RIGHT OF ENTRY LICENSE AGREEMENT
BETWEEN
THE CITY OF SAN DIEGO AND ZOOLOGICAL SOCIETY OF SAN DIEGO

THIS RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and ZOOLOGICAL SOCIETY OF SAN DIEGO dba SAN DIEGO ZOO GLOBAL, a not-for-profit organization ("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 Brown Field Municipal Airport ("Airport") as depicted on **Exhibit A: Permit Area**, attached hereto. Tenant leaseholds are not included as part of the Permit Area.

B. **"Permit Use"** shall mean the non-exclusive use of the Permit Area and be limited to conducting research on local ecosystem process and function, including research on sensitive, rare, threatened, and endangered species.

C. **"Permittee"** shall mean Zoological Society of San Diego dba San Diego Zoo Global, which shall include PERMITTEE' s agents, employees and volunteers. PERMITTEE shall be responsible for all of PERMITTEE' s agents, employees and volunteers and ensure that they adhere to all conditions as stated in this Permit.

D. "**CITY Contact**" for Permit Area Access:
Andrew Schwartz, Airport Manager
1424 Continental Street
San Diego, CA 92154
Main: (619) 424-1440
Desk: (619) 424-0456
Email: ASchwartz@sandiego.gov

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

1. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its officers, employees, agents and contractors to enter upon the Airport solely for the purpose of the Permit Use.

2. Term. The Term shall commence on the Effective Date and expire in three (3) years from the Effective Date.

Agreement year shall mean each twelve (12) month period during the Term, commencing on the month and day of the Effective Date and continuing to the same month and day of the following year, minus one (1) calendar day.

3. Permit Fee. The processing fee for this Permit is hereby waived because the Permit Use provides a public benefit by providing City with information regarding conservation of City of San Diego Multiple Species Conservation Program (MSCP) covered species and fulfills, in part, monitoring requirements for the MSCP free of charge to the City and the Airport. Additionally, the information gathered during the Permit Use is valuable information that the Airport relies on to plan for future development of the Airport.

4. 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. All use of the Permit Area must be in compliance with the Brown Field FAA Requirements set forth in Exhibit B attached hereto.

   4.1 Access to Reports and Data. In exchange for CITY's permission to carry out the Permit Use on the Permit Area, and in for the waiver of the Permit Fee, PERMITTEE agrees that it will provide, upon request, copies of all data collected and all analysis of that data, including any reports generated by PERMITTEE including, relying on, or citing to data collected as part of the Permit Use to CITY at no cost to CITY.

5. Vehicles in Permit Area. PERMITTEE may use vehicles to access the Permit Area, if such use is approved as part of the activity coordination requirements set forth in Section 7. The approval of vehicular access will be in the sole discretion of the Airport Manager. All access to study sites will be on approved access roads or on foot.

6. Unauthorized Activities. PERMITTEE shall not engage in any activity on CITY-owned property without coordinating such activity and receiving pre-approval for the activity as set forth in Section 7. Any work performed by PERMITTEE that was not previously approved or otherwise authorized by this Permit, shall be removed and the CITY-owned property shall be put back to its condition on the Effective Date at the PERMITTEE's sole cost and expense, subject to the satisfaction of the CITY Contact.

7. Activity Coordination. PERMITTEE shall contact CITY Contact a minimum of three (3) working days prior to entering onto the Permit Area to carry out the Permit Use. At that time, PERMITTEE shall submit all information requested by the Airport Manager concerning the specific activities PERMITTEE will be engaging in and any specific components of the Permit Use. CITY reserves the right to impose reasonable restrictions and scheduling conditions for any aspect of the Permit Use, and PERMITTEE shall not enter onto the Permit Area or commence any activities under the Permit Use pursuant to this Permit without the prior verbal approval of the CITY Contact.

8. 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.

9. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the Mayor, or his or her designee,

unless otherwise expressly provided, without need for further resolution by the City Council. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.

10. 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 upon providing sixty (60) days written notice. 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.

11. 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 a condition which is the same or similar as it was on the Effective Date, normal wear and tear excepted, and vacate the Permit Area.

12. 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.

13. 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.

14. 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.

15. Indemnification & Hold Harmless. PERMITTEE shall protect, defend, indemnify, and hold CITY and its 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 sole negligence or willful misconduct of the 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.

16. Insurance. PERMITTEE shall obtain and maintain throughout the Term of this Permit, at its sole cost and expense, all insurance required by this Permit. PERMITTEE's liabilities under this Permit, including without limitation PERMITTEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. PERMITTEE's maintenance of the required insurance coverage is a material consideration for this Permit. Notwithstanding any provision of this Permit to the contrary, if PERMITTEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, PERMITTEE shall be in default of this Permit. PERMITTEE's liabilities, including but not limited to PERMITTEE's indemnity obligations, under the Permit, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of the Permit and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of the Permit may be treated as a material breach of contract by CITY. PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of the Permit. PERMITTEE shall obtain and deliver to CITY's Airport Division on the Commencement Date a current certificate of insurance and all relevant endorsements for (and subject to CITY's written approval of same):

a. Commercial General Liability Insurance. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars ($2,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars ($2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

b. Commercial Automobile Liability Insurance: Commercial Automobile Liability Insurance ("Auto") if and when PERMITTEE uses vehicles in the Permit Area and/or in connection with PERMITTEE's use of the Permit Area, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 0 1 12 90* or a later version of such form or equivalent form providing coverage at least as broad for a combined single 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 in performing any and all work pursuant to this Permit.

c. Workers' Compensation Insurance. As required by applicable laws, for all of PERMITTEE's employees, if any, who work in the Permit Area and/or in

connection with PERMITTEE's use of the Permit Area, with employers' liability coverage with a limit of at least One Million Dollars ($1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.

16.2.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each CGL and Auto policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf; (b) PERMITTEE's products; (c) PERMITTEE's work, including without limitation PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf; and, (d) the Permit Area.

16.2.2 Primary & Non-Contributory. Each CGL and Auto policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of PERMITTEE's insurance and shall not contribute to it.

16.2.3 Severability of Interest. Each CGL and Auto policy must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

16.2.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.

16.2.5 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.

16.2.6 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. The policies shall be kept in force for the duration of the Term. 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. PERMITTEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.

16.2.7 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time 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 the Allowed Uses.

16.2.8 Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons in the Permit Area or otherwise related to the allowed uses. 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.

16.2.9 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 related to the Permit Use or 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.

17. Nondiscrimination. This Permit is made and accepted upon and subject to the covenant and condition, which will run with the land, that PERMITTEE or any person claiming under or through PERMITTEE will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Permit Area or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Permit Area.

18. 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 commercially reasonable efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its commercially reasonable efforts to hire qualified local residents and firms whenever practicable.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 withheld or delayed in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

24. 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 72 hours after notice by CITY, or CITY may thereafter remove the item at PERMITTEE'S cost.

25. 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.

26. 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.

27. Equal Benefits. PERMITTEE will comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require permittee of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Permit, PERMITTEE certifies

that it will maintain such equal benefits throughout the term of this Permit. PERMITTEE's failure to maintain equal benefits will be a default of this Permit.

28. Equal Pay Ordinance. Unless an exception applies, PERMITTEE will comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Permit, PERMITTEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.

28.1. PERMITTEE and Sub-permittee Requirement. The Equal Pay Ordinance applies to any sub-permittee of the Permit Area to the same extent as it would apply to PERMITTEE. PERMITTEE will require sub-permittees to certify compliance with the Equal Pay Ordinance in their sub-permits.

28.2. Notice Requirement. PERMITTEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

29. Hazardous Substances. PERMITTEE shall not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Permit Area. PERMITTEE and PERMITTEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Permit Area without CITY's prior written consent. PERMITTEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

29.1 Release. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.

29.2 Hazardous Substance. "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.

29.3 Remediation. If PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area results in a release of a Hazardous Substance, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Permit Area, and in accordance with all applicable laws, rules and regulations of governmental authorities.

29.4 Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances or hazardous wastes to the Permit Area, PERMITTEE and/or PERMITTEE's contractor or agent shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment or device from the Permit Area

immediately upon or prior to the expiration or earlier termination of this Permit. Upon CITY's request, PERMITTEE shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Permit Area. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

29.5 Indemnity. PERMITTEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

29.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents has been released on, from or beneath the Permit Area, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency in compliance with California Code of Regulations Title 19 and all other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Area.

29.7 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area ("PERMITTEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Permit Area, CITY may cause an environmental assessment under regulatory oversight of the suspect 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 on, in, from or under the Permit Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Permit Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in 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, as

determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Permit Area and compliance with environmental law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

30. Water Quality – Best Management Practices. City and PERMITTEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Permit Area in a manner which aids in the protection of City's precious water resources. It is PERMITTEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, PERMITTEE will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately PERMITTEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, PERMITTEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

31. 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.

32. 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.

33. Survival. Any obligation which accrues under this Permit prior to its expiration shall survive such termination.

34. 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.

35. 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.

36. 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.

37. 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 attorney's fees will be determined under the applicable federal law, which includes the Equal Access to Justice Act, 28 U.S.C. Sec. 2412.

38. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same instrument, it being understood that all parties need not sign the same counterpart.

39. 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:

CITY:
Airports Deputy Director
Montgomery-Gibbs Executive Airport
3750 John J Montgomery Drive
San Diego, CA 92123

PERMITTEE:
ZOOLOGICAL SOCIETY OF SAN DIEGO
Attention: Director, Wild Animal Park
P.O. Box 120551
San Diego, California 92112-0551
(760) 738-5011

40. Permit Subject to Federal Aviation Administration (FAA) Regulations. PERMITTEE acknowledges and agrees, in addition to the foregoing terms and conditions of this permit, that PERMITTEE shall strictly adhere to, and at all times be subject to, the FAA Regulations set forth in the attached **Exhibit B**, which by this reference are made a part of this Permit. Failure to strictly adhere to the FAA Regulations shall subject this permit to immediate termination with no liability to CITY.

41. 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.

42. Incorporation of Recitals and Exhibits. All recitals and exhibits included or referenced in this Permit are hereby incorporated into this Permit.

42. 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.

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IN WITNESS WHEREOF, this Permit is executed by CITY, acting by and through its Mayor, and by PERMITTEE, acting by and through its lawfully authorized representative.

THE CITY OF SAN DIEGO

Date 8-11-21

By _____
Penny Maus
Director, Real Estate Assets Department

PERMITTEE

Date 7-28-2021

By _____
ZOOLOGICAL SOCIETY OF SAN DIEGO, a California nonprofit organization

Approved as to form this 12th day of August, 2021.

Mara W. Elliot, City Attorney

By Melissa Ables

Name: Melissa Ables

Title: Deputy City Attorney

Exhibit A: Permit Area

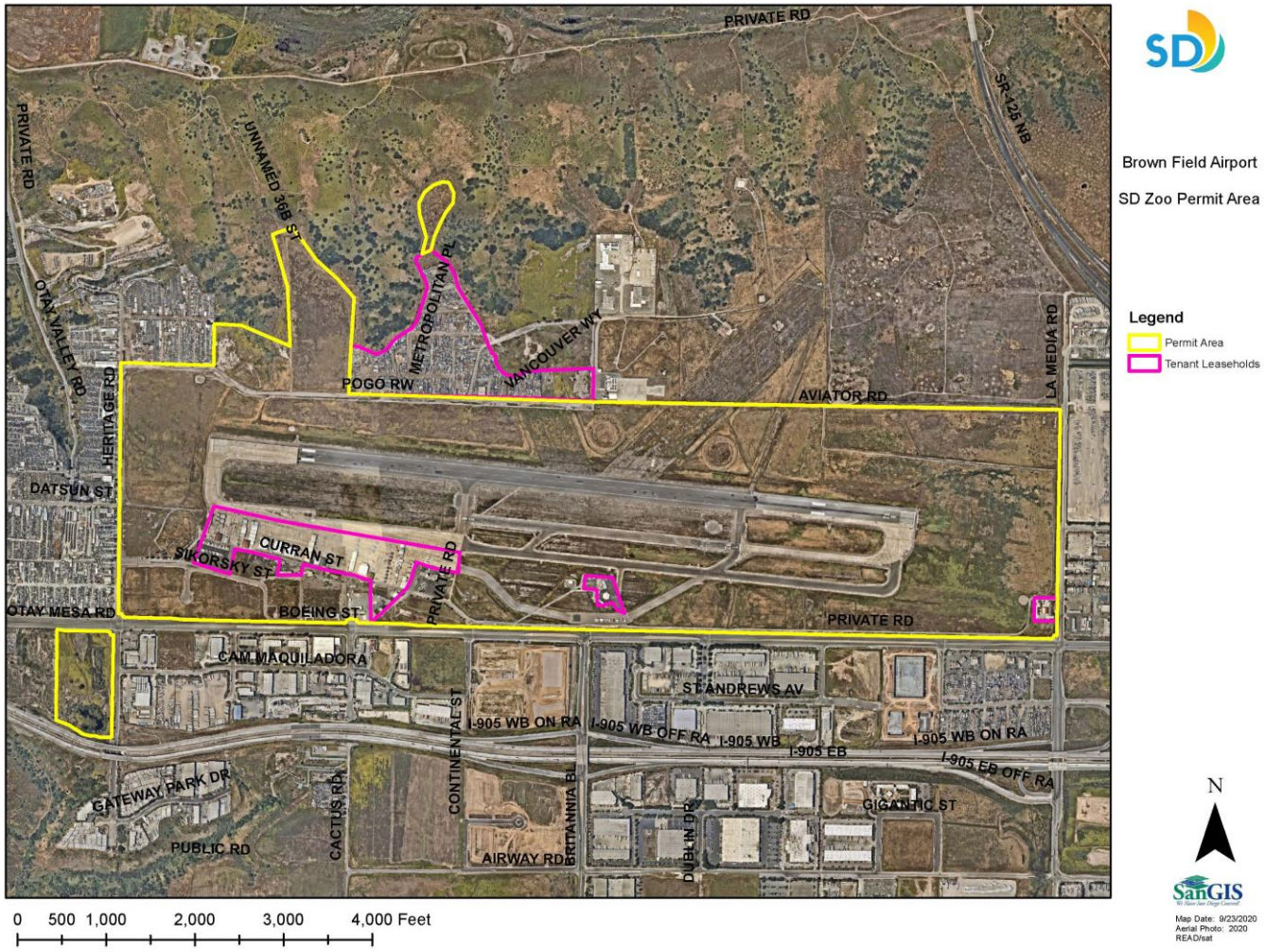


Exhibit B
BROWN FIELD FAA REQUIREMENTS

PERMITTEE shall adhere to the following terms and conditions during the entirety of the time period covered by this Permit. If any term and or condition contained in this Exhibit conflicts with any provision contained in the main body of the Permit, the terms and conditions of this Exhibit shall prevail; however, varying degrees of stringency in requirements shall not be considered conflicts, and PERMITTEE shall comply with the most stringent requirement.

1. PERMITTEE's Use to Conform with Law and Other Rules

   If the Permit Use requires, PERMITTEE is granted the nonexclusive use of all public airport facilities including, but not limited to, taxiways, runways, aprons, navigational aids and other facilities related to the normal function of any aircraft under PERMITTEE's or its sub-PERMITTEE's control. PERMITTEE agrees that such use shall be in accord with existing or future laws, rules and regulations of the United States of America, the State of California and CITY in regard to their aviation and air navigation authority.

2. PERMITTEE's Use and Construction to Conform with Federal Aviation Regulations

   PERMITTEE agrees to conform to all applicable Federal Aviation Regulations in any operation or construction on the Permit Area and Airport. PERMITTEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (which may be amended or replaced by other regulations from time to time) before constructing any improvements or modifying or altering any structure on the Permit Area.

3. PERMITTEE's Noninterference with Aircraft

   PERMITTEE, on behalf of itself and its successors, assigns, licensees and sub-PERMITTEEs, agrees not to use the Permit Area in any manner or act in any manner that might interfere with any aircraft landing or taking off from the Airport or otherwise create a hazard. If this covenant is breached in any way, CITY reserves the right to enter the Permit Area and abate or eliminate the interference at the expense of PERMITTEE and PERMITTEE agrees to reimburse CITY for all costs and fees, including attorney's fees, incurred by CITY involved with said abatement or elimination.

4. Permit Subordinate to CITY/United States of America Agreements

   This Permit shall be subordinate to the terms of any existing or future agreements between CITY and the United States of America, and to any United States of America legal requirement relative to the development, operation or maintenance of the Airport, and CITY shall not be liable for any claims, losses, or damages, of any type, that PERMITTEE, or anyone claiming through PERMITTEE, may incur or suffer as a result of any such subordination.

5. Height Limitation

The PERMITTEE and the PERMITTEE'S successors and assigns agree not to erect or permit any structure unless it complies with all height limitations and other requirements of the FAA and the applicable Airport Land Use Compatibility Plan (also known as the "ALUCP"). If this covenant is breached in any way, CITY reserves the right to remove the structure or object at the expense of the PERMITTEE, and PERMITTEE agrees to reimburse CITY for all costs and fees, including attorney's fees, incurred by CITY involved with said removal.

6. Right of Flight Easement

CITY and its successors and assigns reserve a right of flight for the passage of aircraft in the air space above the Permit Area, for the benefit and use of the public. This right includes the right to make noise inherent in the operation of existing or future aircraft that operate in any way on or near the Airport.

7. War or National Emergency

In the event of war or national emergency, this Permit and all of its provisions shall be subject to any right of the United States of America, existing now or in the future, affecting the control, operation, regulation, take over, or exclusive or nonexclusive use of the Airport. During any war or national emergency, CITY shall have the right to Permit, or allow the use of, any part of the Airport, including its landing areas, to the United State of America. In this event, any provisions of this Permit which are inconsistent with the provisions of the Permit, or allowed use, to the United States of America shall be suspended. CITY shall not be liable for any claims, loss, or damages, of any type, that PERMITTEE, or anyone claiming through PERMITTEE, may incur or suffer as a result of this action. However, nothing in this Permit shall prevent PERMITTEE from pursuing any rights it may have for reimbursement from the United States of America.

8. Airport Development

CITY reserves the right to further develop, change or improve the Airport and its routes and landing areas as CITY sees fit, without liability to PERMITTEE, and without PERMITTEE interference or hindrance and regardless of PERMITTEE's views and desires. CITY shall have the right to perform any and all such actions referred to in this section 8, including the right to shut parts or all of the Airport down, at no liability to CITY, regardless of any damages or losses PERMITTEE, or anyone claiming through PERMITTEE, may suffer from said actions.

9. Nonexclusive Right

PERMITTEE understands and agrees that nothing in this Permit shall be construed to grant or authorize an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958 (Title 49, Section 1349 of the United States Code)

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10. Landing Area Maintenance

CITY reserves the right, but not the obligation, to maintain and repair the Airport landing and travel areas and all other public facilities at the Airport, at CITY's sole discretion, without liability to PERMITTEE, or anyone claiming through PERMITTEE. CITY also has the right to direct and control all PERMITTEE activities affecting the maintenance and repair of these facilities.

11. FAA Nondiscrimination Covenant

a. PERMITTEE, on behalf of itself and its representatives, successors, sub-PERMITTEEs, licensees and assigns, as part of the consideration for this Permit, agrees to the following nondiscrimination covenants:

(1) No person shall be denied benefits, participation or subjected to discrimination in the use of facilities on the Permit Area based on race, color, sex or national origin.

(2) No person shall be denied benefits, excluded from participation in or subject to discrimination in the construction of any improvements nor the furnishing of any services on the Permit Area, based on race, color, sex or national origin.

(3) PERMITTEE shall use the Permit Area in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964," as now exists or may be amended in the future.

b. If any of the above nondiscrimination covenants are breached, CITY may terminate this Permit and reenter and repossess the Permit Area as if this Permit had never been made. This provision is not effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

c. PERMITTEE agrees to furnish accommodations and services on a fair and equal basis to all users and will charge fair, reasonable and equal prices for each item or service. PERMITTEE is allowed to make reasonable and nondiscriminatory discounts, rebates or similar price reductions to volume purchasers. If PERMITTEE does not comply with this provision, CITY has the right to terminate this Permit, without liability, and either CITY or the United States of America may judicially enforce this entire covenant.

d. PERMITTEE agrees to include this entire covenant in any sub-Permit or Permit agreement by which PERMITTEE grants any right or privilege to any firm, corporation or person providing services or accommodations to the public on the Permit Area.

12. Equal Opportunity

PERMITTEE on behalf of itself and its successors, assigns, sub-PERMITTEEs, licensees and any suborganizations, agrees to undertake an equal opportunity program as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to ensure that no person shall be excluded from any employment program or opportunity, nor be denied any service described, based on race, creed, color, national origin or sex.

13. CITY to Mitigate Impacts of Subordination

If subordination agreements between CITY and the United States of America result in PERMITTEE's inability to operate as authorized by this Permit, or if PERMITTEE's operations authorized under this Permit are materially affected during a period of subordination, (1) CITY agrees to make a reasonable adjustment to the terms and conditions of the Permit, as determined by CITY, in its sole discretion; or (2) upon written request from PERMITTEE, CITY will terminate this Permit or extend the term of this Permit for the period of time that PERMITTEE's operation is affected, and no rent shall accrue during any period of non-operation. PERMITTEE agrees that any damages claimed during this subordination period will be limited to the relief granted by CITY, if any, and that CITY will incur no liability for any losses suffered by PERMITTEE.

14. Hangar Keeper's Insurance

If the Permit Use allows PERMITTEE to hangar any aircraft that is not owned by PERMITTEE, PERMITTEE agrees to maintain the following insurance at its sole expense, during the entirety of the time period covered by this Permit: Hangar Keeper's Insurance sufficient to cover any aircraft hangared for others. This insurance is subject to the same requirements, restrictions and penalties in the event of failure to provide or maintain as detailed under the insurance provision of this Permit.

15. Licenses and Certifications

PERMITTEE agrees that it will not maintain any activities such as a flight school, air charter, air taxi or grounds school, without the required FAA certifications and licenses. Failure to comply with this provision constitutes a default and CITY then has the right to terminate this Permit without liability.

16. Employee Conduct

PERMITTEE shall be responsible for the conduct of any employee, contractor, agent, invitee, and guest on the entire Airport, if that employee, contractor, agent, invitee or guest is on Airport property during any period of employment or in connection with PERMITTEE's operations or activities on the Airport.

17. Subordination to Brown Field Quitclaim Deed

PERMITTEE agrees that this Permit is subordinate to the provisions of the Brown Field Quitclaim Deed to CITY.

18. Aircraft Parking

PERMITTEE shall require that all aircraft under its control be parked only on the Permit Area, except as otherwise provided by the direction of the CITY. At no time shall any aircraft, vehicle or other object, including refuse, under PERMITTEE's control, be allowed to obstruct any designated taxiways.

19. Minority Business Policy

If PERMITTEE receives any federal funds governed by Title 49, Code of Federal Regulations, Part 23, PERMITTEE agrees that it and its contractor will ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. PERMITTEE and PERMITTEE's contractors agree not to discriminate on the basis of race, color, national origin or sex in the award and performance of any Federal Department of Transportation-assisted contracts.

20. Provisions to be Included in All Pertinent Documents

PERMITTEE agrees that it shall insert all of the foregoing provisions in all sub-permits, contracts or agreements by which said PERMITTEE grants a right or privilege to any person, firm or corporation to render accommodations or services to the public on the Permit Area.