Museum and wild life, including birds that reside in the park.
- The nature store is open to all visitors, not only Audubon members.
- SCVAS provides internships to local college students and recent graduates. Many of the interns have been Cupertino residents.
- SCVAS has engaged volunteers in advocacy for keeping nature the focus of Stevens Creek Corridor
- SCVAS is currently working with Apple to make their new campus a bird friendly environment.
- The Education and Outreach Program offers a lot of opportunities for Cupertino Residents.
- Birding and gardening classes for adults (through out the year)
- Nest Box monitoring during the spring/summer - supports local populations of birds, AND an education tool
- Nest box building activities for Cupertino scouts and homeschool groups (as requested, throughout the year)
- Winter and spring service projects for families (in partnership with the city and with Grassroots Ecology) to clean up the preserve.
- Native Plant display garden - helps support habitat for local wildlife but also gives community members a chance to see what native gardening looks like/gives them ideas
- Birding walks for schools, scout troops, families, etc. (i.e. anyone that asks...) - both at McClellan Ranch and by request at local parks
- Free- Community festival (Wildlife and Harvest Day) - also participate in Cupertino festivals (e.g. Earth Day, Fall Festival, etc.). A LOT of Cupertino high school students participate in this event to get community service hours.
- Other community service hour projects for Cupertino middle and high school students
- Schools programs (including bird walks, talks, presentations, field trips) for Cupertino Unified School District students
- Birding and habitat presentations for Cupertino garden clubs, Cupertino library, and Cupertino Adult Day centers
- Birding presentations for Cupertino afterschool programs and scout troops
- Holiday open house (open to the public) - and really, any of our membership meetings are open to the public.
- Author talks, book-signings, etc. open to the public. (we haven't done many of those since they started the construction, but we used to do at least one a year)
- Ongoing partnerships with City Naturalist and Acterra



## **Exhibit B Insurance Requirements for Lessees**

### **(Not For Daily or Short Term Rentals)**

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease. (for lessees with employees).
3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

### **Other Insurance Provisions:**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### ***Additional Insured Status***

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance (at least as broad as ISO Form CG 20 10.)

#### ***Primary Coverage***

For any claims related to this contract, the Lessee's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

INTEGRATED INSURANCE & FINANCIAL SERVICES

***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

***Waiver of Subrogation***

Lessee hereby grants to Entity a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Entity by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

***Acceptability of Insurers***

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Entity.

***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the Lessee shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Entity, its officers, officials, employees, and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

***Verification of Coverage***

Lessee shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time. **We strongly recommend** obtaining a copy of the policy declarations and endorsement page (make this a requirement in your Contract) to facilitate verification of coverages and spot any undesirable policy limitations or exclusions.

***Special Risks or Circumstances***

Entity reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

**Name Of Additional Insured Person(s) Or Organization(s):**

Any person or organization that you are required to add as an additional insured on this policy, under a written contract or agreement currently in effect, or becoming effective during the term of this policy. The additional insured status will not be afforded with respect to liability arising out of or related to your activities as a real estate manager for that person or organization.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
1. In the performance of your ongoing operations; or
  2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



*A Head for Insurance. A Heart for Nonprofits.*

Policy Number: 2018-12845  
Santa Clara Valley Audubon  
Society

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
SOCIAL SERVICE PROFESSIONAL LIABILITY COVERAGE FORM

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Where you are so required in a written contract or agreement currently in effect or becoming effective during the term of this policy, we waive any right of recovery we may have against that person or organization because of payments we make for injury or damage.

City of Cupertino  
10300 Torre Ave.  
Cupertino CA 95014

