

CITY OF SAN DIEGO

USE AND OCCUPANCY PERMIT

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and ZOOLOGICAL SOCIETY OF SAN DIEGO, a California non-profit corporation ("PERMITTEE"), to be effective (the "Effective Date") when signed by the parties and approved by the San Diego City Attorney, as follows:

DEFINITIONS

As used in this Permit, the following terms shall be defined as follows:

- A. **"Permit Area"** shall mean all or part of that certain CITY-owned real property commonly known as APN 242-100-10, 241-100-34, 241-090-25. The north-eastern portion of the Permit Area shall have structural and water conveyance improvements and the total area is approximately 212 acres located in the San Pasqual Valley Agricultural Preserve, and more particularly delineated on **Exhibit A: Permit Area**, attached hereto.
- B. **"Permit Processing Fee"** shall mean a one-time, non-refundable permit processing fee in the amount of Six-Hundred Dollars (\$600).
- C. **"Permit Use"** shall mean the exclusive use of the Permit Area for the purpose of growing food, forage, and browse farm; educational activities compatible with the property and environment; maintaining zoological gardens; zoological and species husbandry; and other related purposes as may first be approved in writing by the Mayor and for no other purpose whatsoever. The project scope is attached as **Exhibit B: Project Scope**, attached hereto. The seed palate shall be reviewed and approved by City prior to planting.

"PERMITTEE'S Address for Notices" shall be: Zoological Society of San Diego
Wild Animal Park
P.O. Box 120551
San Diego, CA 92112-0551

- D. **"Use Fee"** shall be \$68,200 per year, paid quarterly in advance, in the amount of \$17,050. This is \$321.70 per acre per year.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Occupancy.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its officers, employees, agents and contractors to enter upon and occupy the Permit Area solely for the purpose of the Permit Use.

2. Use of Permit Area. PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY'S prior written consent in each instance.
3. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to PERMITTEE'S occupancy, use, development, maintenance or restoration of the Permit Area. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
4. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the San Diego City Manager, or his or her designee ("City Manager"), unless otherwise expressly provided, without need for further resolution by the City Council. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. All references to "City Manager" herein shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of The City Charter of the City of San Diego, California.
5. Term. The Term shall commence on the Effective Date. If the Effective Date is not the first day of a calendar month, the first, partial month shall be counted as a full month for purposes of determining the Use Fee. This is an interim Permit while a long term lease agreement is negotiated and shall automatically terminate upon the effective date of a new agreement or three (3) years whichever comes first.
6. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY'S revocation or termination of this Permit.
7. No Holdover. If PERMITTEE continues to occupy the Permit Area after the termination of this Permit, such occupancy shall not give PERMITTEE any rights in or to the Permit Area. If PERMITTEE continues to occupy the Permit Area after the termination of this Permit, PERMITTEE shall pay to CITY rent calculated on a per diem basis using three (3) times the Use Fee in effect prior to such expiration or earlier termination. CITY'S acceptance of such Fee shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area.
8. Restore and Vacate. Upon termination of this Permit, PERMITTEE shall immediately cease all operations on the Permit Area and as soon as practicable thereafter restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted, and vacate the Permit Area.

9. Superior Interests. This Permit is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Permit Area, whether or not of record. PERMITTEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Permit Area, relative to any such superior interest. If PERMITTEE'S use of the Permit Area is or becomes inconsistent or incompatible with a preexisting, superior interest, PERMITTEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
10. Permittee Processing Fee. PERMITTEE shall pay the Processing Fee to CITY upon execution of this Permit.
11. Use Fee. PERMITTEE shall pay each Quarterly Use Fee payment in advance on the first day of each quarter during the Term of this Permit. If the Effective Date is not the first day of a calendar month, then the Quarterly Fee payable for the partial month at the beginning of the Term shall be prorated on a per diem basis.
12. Payment for Right to Use Water. As provided in Section A, Permit Area, it is understood and agreed by CITY and PERMITTEE that the irrigation water supply shall be provided by the existing Wild Animal Park well located approximately one-half (1/2) mile Southeast of the Permit Area. The water cost per acre foot shall be the same rate and adjust at the same time as the existing irrigation water costs and shall be used for the uses set forth in Section C, Permit Use. However, if another well is drilled to service the Permit Area and in the opinion of the City Manager a water charge is deemed warranted for underground water pumped from the new well, the CITY shall notice PERMITTEE of the water charge. The water charge shall be a percentage of the cost of untreated water and will be determined solely by the City Manager who shall have the right to periodically adjust the charge upward or downward to reflect changes in the cost of untreated water as determined by the CITY'S Public Utilities Department. The rent may be adjusted to reflect additional water charge. All costs associated with the use of ground water shall be a PERMITTEE expense.
13. Place of Payment. Quarterly Fee payment check shall be made payable to "City Treasurer" and delivered to the Office of the City Treasurer, Civic Center Plaza Building, 1200 Third Avenue, First Floor, San Diego, CA 92101, or mailed with an invoice to:

THE CITY OF SAN DIEGO
Office of the City Treasurer
P.O. Box 122289
San Diego, CA 92112-4165

14. Delinquent Quarterly Use Fee Payments. If PERMITTEE fails to pay Quarterly Use Fee when due, PERMITTEE shall pay, in addition to the unpaid Quarterly Fee, five percent (5%) of the delinquent Quarterly Fee. If the Quarterly Fee is still unpaid after fifteen (15) days past due, PERMITTEE shall pay an additional five percent (5%) [being a total of ten

percent (10%)), which is agreed by the parties to be appropriate to compensate CITY for loss resulting from fee delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for late payments of Quarterly Fee be less than Twenty Five Dollars (\$25). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

15. Maintenance of the Permit Area. PERMITTEE shall, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, maintain the Permit Area in good order and repair and in a safe, healthy and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the use of the Permit Use. CITY shall at no time during the Term of this Permit be required to make any improvements or repairs to the Permit Area. PERMITTEE shall keep the Permit Area free and clear of rubbish, debris and litter at all times.
16. Inspection. CITY may at all times enter and inspect the Permit Area.
17. Water Rights. CITY reserves all of its right, title and interest in and to the water on the Permit Area. There is hereby reserved to CITY and PERMITTEE herein expressly agrees CITY shall have the right throughout the Permit Term to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flow over, under or across the Permit Area, together with the right to divert, inject, spread or percolate water in or through the soils beneath the surface of the Permit Area. Nothing in this Permit shall result in the transfer of the CITY'S rights, title or interest in the water on the Permit Area to any other person or entity.
18. Utilities. PERMITTEE shall order, obtain, and pay for all utilities and service and installation charges in connection with its use of the Permit Area.
19. Improvements/Alterations. PERMITTEE shall not construct any improvements, structures, or installations on the Permit Area, and shall not alter the Permit Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Permit Area.
20. Ownership of Improvements and Personal Property.
 - 20.1. Improvements. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Permit Area now existing or constructed on the Permit Area by PERMITTEE shall be deemed to be part of the Permit Area and shall become CITY'S property free of all liens and claims. Notwithstanding the foregoing, CITY may, upon notice to PERMITTEE at termination or at any time prior to the expiration of the Term, elect not to assume ownership of all or any PERMITTEE-installed improvements, trade fixtures, structures, and installations. In that case, PERMITTEE shall, at PERMITTEE'S sole cost and expense, remove all PERMITTEE-installed

improvements, trade fixtures, structures, and installations as soon as practicable, but in no even later than sixty (60) days after the expiration or earlier termination of this Permit. If any removal of such PERMITTEE-installed improvements, trade fixtures, structures, and installations by PERMITTEE results in damage to the Permit Area, PERMITTEE shall repair all such damage at its sole cost and expense. If PERMITTEE fails to remove any improvements, structures, and installations as required by this Permit, CITY may, at its option, remove them at PERMITTEE'S sole cost and expense.

20.2. Personal Property. PERMITTEE shall remove PERMITTEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than sixty (60) days after the expiration or earlier termination of this Permit. Any such items which PERMITTEE fails to remove shall be handled in accordance with California law. If any removal of such personal property by PERMITTEE results in damage to the Permit Area, PERMITTEE shall repair or pay for all such damage at its sole cost and expense.

20.3. Late Removal. PERMITTEE shall pay to CITY an additional fee calculated on a per diem basis using the Use Fee rate in effect just prior to the termination for any period of time needed to remove any improvements or personal property, whether by CITY or PERMITTEE, after the termination of this Permit.

20.4. CITY'S Right to Acquire. Notwithstanding the foregoing, if PERMITTEE elects to dispose of any of its personal property used in its operations on the Permit Area, upon expiration or termination of this Permit, CITY shall have the first right to acquire or purchase such personal property.

21. Insurance. PERMITTEE shall deliver to CITY a current certificate of insurance for:

- 1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000);
- 2) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Permit Area. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
- 3) Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE'S employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).

- 21.1. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- 21.2. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department.
- 21.3. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 21.4. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 21.5. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- 21.6. Modification. To assure protection from and against the kind and extent of risk existing on the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to PERMITTEE'S use of the Permit Area.
- 21.7. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 21.8. Causes of Loss - Special Form Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of

PERMITTEE'S insurable property on the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.

22. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance or restoration of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation, reasonable attorney fees and costs.
23. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE'S use of the Permit Area, including without limitation the provision of goods, services, facilities, privileges, advantages, and accommodations, and the hiring of employees and contractors.
24. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
25. Drug-free Workplace. PERMITTEE shall abide by the Drug Free Workplace Act of 1988 (41 U.S.C. Sec. 701 et seq), by adopting and enforcing a policy to maintain a drug-free workplace.
26. Disabled Access Compliance. PERMITTEE shall, as applicable, comply with the 1990 Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (commonly known as the "building code") as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
27. PERMITTEE'S Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE'S occupancy, use, development

maintenance and restoration of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.

28. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
29. Assignment and Sublease. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY'S prior written consent, which may be unreasonably withheld or delayed in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.
30. Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Permit Area, PERMITTEE shall remove the item at its expense within 24 hours after notice by CITY, or CITY may thereafter remove the item at PERMITTEE'S cost.
31. Encumbrances. PERMITTEE shall keep the Permit Area and any CITY-owned property of which the Permit Area is a part free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance or restoration of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
32. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to PERMITTEE'S occupancy, use, development, maintenance and restoration of the Permit Area.
33. Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Permit Area, including the land, any buildings, structures, machinery, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE, or levied by reason of PERMITTEE'S occupancy, use, development, maintenance or restoration of the Permit Area, including any licenses or permits. PERMITTEE acknowledges that this Permit may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on that interest. PERMITTEE shall pay all such possessory interest taxes. PERMITTEE'S payment for such taxes, fees, and assessments shall not reduce any payment due CITY.

34. Hazardous Substances. PERMITTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Permit Area by PERMITTEE, its officers, employees, invitees, guests, agents, or contractors ("PERMITTEE Parties"). PERMITTEE Parties shall not store, utilize, or sell any hazardous substance on the Permit Area without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.
- 34.1. Remediation. If any release of a hazardous substance occurs as a result of PERMITTEE'S use, development, or maintenance of the Permit Area ("PERMITTEE'S Operations"), PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- 34.2. Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S operations, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 34.3. Notice of Release. If PERMITTEE knows or has reasonable cause to believe that any hazardous substance has been released on or within the Permit Area, PERMITTEE shall give written notice to CITY within three (3) business days after receipt of such knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall notify CITY by the most immediate means available and immediately upon receipt of such knowledge or belief and shall take all actions necessary to minimize the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private lawsuits related to the Permit Area.
- 34.4. Environmental Assessment. Upon reasonable cause to believe that PERMITTEE'S operations resulted in a hazardous substance being released on or from the Permit Area, CITY may cause an environmental assessment of the Permit Area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have

more likely than not been caused by PERMITTEE'S Operations and in what quantities. If any such hazardous substances exist in quantities greater than allowed by municipal, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor. If the environmental assessment conclusively establishes that PERMITTEE'S Operations did not result in a hazardous substance being released on or from the Permit Area, CITY shall reimburse PERMITTEE for the cost of the assessment.

35. Water Quality Assurances. PERMITTEE shall comply with San Diego Municipal Code Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices" including a "Storm Water Pollution Prevention Plan" as those terms are defined by the Stormwater Code (collectively, "Prevention Plan") and as approved by CITY under its Stormwater Management Program. Within the first thirty (30) days of the Term, PERMITTEE shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amount of "Pollutants," as defined by the Stormwater Code, and other sediments discharged from the Premises. CITY may review the Prevention Plan periodically. Within thirty (30) days after written notice from CITY requesting an update of the Prevention Plan, PERMITTEE shall submit an updated Prevention Plan to CITY'S satisfaction. PERMITTEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. PERMITTEE shall inform its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and ensure their compliance therewith.
36. Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to insist upon the strict performance of any of PERMITTEE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY'S waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY'S delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY'S acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY'S failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

37. Cumulative Remedies. CITY'S rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY'S rights or remedies at law or in equity.
38. Survival. Any obligation which accrues under this Permit prior to its expiration shall survive such termination.
39. Joint and Several Liability. If PERMITTEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of PERMITTEE under this Permit.
40. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
41. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE'S occupancy, use, development, maintenance and restoration of the Permit Area. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
42. Legal Proceedings. Should it become necessary for the PERMITTEE or CITY to commence legal proceedings to collect rent, to recover possession, or enforce any other provision of this consent, the Permittee's payment of any legal costs or attorneys fees will be determined under the applicable federal law, which includes the Equal Access to Justice Act, 28 U.S.C. Sec. 2412.
43. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE'S Address for Notices, and to CITY as follows:

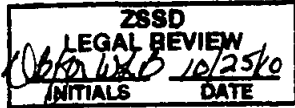
THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

ZOOLOGICAL SOCIETY OF SAN DIEGO
Attention: Director, San Diego Zoo Safari Park
P.O. Box 120551
San Diego, California 92112-0551
(760-738-5018)

44. Joint and Several Responsibility. If PERMITTEE includes more than one person or legal entity, each such person and legal entity shall be jointly and severally responsible for the performance of each and every obligation of PERMITTEE under this Permit.
45. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
46. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations, and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition, and acknowledges and agrees that CITY has fulfilled all obligations it may have had to improve, modify, repair, replace, alter, or otherwise develop the Permit Area prior to the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE'S employees, from any defects in the Permit Area, and shall be solely responsible therefor.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: _____



ZOOLOGICAL SOCIETY OF SAN DIEGO, a
California nonprofit corporation

BY: [Signature]
Name: MICK MUSELLA
Title: CHIEF OPERATING OFFICER
ZOOLOGICAL SOCIETY OF SAN DIEGO

Date: 11/12/10

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: [Signature]
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section
15301, Class 1, Existing Facilities.

Date: 11/16/10

BY: [Signature]
Name: Nicole A. McGinnis
Title: SENIOR PLANNER

APPROVED AS TO FORM AND LEGALITY:

Date: 12/2/10

JAN I. GOLDSMITH, City Attorney
BY: [Signature]
Name: Debra J. Brewer
Title: Deputy City Attorney

DCM/cb
10-19-10

LSUPPORT STAFF GROUP\WP0\2009\MARTENS\USE AND OCCUPANCY PERMIT-ZOOLOGICAL SOCIETY OF SD4

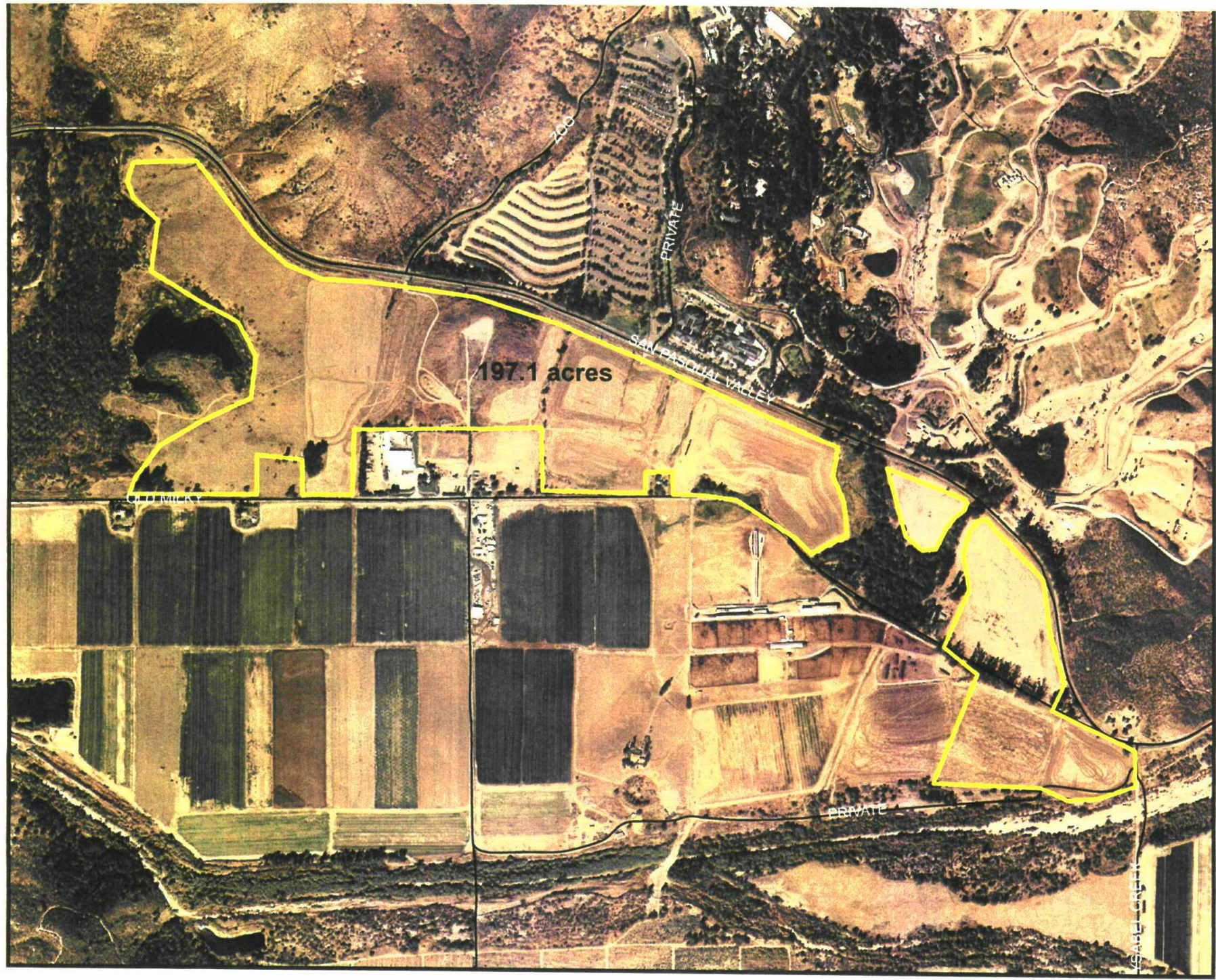
Exhibit A: Permit Area

Exhibit A

Legend

-  Forage Area
-  SANGIS.ROADS_

197.1 acres



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READ 10-07-09

Exhibit B: Project Scope

Milky Way Browse Farm
Located Between Old Pasqual Road & Hwy 78

Project Scope

1. Tap 10" valley well water supply line.
2. Install 6" Cla Valve and isolation valves.
3. Install water tank leveling telemetry system.
4. Grade 100' x 100' compound area.
5. Install 400' 6' chainlink fencing topped w/barbed wire w/one man gate and two 10' vehicle gates at compound area.
6. Install 20' x 30' reinforced concrete pad for water tank and pump equipment.
7. Install 40,000 gallon water tank..
8. Install 170' tank fill line from POC to tank.
9. Install irrigation pressure pump system.
10. SDG&E Power Drop With Transformer. Install 20 amp service from existing SDG&E power pole, underground to the utility area, (approximately 20').
11. Install exterior lights for storage shed and equipment area work light.
12. Install (1) 48 Station Rain Master Evaluation w/remote and (3) hand helds.
13. Install 10' x 20' storage shed (vandal proof).
14. Install 2" supply line from tank to irrigation manifold.
15. Install irrigation valve manifold for drip system.
16. Plant 600/24" box proposed Acacia saligna trees 10' on centers. Browse material type and layout to be the decision of the Zoo Horticulture Department.
17. Install a 15' dirt road separating (2) rows of plants.
18. Install access road from point of entry to utility compound and around the perimeter of farm.
19. Install (2) pipe type cow gates at the Milky Way entries.