

**MEMORANDUM OF UNDERSTANDING  
RELATED TO THE MONITORING, ADMINISTRATION  
AND ENFORCEMENT OF CONSERVATION EASEMENTS AND  
THE IMPLEMENTATION AND ADMINISTRATION OF THE  
SWAINSON'S HAWK MONITORING PROGRAM**

**between**

**THE CITY OF \_\_\_\_\_  
a California municipal corporation**

**and**

**THE \_\_\_\_\_  
a California non-profit corporation**

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF  
\_\_\_\_\_ AND THE \_\_\_\_\_  
RELATED TO THE MONITORING, ADMINISTRATION AND  
ENFORCEMENT OF CONSERVATION EASEMENTS AND THE  
IMPLEMENTATION AND ADMINISTRATION OF THE  
SWAINSON'S HAWK MONITORING PROGRAM**

**1. PARTIES AND DATE.**

This Memorandum of Understanding ("MOU") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, between the City of \_\_\_\_\_, a California municipal corporation ("City"), and the \_\_\_\_\_, a California non-profit corporation organized under the laws of the State of California ("Land Trust"). The City and Land Trust are sometimes referred to individually as "Party" and collectively as "Parties" in this MOU.

**2. RECITALS.**

2.1 WHEREAS, the City desires to have Land Trust act as a co-holder and steward on: (a) perpetual conservation easements for the purpose of retaining land predominantly in its natural, scenic, historical, agricultural, forested and/or open space condition (collectively "Easements"); and (b) Easements wherein the protection of the Swainson's Hawk and its habitat is one of the primary purposes of said Easement. The City is permitting landowners to "stack" easements so that a single property may be subject to both a perpetual agricultural conservation easement, and a Swainson's Hawk habitat conservation easement;

2.2 WHEREAS, Land Trust agrees to act as a co-holder and steward on Easements for the purposes of retaining land predominantly in its natural, scenic, historical, agricultural, forested and/or open space condition (collectively "Easements"); and Easements wherein the protection of the Swainson's Hawk and its habitat is one of the primary purposes of said Easement;

2.3 WHEREAS, City desires to have Land Trust bear perpetual stewardship responsibilities as described in the individual deed of conservation easement document(s) while allowing the City to maintain its right to: (a) take action to enforce and preserve the Easement; and (b) involvement in significant decisions relating to the Easements as described in paragraph 3.2 herein;

2.5 WHEREAS, Land Trust agrees to bear perpetual stewardship responsibilities as described in the individual deed of conservation easement document(s) while allowing the City to maintain its right to: (a) take action to enforce and preserve the Easement; and (b) involvement in significant decisions relating to the Easements as

described in paragraph 3.2 herein;

2.6 WHEREAS, the Parties therefore desire to set forth their respective rights and responsibilities with regard to the perpetual Easements.

NOW THEREFORE, the Parties hereby agree as follows

**3. TERMS AND CONDITIONS.**

3.1 Land Trust Duties. Except as provided in section 3.2, the Land Trust shall be entitled to act, and shall bear responsibility for acting, on behalf of the Parties in maintaining and verifying compliance with both the perpetual Easements as provided in the individual deed of conservation easement document(s), and the Easements included in the Monitoring Program. Said responsibilities include consulting with and reporting to the California Department of Fish and Game, and in taking such other actions which the Parties are entitled or obligated to take in connection with any grant of an Easement. The Land Trust shall annually report to the City the status of each of the Easements. Land Trust is authorized to hire such qualified personnel, or use volunteers acting under qualified supervision, as Land Trust deems necessary in order to fulfill its responsibilities on Easements.

3.2 City's Duties on Easements. Notwithstanding section 3.1, consent of the City shall be required prior to any amendment, termination or transfer of an Easement or portion thereof. Consultation with the City shall also be required prior to the commencement of any judicial action brought to enforce an Easement, except where the Land Trust determines that a violation is imminent, and ex parte court relief is necessary in order to obtain an injunction to prevent irreversible harm or damage to an Easement. Should the City and the Land Trust disagree about the appropriateness and/or necessity of commencing an enforcement action, counsel shall be sought from the California Department of Fish and Game and/or the State Attorney General's Office (which office also retains a statutory right to enforce any conservation easement in the state).

3.3 Endowments on Easements. Land Trust and City acknowledge that landowners will be asked to provide an endowment to Land Trust for the perpetual stewardship of the conservation easement on their land. City agrees that said endowment shall be held and administered by Land Trust, at Land Trust's sole discretion, for the perpetual stewardship of the land that is the subject of an Easement. City understands and agrees that City shall not receive any funds from endowments received from landowners for the perpetual stewardship of their land.

3.4 City Retention of Rights. Notwithstanding section 3.1, above, the City and the Land Trust each retain all rights granted to the Parties in connection with any grant of Easement, and may, in its each Party's individual discretion, act in furtherance of those rights.

3.5 Termination or Modification. This MOU may be terminated or

amended only upon the mutual written agreement of the Parties.

3.6 Notices. All notices shall be in writing, and either served personally or sent by United States Mail. For these purposes, the addresses for the Parties are as follows:

As to Land Trust:

As to City:

3.7 Attorneys' Fees. In the event any action is commenced to enforce or interpret any term or condition of this MOU, in addition to costs and any other relief, the prevailing Party shall be entitled to its reasonable attorneys' fees, expert fees and other reasonable costs of defense.

3.8 Entire Agreement. This MOU contains the entire agreement of the Parties hereto with respect to the matters contained herein, and supersedes all negotiations, prior discussions and preliminary agreements or understandings, written or oral.

3.9 Assignment. This MOU shall be binding on the successors and assigns of the Parties.

3.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.11 Invalidity and Severability. If any portion of this MOU is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.12 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this MOU.

3.13 Governing Law/Venue. This MOU shall be governed by the laws of the State of California. Venue shall be in \_\_\_\_\_ County.

3.14 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.15 Construction; Captions. Since the Parties have participated fully in the preparation of this MOU, the language of this MOU shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do

not define, limit, augment, or describe the scope, content, or intent of this MOU.

3.16 Incorporation of Recitals. The Recitals are incorporated herein and made an operative part of this MOU.

3.17 Authority to Enter into Agreement. City and Land Trust warrant that they have all requisite power and authority to execute and perform this MOU. Each person executing this MOU warrants that he or she has the legal power, right, and authority to make this MOU and bind his or her respective Party.

**CITY OF** \_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

*Approved as to Form:*

*Approved as to Form:*

\_\_\_\_\_

\_\_\_\_\_

**City Attorney**

**Land Trust Counsel**