

**SAN DIEGO WILD ANIMAL PARK
OPERATING AGREEMENT**

- **February 13, 1969** Original agreement signed - 1,800 acres.
Agreement term is month to month with 30 day advance notice for termination.
- **Rent 1969-74** Rent was paid to the City annually in advance for the cost of promotional services rendered by the City on behalf of the Park in an amount to be agreed upon by Wild Animal Park(WAP) and City prior to August 1. The City was then required to transfer, annually, funds that amount to the Fair Market Value(FMV) of the land to Water Utilities. This amount was \$24,832/yr for the 72-73 and 73-74 lease year.

RENT SCHEDULE

1969-70	\$10.00/YR
1970-71	\$10.00/YR
1971-72	\$10.00/YR
1972-73	\$26,000/YR*
1973-74	\$26,000/YR

*The WAP opened to the public on or about May 1, 1972. Before that the City only charged the token rent(\$10.00/yr).

- **Rent 1975-Pres.** Original Operating Agreement was modified by the 5th Amendment. Rent shall be adjusted every 5yrs based on current FMV of land.

RENT SCHEDULE

1974-79	\$30,000
1979-84	\$31,000
1984-89	\$38,500
1989-94	\$47,500*

*The rental adjustment for 1989-94 was based on the Consumer Price Index(CPI) and not FMV of the land.

There is no specific correspondence regarding why the rental adjustment was changed from FMV to CPI. Although , a FMV adjustment may not always result in an increase of rent, and in

order to do a FMV adjustment one must obtain an appraisal which can be costly and time consuming.

- **1974 FMV Rent Adjustment** The FMV was calculated by Mr. J.C. La Force in 1974. There was no market data given to support his land value.
- **1979 FVM Rent Adjustment** Again the FMV was calculated with input from Mr. La Force. No market data was given.
- **1984 FMV Rent adjustment** Appraisal by William Anderson was completed and submitted to City Valuation.

Based upon the appraisal the following FMV calculations where made:

Rent per year:

Low: \$30,000

High: \$38,500

The estimates where derived from the following calculations:

<u>Low:</u>	111 acres at \$200	\$22,000
	59 acres at \$50.00	\$2,950
	1,543 acres at \$3	\$4,629
	35 acres at \$1	\$35
	TOTAL	\$29,814 (rounded to \$30,000)

<u>High:</u>	170 acres at \$200	\$34,000
	1,543 acres at \$3	\$4,629
	35 acres at \$1	\$35
	TOTAL	\$38,664(rounded down to \$38,500)

The above estimates were based on agricultural land use utilizing the existing water distribution system developed by, and for, WAP. The facilities include an on-site water storage reservoir which receives water from the City of Escondido's Reed Reservoir and an off site well that produces 2,000 gallons per minute.

The basic difference between the high and low estimates relates to approximately 59 acres that the appraiser estimates would be primarily suitable for citrus and flowers. Under the low rental scenario they assumed that the use of the land would be somewhat more restrictive because of the existing soil condition. There is no other data for the charge of \$3 and \$1 per acre but I would assume that it would mean the land is steep slope and not very useful.

- **1989 FMV Rent Adjustment** Adjusted by CPI under the following computations.
The adjustment was based on the increase in the
CPI since the previous rental adjustment.

$$\begin{aligned}\text{Current/Base} &= \text{June 1989 CPI} / \text{July 1984 CPI} = (1.234) \\ \$38,500 \times 1.234 &= \$47,509 \text{ (rounded to } \$47,500\text{)}\end{aligned}$$

The rent that the City has charged the WAP since 1974 has been determined by the FMV of the land(except 1989 CPI). Under normal circumstances the land would be appraised to it's highest and best use. The highest and best use of this land *is* the WAP. It would be very difficult to consider the land as usable agricultural property. The WAP claims to run a yearly deficit.

The problem the agents have had over the years are understandable. Ascertaining the value of otherwise unusable land is difficult. A CPI adjustment may be the answer to future adjustments but this may also charge the WAP unfair rent in the long run. The last CPI that was done increased rent by more than 23%. The tenant is very high profile and is a benefit to tourism in the City.

CA/7-25-95

ORIGINAL

OPERATING AGREEMENT
WILD GAME PRESERVE

THIS AGREEMENT is made by THE CITY OF SAN DIEGO, a municipal corporation, herein called "City," and the ZOOLOGICAL SOCIETY OF SAN DIEGO, a California nonprofit corporation organized and existing under the Nonprofit Corporation Law of the State of California, herein called "Society."

R E C I T A L S

A. Society, for over fifty years, has maintained and operated zoological gardens in a portion of Balboa Park, herein called "Gardens," with the consent of and under agreement with City.

B. Society has through its efforts gathered numerous animals, birds, reptiles and plants into one of the finest collections on exhibition in the world.

C. Society, by virtue of its maintenance and operation of the exhibits in the Gardens, has performed services of immense benefit and value to The City of San Diego and its inhabitants.

D. Society acknowledges that the number of exhibits now maintained and the number of visitors which the Gardens can accommodate are approaching a saturation level.

E. Society desires to establish a wild game preserve to simulate as nearly as possible the natural habitat of the animals, birds, reptiles and plants which it proposes to exhibit in such a preserve.

F. City desires to cooperate and assist Society in the establishment, maintenance and operation of a wild game preserve.

G. City owns a parcel of land consisting of approximately 1,800 acres currently carried on the books of the City as an asset of the Water Utility. This land is located in the San Pasqual Valley.

H. Society desires to utilize the parcel of land located in the San Pasqual Valley for purposes of establishing a wild game preserve, herein called "Preserve."

I. City is willing, ready and able to provide the land in the San Pasqual Valley for the establishment and operation of a preserve.

J. City acknowledges that development of a preserve will provide an invaluable asset to the City as a tourist attraction and a beneficial recreational facility for the inhabitants of the City.

K. City is in a unique position to render extensive and beneficial promotional services to Society in order to assist Society in publicizing the Preserve and in promoting it.

L. City desires to avail itself of the services of Society, its trustees, members and employees for the purpose of establishment, maintenance and operation of Preserve.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual obligations of the parties as herein expressed, City and Society agree as follows:

1. City grants the use and occupancy of that portion of land in the San Pasqual Valley carried on the books of City as an asset of the Water Utility and as more particularly described in Exhibit A to this agreement, which is incorporated within this paragraph as if set forth in full, and as further delineated in the drawing attached to this agreement as Exhibit B, which is also included within this paragraph as if set forth in full, together with all buildings, structures and facilities and appurtenances. Use and occupancy on the part of Society shall be for the purpose

of establishment, maintenance and operation of a wild game preserve and associated uses. This grant is intended by the parties to be a grant of a right to use and occupy the premises, Society having the rights of a licensee. It is not the intention of the parties to this agreement to vest in Society any leasehold interest or other interest in the land or improvements owned by City except as a licensee.

2. City will transfer annually or from time to time an amount equal to the fair rental value of the land subject to the license granted by this agreement, from the General Fund of the City to the funds of the Water Utility. No part of the special tax levy required under Section 77a of the Charter shall be utilized for purposes of this transfer.

3. At no cost to City except as provided in paragraph 2, above, City grants the right to Society to have custody of all animals, birds, reptiles and plants now or in the future to be contained in or about the Preserve. To the extent required, City reaffirms the right of Society to custody of all animals, birds, reptiles and plants now located in or about the Gardens.

4. Society will maintain and operate Preserve in an efficient, businesslike and economical manner.

5. Society may, in its discretion, exchange or move animals, birds, reptiles or plants or personal property in its custody now located in the Gardens to the Preserve. To the extent it desires, Society, in its discretion, may freely exchange exhibits or personal property between the Gardens and the Preserve.

6. Society may sell, loan or exchange excess exhibits, all animals, birds, reptiles and plants and all personal

property in its custody. Title to all such exhibits and personal property shall always be vested in City.

7. Title to all improvements acquired, completed or constructed by Society and title to all furniture, furnishings and equipment shall be and remain in City except that title to improvements constructed and personal property utilized in connection with such improvements pursuant to a grant agreement between Society and any government or governmental agency, the construction or acquisition of which improvement has been approved by resolution of the Council, may be and remain vested in such government or governmental agency. Removal of improvements shall require the consent of the City Manager.

8. Society shall have the right to charge an admission fee to the Preserve in an amount which first shall have been approved by resolution of the City Council. Society may also charge a fee, in addition to that required for admission, for the purpose of providing transportation in and about the Preserve. Revenues of, and intangibles owned by, Society may be pledged or assigned as security for indebtedness incurred by Society.

9. Society may operate concessions or enter into agreements for the operation of concessions within and about the Preserve for the sale of refreshments, curios, souvenirs and other merchandise or services ordinarily available to visitors to zoological gardens and exhibits of similar character. Revenues derives from the operation of such concessions or from any revenue derived from concessionaires shall be expended by Society for the maintenance and operation of the exhibits within the Preserve, or for the maintenance and operation of the exhibits within the Gardens, or for research or education or for promotion of the Preserve or the Gardens. Such revenues may be pledged or assigned as security for indebtedness incurred by Society.

10. Society shall use all donations to it of money, materials or exhibits or other things of value or net profits or any surplus strictly for the purposes specified by the Society's Articles of Incorporation or for the purposes specified in this agreement.

11. Society shall not utilize any portion of the monies derived from the special tax levied pursuant to the provisions of Section 77a of the Charter of The City of San Diego in the establishment, maintenance or operation of the Preserve. Society will maintain separate accounts on its books with respect to any Section 77a monies. The books of Society shall, at all reasonable times, be open to City or its duly authorized representative.

12. Annually, on or before June 1, Society shall submit to City, a proposed budget including all expected revenue and projected expenses for the coming fiscal year. This budget shall include expenses for all of Society's operations including but not limited to the Gardens and the Preserve.

13. Annually on or before October 1, Society shall submit to City an annual statement showing Society's assets and liabilities, profit and loss statement, and a statement of surplus, all for the preceding fiscal year ended June 30.

14. City shall cause to be made an audit of the annual statement, the profit and loss statement, and the statement of surplus within ninety days after its submission by Society.

15. Society shall not assign this agreement or any rights accorded to it without the written consent of City. A consent to the assignment of any one right shall not be considered to be a waiver of City's right to consent to any subsequent assignment of that right or any other right.

16. Society shall indemnify and save City free and harmless of and from all claims, demands, losses and liability, including legal fees, arising out of Society's performance pursuant to this agreement.

17. Society will obtain and, so long as Society operates the Preserve pursuant to this agreement, maintain public liability insurance to protect against loss by reason of bodily injury, death or property damage caused directly or indirectly by the activities in the Preserve, of Society or any person acting on behalf of Society. The insurance shall be procured from a carrier acceptable to the City Manager and shall be in the following minimum amounts:

(a) Public Liability

Per person per accident \$ 250,000

More than one person per
accident \$1,000,000

(b) Property Damage \$ 50,000

The policy or policies shall contain a clause requiring notice to City prior to cancellation, and shall name City as an additional insured. If Society fails to obtain or maintain such insurance, City may do so, rendering a statement to Society for the amount of the premiums paid.

18. Annually or from time to time during any fiscal year, Society will pay City for promotional services in an amount to be agreed upon by Society and City prior to August 1, so long as Society is operating the Preserve, which amount shall be equal to the estimated value of the promotional services to be rendered. City shall use its best efforts to promote the Preserve and to encourage its citizens and tourists to visit the Preserve. City may utilize the services in whole or in part of any person, firm or corporation in discharging the promotional responsibilities imposed upon it by the terms of this paragraph.

19. This agreement may be terminated by either party by giving written notice to the other party thirty days prior to the desired termination date.

20. Any notice provided for by this agreement or by law to be given, served or exercised by or upon Society may be given or served by depositing in the United States mail, postage prepaid, a letter addressed to the President, Zoological Society of San Diego, Balboa Park, San Diego, California 92101, or may be personally served upon Society, or any person hereafter authorized by Society to receive such notice; and any notice provided for by this agreement to be given, served or exercised by or upon City may be given or served by depositing in the United States mail, postage prepaid, a letter addressed to the City Manager, City Administration Building, 202 C Street, San Diego, California 92101, or may be personally served upon said City Manager or any person hereafter authorized by City to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served.

IN WITNESS WHEREOF, this agreement is executed by The City of San Diego, acting by and through its City Manager, pursuant to Resolution No. 196063 authorizing such execution, and by Society pursuant to resolution of its Board of Trustees dated _____, 1969.

Dated this 13 day of February, 1969.

THE CITY OF SAN DIEGO

By [Signature]
Assistant City Manager

ZOOLOGICAL SOCIETY OF SAN DIEGO

By [Signature]
Anderson Borthwick, President

I HEREBY APPROVE the form and legality of the foregoing agreement this 19th day of February, 1969.

EDWARD T. BUTLER, City Attorney

By [Signature]
Brian J. Newman-Crawford, Deputy

7-22-69
2-C

This is a correct copy of the Resolution passed by the Board of Trustees
March 26, 1969, at its regular meeting.

RESOLUTION

WHEREAS, this Society formerly operated the Zoological
Gardens in Balboa Park under and pursuant to the provisions of San
Diego City Ordinance No. 6605 (New Series), as amended; and

WHEREAS, the City Council of the City of San Diego has
heretofore repealed said Ordinance and all amendments thereto and
substituted, in lieu thereof, an Operating Agreement between this So-
ciety and the City of San Diego; and

WHEREAS, the repeal of said Ordinance and amendments
thereto for said purpose is deemed to be to the best interests of this
Society and its members;

NOW, THEREFORE, BE IT RESOLVED, that the repeal
by the City Council of the City of San Diego of San Diego City Ordinance
No. 6605 (New Series) and all amendments thereto is hereby accepted,
ratified and approved by this Society.

ZOOLOGICAL SOCIETY OF SAN DIEGO

Frank H. Kungul
Secy.

Secretary

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SAN DIEGO, CALIF.

EXHIBIT A

All that portion of City-owned land and appurtenances containing approximately 1,800 acres, within the area outlined in green on EXHIBIT B hereof to be more specifically mutually agreed upon between Society and the City Manager of City.

2-7-69

RESOLUTION No. 205291

Adopted on APR 6 1972

BE IT RESOLVED, by the Council of The City of San Diego as follows:

That the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, a third amendment to Operating Agreement with the ZOOLOGICAL SOCIETY OF SAN DIEGO for the Wild Game Preserve, on file in the office of the City Clerk as Document No. 727223, deleting approximately fourteen (14) acres from the preserve premises under the terms and conditions set forth in the form of Third Amendment to Agreement on file in the office of the City Clerk as Document No. 739566.

APPROVED: JOHN W. WITT, City Attorney

By H. Valderhaug
Harold Valderhaug, Deputy

HOV:rp
3/29/72
Job 9165

RESOLUTION NO. 205292

APR 6 1972

WHEREAS, paragraph (E) 8 of the Second Amendment to Operating Agreement between THE CITY OF SAN DIEGO and the ZOOLOGICAL SOCIETY OF SAN DIEGO, on file in the office of the City Clerk as Document No. 734542, provides that the Zoological Society of San Diego shall have the right to charge an admission fee to the Wild Game Preserve in an amount which shall have first been approved by resolution of the City Council; and

WHEREAS, the Zoological Society of San Diego has requested the City Council to approve the following admission fees; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That the following rates are hereby approved as admission fees for the Wild Game Preserve:

Adults	\$1.25
Children under 16	No Charge

APPROVED: JOHN W. WITT, City Attorney

By H. Valderhaug
Harold Valderhaug, Deputy

HOV:rp
3/30/72
Job 9165

4.13.71
4:20

ORIGINAL

AGREEMENT

Doc 735605

THIS AGREEMENT is made by THE CITY OF SAN DIEGO, a municipal corporation, herein called "City", and the ZOOLOGICAL SOCIETY OF SAN DIEGO, a California nonprofit corporation, herein called "Society."

RECITALS

A. City desires Society to provide professional services in connection with the esthetic and architectural design of visitor entrances, educational and recreational facilities, animal exhibits, entertainment and service complexes and graphics and including all grading, site preparation and access to each improvement for the San Diego Wild Animal Park, hereinafter called "Project".

B. Society is ready, willing and able to provide such professional services.

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties hereto, as herein expressed, City and Society agree as follows:

I. SOCIETY'S RESPONSIBILITIES

Under the general supervision of the City Manager, or his designated representatives, Society shall perform the following professional services for City for each portion of the "Project":

A. Society's services shall consist of the six design phases described below, including but not limited to structural, mechanical and electrical engineering services.

1. Schematic Design Phases

Society shall consult with City to ascertain the

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SAN DIEGO, CALIF.
MR

requirements of the Project, including but not necessarily limited to the following:

- a. Site analysis including topography and the possibility of incremental construction.
- b. Special purpose areas and use analysis.
- c. Analysis of utility demands, including methods for providing for future use.
- d. Prepare for City's approval, drawings and other documents illustrating the scale and relationship of the Project components.
- e. Preparation of a cost estimate on a unit cost basis, of the Project for each schematic solution submitted, indicating the estimated cost of each major sub-item.

2. Design Development Phases

- a. Society shall prepare from the approved Schematic Design Studies, for approval by the City, the Design Development Documents consisting of drawings, outline specifications, list of materials and equipment and other documents to fix and describe the size and esthetic character of the entire Project and as to structural, mechanical and electrical systems, materials and such other essentials as may be appropriate.
- b. Prepare a cost estimate on a unit basis of the Project for each design development study submitted, indicating the estimated cost of each major sub-item listed in the outline specifications.

3. Construction Documents Phases

a. Society shall prepare from the approved Design Development Documents, for approval by the City, Working Drawings and Specifications setting forth in detail the requirements for the construction of the entire Project including the necessary bidding information. Working Drawings and Specifications will be prepared in accordance with the latest City drawing and specification format and will include, insofar as practicable, the City's Standard Specifications.

b. Society shall assist City in filing the required documents for the approval of authorities having jurisdiction over the Project and in obtaining the services of all utilities required by the Project. Copies of the Service and Meter Location Request and the utility company's verification shall be furnished, if required, along with initial submission of Contract Documents.

c. Society will prepare a final cost estimate based on the Working Drawings and Specifications.

4. Bidding Phases

Society, following the City's approval of the Construction Documents and final cost estimate, shall assist City in obtaining bids and in awarding the construction contract.

5. Construction Phases

a. The Construction Phases will commence with the award of the Construction Contract and will terminate when final payment is made by City to the Contractor.

b. Society shall provide technical advice for the

Project and any other related work to a Project Officer employed by and responsible to City.

c. Society shall aid in the general administration of any construction contract let by City for construction of the Project, including periodic inspections as may be necessary to determine if the work is proceeding in accordance with the Contract Documents. Society shall make such regular reports as may be required by applicable public agencies, inform City Manager of the progress of construction by preparation of a monthly report, check and approve schedules and other submittals required by the Contract Documents, prepare Change and Clarification Memoranda and Change Orders for City's approval, examine Contractor's request for Progress Payments and make recommendations with respect to said payments and provide color scheme and schedule of all materials in Project for City's approval.

d. Society shall aid in the assembling of all written guarantees and warranties, instruction books, diagrams and charts required by the Contract Documents.

e. Society shall conduct inspections to determine the dates of Substantial Completion and Final Completion and shall prepare final Certificates for Payment for City's approval.

6. As-Built Documents Phases

Society shall incorporate all construction changes on the working drawings and submit to City for final acceptance.

II. PROJECT DOCUMENTS

Society shall, for the Project and/or each portion thereof, furnish City with the following:

- A. Ten sets of Schematic Design Phase documents.
- B. Ten sets of Design Development Phase documents.
- C. Ten sets of Contract Documents Phase documents for review and approval of applicable public agencies.
- D. Ten sets of Contract Documents Phase documents after City's final approval.
- E. Tracings of Final Approved Contract Drawings and master copies of Specifications typewritten on bond paper in form acceptable to City.

III. PROJECT CONSULTANTS

- A. Society shall employ such architects, designers, artists, experts and others (herein called "Consultants") as may be required.
- B. Consultants employed by Society shall be subject to prior approval by City.
- C. City reserves the right to employ any or all consultants, estimators, testing laboratories or other personnel it deems necessary to complete the Project.

IV. CITY'S RESPONSIBILITIES

- A. City shall provide full information as to the requirements and program of Project, including realistic budget limitations and scheduling.
- B. City shall provide at its expense information for all necessary traffic and parking research and provide personnel for consultation with Society as required for proper design of access to the site, internal automobile traffic flow and parking arrange-

ments.

C. City shall provide at its expense or cause to be provided, all material testing and investigations required for proper design and construction of the Project.

D. City shall notify Society of administrative procedures required and name representatives authorized to act in its behalf.

V. PROJECT SCHEDULING

A. Society shall, for the Project, or each approved portion thereof, deliver Schematic Design Phase documents to City within Forty-Five (45) days after approval and authority to proceed.

B. Society shall deliver Design Development Phase documents to City within Forty-Five (45) days after the Schematic Design Phase documents have been approved by City.

C. Society shall deliver Construction Documents to City within Thirty (30) days after Design Development Phase documents have been approved by City.

D. Society shall deliver final approved Construction documents to City within two weeks after all approvals have been obtained by the applicable agencies involved.

VI. OWNERSHIP OF DOCUMENTS

The tracings of the Contract Drawings and the Contract Specifications masters shall become the property of City when Society has been compensated as set forth herein. Society and City mutually agree that the Contract Documents for the Project shall not be used on any other work without the mutual consent of each party.

VII. PROJECT BUDGET

A. The approved construction budget including Society's fee as described in Section VIII (A) for the Project is TWO MILLION

THREE HUNDRED FIFTY THOUSAND DOLLARS (\$2,350,000). This will include the design fee as set forth below and provisions for increasing the cost of construction during the planning and design stage, and for a contingency reserve of five percent (5%) of construction cost.

B. If at any time prior to City approval of the final Contract Documents for the entire Project, Society believes that the total construction cost will exceed the construction budget as set forth above, Society shall so notify the City Manager in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which Society believes will bring the construction cost to within the assigned construction budget. City shall review the cost estimate and recommend revisions and in consultation with Society, City shall delineate a project which Society estimates can be constructed for the budget amount as stated above. If bids received by City from Contractors for the desired construction indicate that construction of the Project cannot be done in accordance with the Construction Documents furnished by Society for a sum within one hundred five percent (105%) of the stated budget amount, Society shall, if requested by City, and without extra compensation therefor, revise the plans and specifications so that construction may be completed for the budgeted amount stated above.

VIII. SOCIETY'S COMPENSATION

City shall compensate Society for its professional services as follows:

A. The payment to Society shall not in any event exceed the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), which fee may be prorated for any portion of the Project for which a construction

estimate is approved, the prorated fee to be paid as follows.

B. Society shall submit agreements between Society and its Consultants to City for approval. The approval by City of said agreements shall be a condition precedent to City's obligation to pay pursuant to this agreement.

C. Society shall submit to City evidence satisfactory to City of Society's payments to Society's Consultants before City shall be required to pay Society.

D. Notwithstanding the amount of payments by Society to its Consultants, payments by City to Society as to each approved construction estimate shall be limited as follows:

1. Upon approval of Schematic Documents -----15%
2. Upon approval of Design Development Documents -----15%
3. Upon approval of Construction Documents -----45%
4. Upon acceptance of Project by City -----20%
 - a. Payment during the course of construction will be paid monthly based on the progress of construction as determined by the approved progress payments to each Contractor.
5. Upon approval of the As-Built Construction Documents----- 5%

E. If at any stage of the work the Project is abandoned or delayed indefinitely by City, City may at its option elect to terminate this agreement. In the event City elects to terminate, City shall pay Society the reasonable value of the work performed, but not to exceed the amounts as scheduled in Item VIII.

F. 1. If unusual delays occur in complying with Project

Schedules, City may, at its option, suspend performance of further services by Society for a reasonable period of time, after which City may require compliance by Society with all terms and conditions of this agreement. In the event of such suspension, City shall pay Society the reasonable value of the work performed up to the date of the suspension but not to exceed the amounts as scheduled in Item VIII. If the above stoppage causes Society additional expenses in the performance of this agreement, Society shall be reimbursed for such additional reasonable expenses by City.

2. City's exercise of its options provided herein shall be evidenced by written notice given to Society. Acceptance of payment by Society shall discharge all of City's obligations and liabilities under this agreement except to the extent that City under subparagraph F of Item VIII requires after suspension, continued compliance by Society with the terms and conditions of this agreement.

IX. GENERAL CONDITIONS

A. Society expressly warrants City that the work performed and submitted by it accurately reflects the various components which comprise the end product submitted. Society expressly warrants City that the work done by it is based upon its expertise and has been done in accordance with all applicable laws, regulations and requirements and in accordance with good architectural and engineering practice. Society agrees that all contracts with Consultants shall contain a provision requiring said consultants to expressly warrant City that the work performed and

submitted by Consultant to City or Society accurately reflects the various components which comprise the end product submitted and requiring said Consultants to expressly warrant City that the work done by Consultant is based upon his expertise and has been done in accordance with good architectural and engineering practice.

B. Society and its Consultants are and shall be independent contractors and not agents of City hereunder. Any provisions in this agreement that may appear to give City the right to direct Society and its Consultants as to the details of doing the work or to exercise a measure of control over the work, means that Society and its Consultants shall follow the wishes of City as to end result of work only.

C. Society shall indemnify and hold City free and harmless from all claims, demands, losses and liability including legal fees to the extent the same is the result of an error, omission or negligent act hereunder of Society or any person employed by Society.

D. 1. Society shall not assign this contract without City's prior written consent. Any assignment by Society without City's prior written approval shall permit termination of this agreement, at the option of City.

2. Society shall not assign any monies due or to become due hereunder without City's prior written consent.

E. In the event that suit is brought upon this agreement to enforce its terms, the prevailing party shall be entitled to a reasonable sum as attorney's fees.

This agreement is executed by The City of San Diego acting
by and through its City Manager, pursuant to Resolution No. 202373
authorizing such execution, and by Society.

Dated this 8 day of April, 1971

THE CITY OF SAN DIEGO
A Municipal Corporation

By R. E. Graham
Assistant City Manager
TO THE

ZOOLOGICAL SOCIETY OF SAN DIEGO
A California Nonprofit Corporation

By [Signature]

I HEREBY APPROVE the form and legality of the foregoing
agreement this 15th day of April, 1971.

JOHN W. WITT, City Attorney

By [Signature]
Clifton E. Reed, Deputy
C. M. Fitzpatrick, Chief Deputy

JW

DOCUMENT NO. 735605
FILED APR 19 1971
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(Contract-Zoo)

Agreement with the Zoological Society of San Diego -
professional services in connection with aesthetic
and architectural design of certain San Diego Wild
Animal Park facilities

cc: ✓ Aud 3C R-202373 4-8-71
✓ Pks & Pub Bldgs #500
✓ Dup Orig to Pks & Pub Bldgs #500 (Ed Riccio)

4-19-71
RK

RESOLUTION No. 196063

ADOPTED ON FEB 13 1969

BE IT RESOLVED, by the Council of The City of San Diego as follows:

That the City Manager be, and he is hereby authorized and empowered to execute for and on behalf of said City, an agreement with the ZOOLOGICAL SOCIETY OF SAN DIEGO, a California nonprofit corporation, for the use and occupancy of a portion of San Pasqual Valley for a wild game preserve, under the terms and conditions set forth in the form of agreement on file in the office of the City Clerk as Document No. 727040.

APPROVED: ROBERT S. TEARE, Acting City Attorney

By Brian J. Newman-Crawford, Deputy

BJN-C:K
2-10-69

Unofficial
Consolidated
Operating
Agreement

OPERATING AGREEMENT

WILD GAME PRESERVE

THIS AGREEMENT is made by THE CITY OF SAN DIEGO, a municipal corporation, herein called "City," and the ZOOLOGICAL SOCIETY OF SAN DIEGO, a California nonprofit corporation organized and existing under the Nonprofit Corporation Law of the State of California, herein called "Society."

R E C I T A L S

A. Society, for over fifty years, has maintained and operated zoological gardens in a portion of Balboa Park, herein called "Gardens," with the consent of and under agreement with City.

B. Society has through its efforts gathered numerous animals, birds, reptiles and plants into one of the finest collections on exhibition in the world.

C. Society, by virtue of its maintenance and operation of the exhibits in the Gardens, has performed services of immense benefit and value to The City of San Diego and its inhabitants.

D. Society acknowledges that the number of exhibits now maintained and the number of visitors which the Gardens can accommodate are approaching a saturation level.

E. Society desires to establish a wild game preserve to simulate as nearly as possible the natural habitat of the animals, birds, reptiles and plants which it proposes to exhibit in such a preserve.

1. City grants the use and occupancy of that portion of land in the San Pasqual Valley carried on the books of City as an asset of the Water Utility and as more particularly described in Exhibit A to this agreement, which is incorporated within this paragraph as if set forth in full, and as further delineated in the drawing attached to this agreement as Exhibit B, which is also included within this paragraph as if set forth in full, together with all buildings, structures and facilities and appurtenances. Use and occupancy on the part of Society shall be for the purpose of establishment, maintenance and operation of a wild game preserve and associated uses. This grant is intended by the parties to be a grant of a right to use and occupy the premises, Society having the rights of a licensee. It is not the intention of the parties to this agreement to vest in Society any leasehold interest or other interest in the land or improvements owned by City except as a licensee.

Deleted per
Amendment #5
(11/26/74)

~~2. City will transfer annually or from time to time an amount equal to the fair rental value of the land subject to the license granted by this agreement, from the General Fund of the City to the funds of the Water Utility. No part of the special tax levy required under Section 77a of the Carter shall be utilized for purposes of this transfer.~~

Added per
Amendment #5
(11/26/74)

2. Zoological Society, as consideration, for this operating agreement, agrees to pay to City's Water Utilities Department, commencing July 1, 1974, the sum of thirty thousand dollars (\$30,000) per year payable annually in advance on or before the

by resolution of the Council, may be and remain vested in such government or governmental agency. Removal of improvements shall require the consent of the City Manager.

Deleted per
Amendment #2
(11/25/70)

8. Society shall have the right to charge an admission fee to the Preserve in an amount which first shall have been approved by resolution of the City Council. Society may also charge a fee, in addition to that required for admission, for the purpose of providing transportation in and about the Preserve. Revenues of, and intangibles owned by, Society may be pledged or assigned as security for indebtedness incurred by Society.

Added per Amendment #2,
then deleted per Amendment #7.
(11/29/79)

8. Society shall have the right to charge an admission fee to the Preserve in an amount which first shall be approved by resolution of the City Council. Society may also charge a fee, in addition to that required for admission, for the purpose of providing transportation in and about the Preserve. Net revenues of Society are hereby pledged, as the primary obligation of Society, to provide City with an amount which shall be equal to the amount required by City to amortize the debt incurred by City as a result of the issuance of said general obligation bonds (hereinafter referred to as "debt service"). Net revenues of Society exceeding the sums necessary to pay said debt service and intangibles owned by Society, may be pledged or assigned as security for indebtedness incurred by Society.

Whereas, the Zoological Society of San Diego has requested the City Council to approve the following admission fees; now, therefore, the Council of The City of San Diego hereby approved as admission fees for the Wild Game Preserve (April 6, 1972):

Adults \$1.25

Children under 16 No Charge

Added per Amendment #2,
then deleted per Amendment #7
(11/29/79)

~~9. Society may operate concessions or enter into agreements for the operation of concessions within and about the Preserve for the sale of refreshments, curios, souvenirs and other merchandise or services ordinarily available to visitors to zoological gardens and exhibits of similar character. Net revenues after operating expenses derived from the operation of such concessions or from any concessionaires are hereby pledged, as the primary obligation of Society to provide City with an amount equal to the debt service on said general obligation bonds. Net revenues of Society exceeding the sums necessary to pay said debt service shall be expended by Society for the maintenance and operation of the exhibits within the Gardens or Preserve, or for research or education or for promotion of the Preserve or the Gardens. Such excess revenues may be pledged or assigned as security for indebtedness incurred by Society.~~

Added per
Amendment #7
(11/29/79)

9. Society shall have the right to rent cameras, strollers, and other equipment for the accommodation of visitors to the Preserve, to sell within and about the Preserve food, beverages, refreshments, gift items, film, printed material, curios, souvenirs, and other merchandise or services ordinarily available to visitors to zoological gardens and exhibits of similar character, and to utilize concessionaires and vending machines for purposes of such sales and rentals. Net revenues after operating expenses derived from such sales, rentals, concessions, and vending machines are hereby pledged, as the primary obligation of Society, to provide City with an amount equal to the Debt Service. Net revenues of Society exceeding the sums necessary to pay the Debt Service shall be expended by Society for the maintenance and

Deleted per
Amendment #4
(5/22/73)

~~13. Annually on or before October 1, Society shall submit to City an annual statement showing Society's assets and liabilities, profit and loss statement, and a statement of surplus, all for the preceding fiscal year ended June 30.~~

Added per
Amendment #4
(5/22/73)

12. Annually, on or before December 1 of each year during the term of this agreement, Society shall submit to City a proposed budget including all expected revenue and project expenses including the debt service of the general obligation bonds described herein for the next fiscal year. This budget shall include expenses for all of Society's operations and activities including, but not limited to, the Gardens and the Preserve.

Added per
Amendment #4
(5/22/73)

13. Annually, on or before April 1 of each year during the term of this agreement, Society shall submit to City an annual statement showing Society's assets and liabilities, profit and loss statement, and a statement of surplus, all for the preceding fiscal year ended December 31.

14. City shall cause to be made an audit of the annual statement, the profit and loss statement, and the statement of surplus within ninety days after its submission by Society.

15. Society shall not assign this agreement or any rights accorded to it without the written consent of City. A consent to the assignment of any one right shall not be considered to be a waiver of City's right to consent to any subsequent assignment of that right or any other right.

16. Society shall indemnify and save City free and harmless of and from all claims, demands, losses and liability, including legal fees, arising out of Society's performance pursuant to this agreement.

~~19. This agreement may be terminated by either party by giving written notice to the other party thirty days prior to the desired termination date.~~

19. City may terminate this agreement at any time by giving written notice to Society thirty (30) days prior to the desired termination date. In the event City elects to terminate this agreement, all obligations of Society pursuant to this agreement shall cease.

20. Any notice provided for by this agreement or by law to be given, served or exercised by or upon Society may be given or served by depositing in the United States mail, postage prepaid, a letter addressed to the President, Zoological Society of San Diego, Balboa Park, San Diego, California 92101, or may be personally served upon Society, or any person hereafter authorized by Society to receive such notice; and any notice provided for by this agreement to be given, served or exercised by or upon City may be given or served by depositing in the United States mail, postage prepaid, a letter addressed to the City Manager, City Administration Building, 202 C Street, San Diego, California 92101, or may be personally served upon said City Manager or any person hereafter authorized by City to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served.

21. Society hereby agrees to adopt and implement an affirmative action program for minorities and women comparable to and consistent with the Affirmative Action Program for The City of San Diego. Society will submit to the City Manager an Affirmative

Added per
Amendment #2
(11/25/70)

Sec. 9
25.

In the event the City Council of City fails or refuses to authorize the issuance of the general obligation bonds described herein, this Second Amendment to Operating Agreement - Wild Game Preserve except for Section 7 herein shall be null and void and of no force or effect.

IN WITNESS WHEREOF, this agreement is executed by The City of San Diego, acting by and through its City Manager, pursuant to Resolution No. 196063 authorizing such execution, and by Society pursuant to resolution of its Board of Trustees dated _____, 1969.

11. Thence Southerly along the East line of said Section 27 to the Southeast corner thereof, being also the Northeast corner of Section 34, Township 12 South, Range 1 West, S.B.M.;

12. Thence Southerly along the Easterly line of said Section 34 to the Northerly right-of-way line of said State Highway 78;

13. Thence Westerly along the Northerly right-of-way line of said State Highway 78 to the Point of Beginning.

EXCEPTING THEREFROM, those lands described as follows:

Exception Parcel "A" (Battle Monument) In Section 33, Township 12 South, Range 1 West, S.B.M.: Beginning at the point of intersection of the Easterly line of the Southwest Quarter of said Section 33, with the Northerly right-of-way line of said State Highway 78, which point bears South $00^{\circ}53'19''$ East 548.04 feet, more or less, from the center point of said Section 33;

1. Thence Easterly along the Northerly right-of-way line of said State Highway 78 a distance of 300.00 feet;

2. Thence North $00^{\circ}53'19''$ West to the Northerly line of the South Half of said Section 33;

3. Thence Westerly along the Northerly line of said South Half of Section 33 to the Northerly right-of-way line of said State Highway 78;

4. Thence Southeasterly and Easterly along said Northerly right-of-way line of State Highway 78 to the Point of Beginning.

Excepting Parcel "B" (San Pasqual Union School Lease) In Sections 33 and 34, Township 12 South, Range 1 West, S.B.M.: Beginning at the point of intersection of the East line of Section 33, Township 12 South, Range 1 West, S.B.M., with the Northerly right-of-way line of said State Highway 78;

1. Thence Easterly along said Northerly right-of-way line of State Highway 78, being along the arc of a curve, concave Northerly, having a radius of 770.00 feet, through a central angle of $08^{\circ}29'45''$, a distance of 114.18 feet to the end of said curve;

2. Thence tangent to said curve along Northerly right-of-way line of said State Highway 78, North $72^{\circ}16'27''$ East, a distance of 650.41 feet;

3. Thence, leaving said Northerly right-of-way line of State Highway 78, North $01^{\circ}00'20''$ West, a distance of 364.36 feet;

4. Thence South $88^{\circ}59'40''$ West, a distance of 1,012.12 feet;

A portion of Section 33, Township 12 South, Range 1 West, San Bernardino Meridian in the County of San Diego, State of California, according to the Official Plat thereof said portion more particularly described as follows:

Beginning at the Northeast corner of said Section 33 thence Southerly along the East line of said section to a point on the Northerly line of Record of Survey 6690 on file in the Office of the Recorder of said County; thence leaving said East line along the Northerly line of said Record of Survey, South 89°06'01" West (record South 88°59'40" West) 512.12 feet to a point which bears Easterly 257.29 feet from the Northwest corner of Record of Survey 6690 said point being the TRUE POINT OF BEGINNING; thence leaving said Northerly line South 03°35'13" East 621.79 feet to a point on the Northerly right-of-way of the relocation Route 15 Div 1-2, being 50.00 feet in width as shown on Record of Survey 6690, said point being the beginning of a nontangent 825.00 foot radius curve, concave Southeasterly a radial line to said point bears North 06°55'08" West; thence along said radial line South 06°55'08" East 25.00 feet to the center line of said Route 15; thence along said centerline Southwesterly along the arc of a 800.00 foot radius curve concave Southeasterly through a central angle of 16°16'04" (record 16°12'00") a distance of 227.14 feet thence tangent South 66°48'47" West 1390.38 feet to the beginning of a tangent 1000.00 foot radius curve concave Southeasterly; thence Southwesterly along said curve through a central angle of 09°04'23" an arc distance of 158.35 feet; thence South 57°44'24" West 436.00 feet to the beginning of a tangent 400.00 foot radius concave Northwesterly; thence Southwesterly along said curve through a central angle of 15°24'19" an arc distance of 107.55 feet; thence leaving said centerline North 00°53'19" West 826.07 feet; thence South 76°04'41" West 926.13 feet to a point in the before mentioned centerline being a point in a nontangent 1200.00 foot radius curve concave Easterly a radial to said point bears South 75°14'23" West; thence Northerly along said curve through a central angle of 05°50'03" an arc distance of 122.19 feet; thence tangent to said curve North 08°55'34" West 200.00 feet; thence leaving said centerline North 77°18'24" East 3104.74 feet to the TRUE POINT OF BEGINNING.

Excepting therefrom any portion lying within the above mentioned Route 15 Div. 1-2.

The gross area contained in the above description is 47.7 acres including the portion within Route 15 Div. 1-2.

NMJ:rc
12/20/77