

## Safe Harbor Management Agreement for Urban Florida Burrowing Owls in Marco Island, Florida

Agreement/Tracking Number:

FBOSHMA #: \_\_\_\_\_

This Florida Burrowing Owl Safe Harbor Management Agreement ("SHMA" or "Agreement"), effective and binding on the date of last signature below, is between the Florida Fish and Wildlife Conservation Commission ("Commission"), Audubon of the Western Everglades ("AWE"), and City of Marco Island ("City"), and the participating Property Owner, \_\_\_\_\_ ("Property Owner") (herein referred to as the Parties). This SHMA is subject to all terms and conditions in the Florida Burrowing Owl Safe Harbor Guidelines.

### RECITALS

**WHEREAS**, the Parties desire to collaborate in order to implement starter or artificial burrows for the Florida Burrowing Owl ("FBO"), on the Enrolled Property, as defined herein, that will provide a net conservation benefit to the owl in the State of Florida; and

**WHEREAS**, the Property Owner agrees to undertake the activities and procedures described herein on the Enrolled Property for the benefit of the FBO.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

#### I. TERM

The duration of this SHMA is five years. This time period is believed sufficient to allow a determination that the net conservation benefit(s) specified in the SHMA will be met. It is renewable, and may be terminated early according to provisions in Section V(l), below.

#### II. SCOPE

The real property covered by this SHMA ("Enrolled Property") is specifically described in Attachment A, which is attached hereto and incorporated herein.

#### **This Agreement covers the following species:**

The FBO (*Athene cunicularia*), a State threatened species, is the only species for which incidental take authority is sought.

#### III. Net Conservation Benefits

A. The Property Owner's Responsibilities include the following:

1. The Property Owner agrees to install one or more starter or artificial burrows in a manner consistent with Appendix D of the FWC's Florida Burrowing Owl Species Conservation Measures and Permitting Guidelines ("Guidelines"), attached

hereto as Attachment B and incorporated herein, and obtain any applicable City permits.

2. The Property Owner agrees to avoid activities within 10 feet of the burrows, other than maintenance as described below and in Appendix C of the Guidelines.
3. If necessary to reduce disturbance or avoid collapse of burrows, the Property Owner may place at-perch, signage, and/or posting in accordance with Appendix C of the Guidelines, which is attached hereto and incorporated herein.
4. The Property Owner agrees to conduct habitat maintenance around burrows in accordance with the Guidelines. This includes:
  - a. Maintenance of an average vegetation (e.g., grasses, forbs, shrubs) height of less than 5 inches within 10 feet of burrow entrances, with light hand-held equipment (e.g., weed trimmer). Use of heavier equipment could collapse the burrow.
    - i. The Property Owner shall carefully trim grass with a weed trimmer within the 10-foot buffer..
    - ii. Trimming shall occur only as often as necessary to maintain the average vegetation height above.
    - iii. The Property Owner shall keep the duration of trimming to less than 5 minutes, with careful foot placement to avoid collapse of a burrow.
    - iv. The Property Owner shall avoid any contact between equipment and owls that may be present at a burrow entrance.
    - v. The Property Owners shall take care not to trim vegetation too close to the ground, which can lead to erosion into a burrow entrance during rain storms.
  - b. The Property Owner shall not plant new trees or dense shrubs within 10 feet of a burrow.
5. The Property Owner agrees to avoid building new structures (e.g., buildings, solid wooden fences, walls) that could obscure a burrowing owl's ability to visually detect predators within 33 feet of the burrows.
6. The Property Owner agrees to avoid the use of pesticides, rodenticides, insecticides, fungicides, or herbicides immediately around burrow entrances. The Property Owner should reduce or avoid the use of pesticides, rodenticides, insecticides, fungicides, or herbicides in burrowing owl foraging habitat to the extent practicable, especially during the nesting season.
7. The Property Owner agrees to keep the entrance of starter burrows and artificial burrows free of debris or eroded soil until burrowing owls occupy the site or for the duration of the Agreement, whichever occurs first.
8. The Property Owner agrees to allow access to the Enrolled Property for occasional (less than 6 visits per year) data collection by the Commission and its research partners, including capturing, banding, and/or placing transmitters on burrowing owls and scoping of burrows.
9. The Property Owner acknowledges that burrowing owls may dig new burrows on the Enrolled Property. New burrows shall be protected and habitat maintained as described in the FBO Permitting Guidelines for starter and artificial burrows. If there are areas in which the Property Owner does not wish burrowing owls to dig new burrows, the Property Owner should cover these areas in advance with thick sod, mulch, or gravel to discourage digging. Any new burrows dug on the Enrolled

Property by FBO will be covered by this SHMA.

10. The Property Owner agrees to submit an annual report to the Commission by January 15. It may be submitted on their behalf by AWE or a consultant. The annual report shall follow the format in Attachment C.

**B. Audubon of the Western Everglades' Responsibilities:**

1. Audubon of the Western Everglades ("AWE") will recruit Property Owners to sign on to the Agreement.
2. AWE will educate potential participants on how to deter burrowing owls from digging burrows in unwanted areas by placing thick sod, mulch, gravel, or other substrate in these areas prior to installation of starter or artificial burrows.
3. AWE agrees to conduct an initial burrowing owl survey on the Enrolled Property to establish the baseline, with surveys conducted according to the recommended survey methodology in the Guidelines.
4. AWE agrees to conduct an annual site visit to monitor compliance with the Agreement and to monitor use of the starter or artificial burrows by burrowing owls.
5. AWE agrees to work with the Property Owner to provide an annual report, in the form provided in Attachment C, of activities under the Agreement. In the event that the Property Owner wishes to return the Enrolled Property to the baseline at the end of the Agreement, or under early termination described in Section V below, AWE agrees to have a qualified individual (see the Guidelines) available to scope, excavate, and fill inactive burrowing owl burrows in accordance with Appendix B of the Guidelines. There would be no "take" involved if no owls have recruited to the subject starter burrow.

**C. City's Responsibilities:**

1. Encourage property owners within the City to participate in the establishment of starter burrows for FBO and educate the community regarding FBO conservation.
2. Provide the Property Owner with a grant in exchange for the Property Owner to comply with the responsibilities set forth herein for a new starter burrow on their property that results in an active burrow for at least one nesting season.
3. Education and Enforcement of City's Listed Species Ordinance

**IV. FBO SHMA Implementation**

**A. Baseline Considerations**

The baseline conditions that will be maintained by the Property Owner on the Enrolled Property are described in the Attachment A

**B. Monitoring and Reporting**

For the duration of the SHMA the Property Owner agrees to provide an annual monitoring report by January 15 of each year to the Commission (Attachment C) Annual monitoring reports will also document any changes in the condition on the Enrolled Property. Reports may be submitted on their behalf by AWE, City or a consultant.

### **C. Emergency Situations**

Emergency situations, such as natural disasters may require that emergency work on the Enrolled Property begin with less than the 60-day notice set forth in this Section IV(C). The Property Owner or their representative shall notify the Commission by written certified notice at least three days prior to conducting any emergency repairs, or as early as possible under the emergency circumstances.

### **D. Successors in Interest**

Property Owners who enter into SHMA's with the Commission shall have the right to transfer their rights and obligations under the SHMA to non-state entities in conjunction with the conveyance of all or part of the Enrolled Property and within the limits set forth in this section. A Property Owner shall notify the Commission by written certified letter at least 30 days prior to any conveyance of the Enrolled Property or as soon as practicable, but prior to such conveyance. The Property Owner bears sole responsibility to inform their successor(s) in interest or potential buyers about enrollment of the listed property in the SHMA. However, after any notification of change in ownership of the Enrolled Property, the Commission, at its discretion, may attempt to contact the new or prospective Property Owner to explain the baseline responsibilities applicable to the Enrolled Property and determine whether the new Property Owner will become a party to the original SHMA, enter a new SHMA, or cease enrollment.

If the new Property Owner agrees in writing to accept the transfer of the SHMA rights and responsibilities, the new Property Owner must sign an amendment to this SHMA making the new Property Owner a party to this SHMA within 90 days of the conveyance. Upon such transfer of the SHMA rights, the Commission and the City will regard the new Property Owner as having the same rights and obligations as the previously enrolled Property Owner under this SHMA. If the new Property Owner enters into a new SHMA within 90 days of the conveyance of the Enrolled Property, that SHMA shall limit baseline responsibilities to those for which there were baseline responsibilities under the previous SHMA, thus, effectively transferring the baseline for the Enrolled Property. If the new Property Owner attempts to enter into a SHMA more than after 90 days after the conveyance, the Commission may allow such a transfer in their sole discretion. If the enrolled Property Owner conveys ownership of only a portion of the Enrolled Property, the enrolled Property Owner may continue to operate under the existing SHMA; however, the SHMA must be amended to redefine the Enrolled Property and the number of potentially occupied burrows on the newly defined Enrolled Property.

### **E. Access to Enrolled Property**

The Property Owner shall grant access to the Commission and the City to verify that the conditions of this Agreement are being upheld, to assess the condition of the baseline nest groups, if any, and any new FBO group(s) that have been discovered, and to measure, and monitor, individual FBOs as appropriate. The Commission and City shall give the Property Owner 30 days' written notice of these visits and may be accompanied by the Property Owner or an agent of the Property Owner. The scope of the visit will be agreed to in advance. The Property Owner shall not unreasonably withhold access to enter upon the Enrolled Property, and agrees to grant the Commission and City access with reasonable notification. Additionally, AWE will monitor occupied burrows on a weekly basis from the street during nesting season, and occasionally, with permission, access the burrow(s) for research and monitoring purposes. These monitoring data will form a portion of annual reports to the Commission and City.

## **V. Termination of SHMA**

### **1. By the Property Owner**

The Property Owner or its enrolled successor in interest must give the Commission and City 60 days written notice, by certified letter, of his/her intent to terminate this SHMA. The Property Owner may terminate this SHMA prior to the expiration date of the SHMA for circumstances beyond the Property Owner's control, or transfer/sale of the Property, or other reasonable cause. Provided that the baseline conditions have been maintained, the Property Owner, subject to the previously mentioned notice requirement, may return the Enrolled Property to baseline conditions, even if the expected net conservation benefits have not been realized. If the Property Owner is unable to continue implementation of the management activities, plans and stipulations of this SHMA, whether due to catastrophic destruction of the species population numbers or habitat or due to unforeseen hardship, this Agreement is voided. Species management on the Property Owner's Property shall return to its status prior to the signing of this SHMA (i.e., original baseline). If a Property Owner has not returned his/her property to baseline conditions at the time of termination of this SHMA, and FBO recruit in after the termination, the FBO will be protected by the take prohibition because the Property Owner's take authorization (via the SHMA) will have become invalid upon termination of the SHMA. If the Property Owner wishes to return the property to the baseline condition within the timeframe of the Agreement, an Incidental Take Permit must be issued by the Commission, at no expense monetarily or mitigation action-wise to the Property Owner.

### **2. By the Commission and City**

The Commission and City have the right to terminate this SHMA where the Property Owner is found to be in non-compliance with the terms and conditions of this SHMA. If the Property Owner is found to be in non-compliance with this SHMA, the Commission or City will issue a written letter of non-compliance to the Property Owner. The Property Owner shall have 60 days from receipt of the letter to rectify the non-compliance issue(s). If the issue(s) is not resolved to the satisfaction of the Commission and City by the end of the 60-day period, the Commission or City may terminate this SHMA.

## **Section VI. Funding**

1. The Property Owner shall install one or more starter or artificial burrows in a manner consistent with Appendix D of the Guidelines as set forth in this Agreement.
2. The Property Owner shall provide the City, Commission, and AWE with an Annual Report of Activities, as provided in this Agreement.
3. City shall grant Property Owner \$250 in grant funds ("Grant") each year of this Agreement that there is an active FBO burrow on the Enrolled Property, for completion of the requirements under this Agreement.
4. City shall provide the Grant to the Property Owner at the end of each year, upon the City's receipt of the Annual Report, which confirms that the Property Owner has successfully met the requirements of this Agreement.

5. The financial obligation of City shall be limited to the Grant; as such funds are budgeted and approved by City Council, in its sole discretion.

## Section VII. Miscellaneous

1. **Indemnification.** Property Owner shall defend, indemnify, and hold harmless the City, the Commission, AWE, and their officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgments or damages, and statutory fines and penalties (collectively referred to as "loss" or "losses") arising out of, related to, or in any way connected with Property Owner's intentional breach of this Agreement or a violation of applicable law, rules or regulations in connection with Property Owner's performance under any provision of this Agreement.
2. **Public Records.** This Agreement is subject to Chapter 119, Florida Statutes.
3. **Notices.** All notices hereunder shall be given in writing by registered or certified mail, return receipt requested, postage prepaid, addressed to the Parties at the following respective addresses, or at such other address as may be designated in writing by either Party to the other, and shall be deemed delivered for all purposes hereunder upon deposit of same into the United States mail:

To City:                      The City of Marco Island  
                                     50 Bald Eagle Drive  
                                     Marco Island, FL  
                                     Attn: Michael A. McNees, City Manager

To Commission:           Florida Fish and Wildlife Conservation Commission:  
                                     HSC Division Director 620 South Meridian St.  
                                     Tallahassee, Florida 32399-1600  
                                     Attn:

To AWE:                      Audubon of the Western Everglades  
                                     P.O. Box 1738 Naples, Florida 34106  
                                     Attn:

To Property Owner:      \_\_\_\_\_  
                                     \_\_\_\_\_  
                                     \_\_\_\_\_

## Section VIII. Attachments to the Agreement

The following attachments are hereby incorporated and made part of this Agreement:

1. Attachment A- Map of the Property Owner's Enrolled Property and the Enrolled Property's Legal Description (include FBO current/potential locations)
2. Attachment B - Florida Burrowing Owl Species Conservation and Permitting Guidelines

3. Attachment C - Annual Report of Activities for FBO Safe Harbor Agreement (to be added after I year of enrollment of Property Owner through to expiration/termination date)

IN WITNESS WHEREOF, the Property Owner has signed and delivered this Agreement, and City, Commission, and AWE have caused this Agreement to be signed and delivered by its duly authorized officer or representative, all as of the date first set forth above.

**Florida Fish and Wildlife Conservation Commission:**

HSC Division Director  
620 South Meridian St.  
Tallahassee, Florida 32399-1600  
Phone: (850) 488-4676

Name:\_\_\_\_\_ Date:\_\_\_\_\_

Signature:\_\_\_\_\_ Date:\_\_\_\_\_

Approved as to form and Legality:

\_\_\_\_\_  
FWC Attorney

**Property Owner(s):**

Name:\_\_\_\_\_ Date:\_\_\_\_\_

Signature:\_\_\_\_\_ Date: \_\_\_\_\_

Name:\_\_\_\_\_ Date:\_\_\_\_\_

Signature:\_\_\_\_\_ Date:\_\_\_\_\_

**City of Marco Island**

50 Bald Eagle Drive  
Marco Island, Florida 34145  
Phone: (230) 389-5000

By:\_\_\_\_\_  
Michael A. McNees  
City Manager

Attest:\_\_\_\_\_  
Laura Litzan  
City Clerk



Approved as to form and legal sufficiency for the  
use and reliance of the City of Marco Island only.

By: \_\_\_\_\_  
Alan L. Gabriel, City Attorney

**Audubon of the Western Everglades**

P.O. Box 1738 Naples,  
Florida 34106  
Phone: (239) 643-7822

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT A**

**FLORIDA BURROWING OWL SAFE HARBOR AGREEMENT SITE INFORMATION**

**I. Background Information**

- A. Date of evaluation: \_\_\_\_\_
- B. Property Name: \_\_\_\_\_
- C. Property Location:
1. County: \_\_\_\_\_
  2. Tax Map #: \_\_\_\_\_
  3. Latitude: \_\_\_\_\_; Longitude: \_\_\_\_\_
- D. Property Owner(s)
- Name: \_\_\_\_\_
- Address: \_\_\_\_\_
- Phone #: \_\_\_\_\_; Fax #: \_\_\_\_\_
- E. Contact Person: \_ \_ \_ \_ \_
- Address: \_\_\_\_\_
- Phone #: \_\_\_\_\_; Fax #: \_\_\_\_\_

**II. Baseline Assessment**

**I. Tract Information**

- A. Total tract acreage (dimension of lot): \_\_\_\_\_
- B. Total number of acres enrolled in Safe Harbor: \_\_\_\_\_
- C. Number of active burrows for which Property Owner has 100% responsibility: \_\_\_\_\_
- D. Number of active burrows for which Property Owner has partial responsibility: \_\_\_\_\_
- E. Number of active burrows for which Property Owner has 100% foraging habitat responsibility: \_\_\_\_\_; Total acreage involved: \_\_\_\_\_
- F. Number of active burrows for which Property Owner has partial foraging habitat responsibility: \_\_\_\_\_; Total acreage involved: \_\_\_\_\_
- G. For each burrow, provide the following information:
- Number present \_\_\_\_\_ (# of starters \_\_\_\_\_ and # of artificial \_\_\_\_\_)
- Number of potentially occupied burrows \_\_\_\_\_
- H. Identify how the baseline was determined, when and how the baseline surveys were conducted, and whether the baseline was established based on already-known information or other factors:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- I. Individual(s) who conducted FBO/installed starter burrow:  
Primary Contact: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Additional Names: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**II. Conservation Measures to be Implemented**

Note: Check all that apply and fill in the blanks.

*FBO Starter/Artificial burrow Installation and Maintenance*

- \_\_\_\_\_ Property Owner agrees to install starter burrow/artificial burrow on the enrolled property.  
\_\_\_\_\_ Property Owner agrees to provide opportunity for the Commission, City of Marco Island, or AWE to assess to the starter/artificial burrow on a yearly basis.

**III. Conservation Benefits**

The following conservation benefits to FBOs are expected as a result of implementing the conservation measures identified in this Agreement:

***Note: the Commission will check all that apply.***

- \_\_\_\_\_ New FBO groups may be recruited through natural population expansion and/or the installation of artificial burrows
- \_\_\_\_\_ Suitable FBO habitat will be maintained, and/or created.
- \_\_\_\_\_ FBO habitat connectivity will increase as a result of habitat enhancement.
- \_\_\_\_\_ Additional information on FBO population productivity and demographics in Florida will be obtained.
- \_\_\_\_\_ Public support for FBO conservation and imperiled species management will increase by demonstrating government agency sensitivity, cooperativeness, and flexibility. Much of the past and current criticism of environmental regulations and private property rights has focused on management restrictions.

**V. Implementation Schedule**

Specify the time frames within which the Property Owner agrees to accomplish the conservation measures agreed upon in this Agreement. For each activity, list the agreed upon dates to accomplish each action:

Management Activities to be Implemented

- A. Activity: \_\_\_\_\_  
Completion Date: \_\_\_\_\_
- B. Activity: \_\_\_\_\_  
Completion Date: \_\_\_\_\_
- C. Activity: \_\_\_\_\_  
Completion Date: \_\_\_\_\_
- D. Activity: \_\_\_\_\_  
Completion Date: \_\_\_\_\_

FLORIDA BURROWING OWL SAFE HARBOR MANAGEMENT AGREEMENT

**Property Map of Starter/Artificial Burrow Locations**

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**ATTACHMENT B**

FLORIDA BURROWING OWL SPECIES CONSERVATION MEASURES AND  
PERMITTING GUIDELINES

## ATTACHMENT C

### FLORIDA BURROWING OWL SAFE HARBOR MANAGEMENT AGREEMENT

#### Annual Monitoring Report for the Safe Harbor Agreement Between the Florida Fish and Wildlife Conservation Commission, City of Marco Island And Audubon of the Western Everglades

Property Owner's Name: \_\_\_\_\_ FBO SHMA  
Tracking Number: \_\_\_\_\_  
Baseline FBO Number: \_ \_ \_ \_ \_  
City/County: \_\_\_\_\_

Safe Harbor Management Agreement Approved By: the Commission  
Covered Species: Florida burrowing owl (*Athene cuniculariajloridana*) (FBO) Physical Address of Property: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Property Owner: \_\_\_\_\_ Date \_\_\_\_\_ of  
Report Completion: \_\_\_\_\_ For Period: \_\_\_\_\_

	Burrow 1	Burrow 2	
Type of burrow (starter or artificial) installed			
Date starter or artificial burrow installed (mm/dd/yyyy)			
Was the burrow used by burrowing owls during the reporting period? (yes or no)			
What was the date burrowing owls were first observed using the burrow? (mm/dd/yyyy)			
What was the maximum number of burrowing owls observed at the burrow at any one time during the period of this report?			
What was the most recent date on which burrowing owls were observed using the burrow? (mm/dd/yyyy)			
Did the burrow flood during or after rains (yes or no)			
How many times did the burrow need to be repaired during this reporting period?			
(Note: Property Owners must keep starter burrows and artificial burrows in usable condition until burrowing owls use the site or for the duration of the agreement, whichever occurs first, unless otherwise stated in the agreement)			

\*If you have more than two burrows installed, please fill out additional report forms as necessary.

Please submit a photograph of each starter or artificial burrow with this report.