

CITY OF OAKLAND
Interoffice Letter

To: Parks and Recreation
Advisory Commission Attention: Anne Woodell Date: February 10, 1993

From: Office of Parks and Recreation (OPR)

Subject: ORDINANCE APPROVING A TEN (10) YEAR
LEASE AGREEMENT BETWEEN THE CITY OF
OAKLAND AND THE EAST BAY ZOOLOGICAL
SOCIETY, INC., FOR MANAGEMENT RIGHTS
OF THE KNOWLAND PARK/OAKLAND ZOO

BACKGROUND

On August 1, 1982, the City of Oakland and the East Bay Zoological Society entered into an agreement for the purpose of operating, rehabilitating and improving Knowland Park/Oakland Zoo for the use and benefit of the public. The real property owned by the City commonly referred to as Knowland Park/Oakland Zoo, which includes the Park, Zoo and Snow Building, as well as all other structures thereon, at 9777 Golf Links Road in Oakland.

The original ten (10) year agreement expired on August 1, 1992. Since that agreement was signed, several sections have become obsolete. For that reason, a new ten (10) year agreement was negotiated.

DISCUSSION

Highlights of the new agreement are:

1. The term of the Agreement shall be for ten (10) years and may be extended by the City and Society an additional five (5) years.
2. The City will annually subsidize the Society a total of two hundred fifty thousand (250,000) dollars which includes all costs and expenses of employing two (2) zookeepers including wages, withholding taxes and benefits.
3. The Society is responsible for payment of all utilities, facility and grounds maintenance, facility and grounds rental, improvements to animal exhibits, subconcessionaire agreements, and fiscal management and operations of the Park and Zoo.
4. The Society is responsible for providing the City with an annual budget, quarterly reports and annual financial audits.

Anne Woodell

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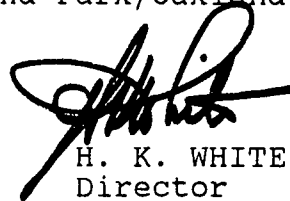
February 10, 1993

FISCAL IMPACT

The City provides an annual subsidy to the East Bay Zoological Society, Inc. from the General Fund 101 in the amount of two hundred fifty thousand (250,000) dollars. The subsidy includes one hundred sixty-nine thousand nine hundred (169,900) dollars and all personnel costs and expenses (e.g., wages, withholding taxes, insurance and benefits) of employing two (2) City zookeepers which totals eighty thousand (80,000) dollars. Staff recommends continuation of this financial commitment.

RECOMMENDATION

That the Parks and Recreation Advisory Commission approve an ordinance approving a ten (10) year lease agreement between the City of Oakland and the East Bay Zoological Society, Inc., for management rights of the Knowland Park/Oakland Zoo.



H. K. WHITE
Director

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NOTICE AND DIGEST

ORDINANCE APPROVING A TEN (10) YEAR
LEASE AGREEMENT BETWEEN THE CITY OF
OAKLAND AND THE EAST BAY ZOOLOGICAL
SOCIETY, INC., FOR MANAGEMENT RIGHTS
OF THE KNOWLAND PARK/OAKLAND ZOO

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ORDINANCE APPROVING A TEN (10) YEAR LEASE AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE EAST BAY ZOOLOGICAL SOCIETY, INC., FOR MANAGEMENT RIGHTS OF THE KNOWLAND PARK/OAKLAND ZOO

WHEREAS, the City of Oakland, a municipal corporation (hereinafter called "City"), and the East Bay Zoological Society, Inc., a California non-profit public interest corporation (hereinafter called "Society"), seek to enter into an agreement for the purpose of maintaining, operating, improving and rehabilitating Knowland Park/Oakland Zoo for the use and benefit of the public, the real property owned by the City commonly referred to as Knowland Park/Oakland Zoo, which includes the Park, Zoo and Snow Building, as well as all other structures thereon, at 9777 Golf Links Road, Oakland, California, all of which real property and improvements are hereinafter collectively referred to as "Zoo and Park"; and

WHEREAS, the City desires to promote and aid in said property's maintenance and improvement as an educational and entertainment area consisting of, but not limited to, zoological and botanical gardens; and

WHEREAS, the Society desires to maintain, operate and rehabilitate said real property consistent with the City's desire; and

WHEREAS, the Zoo and Park is a unique and important asset for the education, enjoyment and recreation of the City's children, residents and visitors; and

WHEREAS, on June 22, 1982, the City Council approved Ordinance No. 10229 C.M.S. which authorized a ten (10) year management agreement between the City and East Bay Zoological Society, Inc. which expired on August 1, 1992; and

WHEREAS, the City and Society have negotiated a new lease agreement with a term of ten (10) years commencing upon execution hereof, and may be extended by the City and the Society an additional five (5) years; and

WHEREAS, the City will annually subsidize the Society a total of two hundred fifty thousand (250,000) dollars which includes all costs and expenses of employing such persons including wages, withholding taxes and benefits of two (2) City employees (Paul Siple and Erica Calcagno); and

WHEREAS, the Society is responsible for: (1) payment of all utilities; (2) facility and grounds maintenance; (3) facility and grounds rental; (4) improvements to animal exhibits; (5) sub-concessionaire agreements; and (6) fiscal management and operations; and

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WHEREAS, all requirements related to the provision of an annual budget, quarterly reports, and annual financial audits by the Society shall remain the same as in the original agreement; now, therefore, be it

RESOLVED: That the City Council finds and determines the foregoing to be true and correct and that it is in the best interest of the public to enter into a new agreement with the East Bay Zoological Society, Inc., to maintain, operate, improve and rehabilitate Knowland Park/Oakland Zoo, as well as other structures thereon for the benefit of the public; and be it

FURTHER RESOLVED: That the City Manager is hereby authorized to execute on behalf of the City of Oakland an agreement with the East Bay Zoological Society.

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KNOWLAND PARK/OAKLAND ZOO MANAGEMENT AND PARK AGREEMENT

THIS AGREEMENT, is entered into this ____ day of _____, 1992, by and between the CITY OF OAKLAND, a municipal corporation (hereinafter called "CITY") and the EAST BAY ZOOLOGICAL SOCIETY, INC., a California nonprofit public interest corporation (hereinafter called "SOCIETY").

W I T N E S S E T H:

WHEREAS, the City is the fee owner of that certain real property located at 9777 Golf Links Road, Oakland, California and which is described in Exhibit "A", attached and incorporated herein by references (hereinafter called "ZOO AND PARK"); and

WHEREAS, the ZOO AND PARK is a unique and important asset for the education, enjoyment and recreation of the City's children, residents and visitors; and

WHEREAS, the City desires to promote and aid in said property's maintenance and improvement as an educational and entertainment area consisting of, but not limited to, zoological and botanical gardens for the citizens of the City, among others; and

WHEREAS, the Society desires to maintain, operate and rehabilitate said real property consistent with the City's desire; and

WHEREAS, the Society administers and manages an annual budget now in excess of \$3 million and which continues to grow; and

WHEREAS, the Society contributes in excess of \$300,000.00 per year to the maintenance, operation and improvement of the ZOO

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AND PARK, over and above the revenues from operation of the ZOO AND PARK; NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

IN CONSIDERATION OF THE ABOVE RECITALS AND PERFORMANCE OF THE RESPECTIVE COVENANTS HEREINAFTER CONTAINED, the City and the Society hereby agrees to improve, maintain and operate the ZOO AND PARK, upon the following terms and conditions:

1. FEE INTEREST: The City shall retain the fee title to the above referenced real property.

2. TERM: The term of this agreement shall be for ten (10) years commencing upon execution hereof. The Society may extend said agreement an additional five (5) years, subject to any modifications to the terms and conditions herein with City approval.

3. MANAGEMENT, IMPROVEMENTS AND MAINTENANCE: For purposes of management, improvements and maintenance, Knowland Park is hereby divided into three (3) areas as shown on the map entitled "Knowland Park Management, Improvements and Maintenance Plan" which plan is attached and made by reference a part of this Agreement as Exhibit "B".

(a) Upper Area: This area contains approximately 65 acres and is that portion of the ZOO AND PARK which lies between Golf Links Road and Skyline Boulevard. The Upper Area is to be maintained in its present natural condition as undeveloped land during the contract period.

(b) Mesa Area: This area contains approximately 275 acres and is that portion of the ZOO AND PARK that lies

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southerly of Golf Links Road and northerly of the private property from Golf Links Road westerly to Maggiora. The Society shall implement improvements to the Mesa Area pursuant to the Master Plan approved by the City Council in December 1990. Any planning and development of this area shall be done with the consultation of the Knowland Park Highland Association, with consideration for the special relationship between this group and the Society. Any such approved mesa development shall be subject to environmental approval in accordance with the rules and regulations of the City, the City Planning Commission and the State of California. The Society shall, during the implementation of the improvements, adhere to sound business and legal practices concerning the following areas: design, construction, financing, supervision, building codes, regulations, maintenance and other applicable laws.

(c) Lower Area: This area contains approximately 150 acres and is that portion of the ZOO AND PARK that is generally developed and contains, among other developments, the zoological collection. The two (2) caretakers' houses, located northeast of the lower meadow will be reserved for night security personnel. The rental charge for security personnel will include a monthly fee of \$100 per month plus night and gate security responsibilities assigned by the Zoological Society. The Society shall implement improvements to the Lower Area pursuant to the Master Plan approved by the City Council in December 1990. Improvements to be paid for with funds from the Measure K Bond Issue shall be performed in compliance with the Master Agreement between the City of Oakland

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and the East Bay Zoological Society for the Oakland Zoo Projects dated July 10, 1992, and the Measure K Procedural Manual.

The Society agrees that it will not, except by prior approval of the City Council, cause any development of the meadow land area which is inconsistent with ZOO AND PARK uses. The meadow land areas are the two (2) large cultivated turf areas in the lower park. One lies north-easterly of the main entrance to the park and the other southerly of the entrance and north of the zoological collection. The Society shall be entitled to close the picnic facilities if necessary for security and safety reasons with City approval.

4. AGREEMENTS: The Society and City agree that this Agreement supersedes all previous agreements or contracts with respect to Society's operations in Knowland Park and further confirms the Society's right to continue the operation of concessions including food, rides, the Snow Building and programs, and further confirms the Society's responsibility for all financial obligation in relation to such agreements and contracts.

5. IMPROVEMENTS: The Society shall implement the improvements in the Lower Area as set forth in the Master Plan or any amendments thereto, as approved by the City Council. The Society shall, during implementation of the improvements, adhere to sound business and legal practices concerning the following areas: design, construction, financing, supervision, building codes, regulations, maintenance and other applicable laws. The Society shall keep the premises free and clear from any and all liens,

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claims, and demands for work performed, materials furnished, or operations conducted on said premises.

During the implementation of the improvements, the Society shall submit all capital improvement items to the City for environmental approval in accordance with the rules and regulations of the City, the City Planning Commission, and the State of California.

6. FINANCING: The Society raises funds for the maintenance, operation and improvement of the ZOO AND PARK, over and above the revenues it receives from the ZOO AND PARK programs and activities. In order to implement said improvements, the Society will necessarily be required to raise funds through available methods of financing: therefore, the Society shall have the right and authority to do (a), (b), (c), (d) of the following during the term hereof, and, with prior approval of the City Council, or its designate, (e):

(a) Collect and use in accordance with this agreement all revenues collected at the ZOO AND PARK;

(b) Sub-license concession areas to responsible parties for a period of time less than that remaining as the term of the agreement;

(c) Charge admission and/or parking fees in accordance with paragraph 8(b) and (c) appearing hereinafter;

(d) Raise funds in any other lawful manner;

(e) Make, execute or guarantee indebtedness secured by Society's improvements; but under no circumstances shall such

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indebtedness be construed as a debt of the City, nor shall it constitute in any way a lien or encumbrance on the fee of said leased premises or any interest of the City in said premises.

7. ACCOUNTING/FUND ACCUMULATION: The Society shall furnish the City Manager and/or his designee with *quarterly reports*, including cash flow operations and maintenance expenses for the previous quarter, total operating and maintenance expenses for the fiscal year to date, revenues for the quarter, and total revenues for the year, prepared by acceptable accounting standards and procedures for each quarter of operation during the term hereof.

An *annual audited financial statement* shall be prepared in accordance with generally accepted accounting principles (GAAP) at the Society's expense and delivered to the City Manager and/or his designee within ninety (90) days after the end of the Society's fiscal year. Should the Society be unable to meet the ninety day requirement, a letter explaining the delay and a projected completion date must be received by the City Manager and/or his designee three (3) weeks prior to the ninety (90) day deadline.

During the term of the Agreement, the Society may accumulate funds received from its operation of the ZOO AND PARK to be used for the following purpose: (1) Regular operation and maintenance as the Society expands, and (2) improvements and animal acquisitions.

The Society shall apply funds from the Measure AA and Measure K Bond Issues to the implementation of the Master Plan and

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the construction of such improvement projects, which funds shall be administered by the Society in accordance with the requirements of the East Bay Regional Parks District as to Measure AA funds and in accordance with the Master Agreement described above as to Measure K funds.

It is the intention of the City and the Society that the improvements in Knowland Park be completed in a timely, continuous and expeditious manner.

In order to expedite capital improvements, the Society shall submit annually to the City Office of Parks and Recreation ("OPR"), within one hundred fifty (150) days after the end of its fiscal year, a capital improvement budget, spending plan, actual expenses and schedule describing its projected development for the current budget year and for the next two (2) following years.

The total amount of money to be spent annually and the scheduling of development shall be the principal responsibility of the Society. In the event a disagreement arises concerning the schedule, the Society and OPR shall meet and attempt to resolve such issues at the earliest practical time. Both parties agree to act reasonably and in good faith. In the event that these differences cannot be resolved, final resolution shall rest with the City Council.

8. CHARGES AND FEES:

(a) Goods and Services: The Society and/or its licensees may set and determine prices for the children's rides and services, goods and products sold to the public; provided, however,

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that said prices shall not be more than those charged for similar services, goods and products at comparable facilities, such as San Diego Zoo, Sea World and Marine World/Africa U.S.A. *Rental fees for the Snow Building shall be determined by the City Council as part of the City's Master Fee Schedule.*

(b) Services: *The Society and/or its licensees may, subject to approval of the City Council, set and determine prices for services such as shows and special performances. In securing such City Council approval, it shall be incumbent upon the Society and/or its licensees to justify the reasonableness of any said prices or increases.* The Society shall submit all proposed price changes regarding services to the City Council prior to the proposed change. The City shall either approve, modify, or disapprove such change.

(c) Parking Fees: The Society may collect and receive parking fees charged to the public. Upon execution of this lease, the City Council herein approves the initial parking fee of Three Dollars (\$3.00) per car, and/or Eight Dollars (\$8.00) per bus, to be charged by the Society. All fees shall be approved by the City Council and included in the City's Master Fee Schedule prior to charging of the public.

(d) Admission Fees: The Society may charge admission to the ZOO AND PARK at rates to be approved by the City Council and included in the City's Master Fee Schedule prior to charging of the public.

9. SOCIETY SERVICES:

(a) On-Going Services: A written schedule of operational standards relating to the present concessions in the ZOO AND PARK shall be maintained by the Society and shall be subject to review and approval of the City Council upon its request.

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(b) Programs and Entertainment: The Society will provide programs and entertainment at ZOO AND PARK for the benefit of the public.

(c) Concessionaires: The Society may enter into agreements with concessionaires for the sale of food, souvenirs, children's rides or animal exhibits. The Society may enter into agreements with suppliers for goods, food, souvenirs, materials, supplies and services related to the operation of the park. Selection and award of contractors and suppliers should follow the City's established policies regarding awards of sub-contracts and/or selection of vendors. In the event a concessionaire desires to retain ownership of improvements placed or constructed on the real property, they may be allowed to do so by the Society so long as the City's interest in the land upon which improvements are located is not subordinate thereto at any time; provided further, that, upon termination of the concession, the premises shall be returned in as good a condition as existed prior to commencement of construction of the improvements. The Society shall provide the City Office of Parks and Recreation copies of all sub-concession agreements and audited financial statements annually.

10. CITY OWNED ANIMALS:

(a) All animals and their issue now owned by the City and presently existing at the ZOO AND PARK shall be loaned to the Society during the term hereof for its use in developing and operating the premises; and the Society may, on the City's account, buy, sell, trade and breed said animals during the term hereof so

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long as the proceeds therefrom are restricted to the acquisition, breeding and care of other animals. Further, all animals and their issue acquired by the Society subsequent to the execution of this contract shall become the property of the City. The City shall retain legal ownership of all animals and their issue at the ZOO AND PARK. The Society shall have exclusive control over and be responsible for the care, maintenance and feeding of such animals, or disposing of any deceased animals. All animals at the ZOO AND PARK at the expiration or termination of this Agreement shall be the sole property of the City.

(b) Should the Society, from time to time, receive animals by way of donation from third persons, or should the Society acquire animals with its own resources, the ownership of said donated animals shall immediately vest in City upon transfer of possession of the Society.

(c) The Society shall submit to the Office of Parks and Recreation annually a written inventory of all animals. Said annual inventory is due at the beginning of the Society's fiscal year.

11. CITY SUBSIDY: In consideration of the services to be performed by the Society for managing, operating and improving the ZOO AND PARK, and its efforts in raising and administering monies from private donations by local businesses and individuals and national and international funds, and governmental contributions from the East Bay Regional Parks District to the Society, the City agrees to pay to the Society an annual subsidy

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which totals two hundred fifty thousand (250,000) dollars.

Such subsidy shall be payable to the Society annually at the commencement of each fiscal year. The annual subsidy includes one hundred sixty-nine thousand nine hundred (169,900) dollars and all personnel costs and expenses (e.g., wages, withholding taxes, insurance and benefits) of employing two (2) City zookeepers which totals eighty thousand one hundred (80,100) dollars. If either of the employees ceases to be employed at the ZOO AND PARK, the City shall add the employee costs to the fixed subsidy amount.

Such Management Fee shall not be deducted from nor reduced by county real property taxes allocated by law to the ZOO AND PARK or the Society, Measure AA funds payable to the Society, Measure K funds payable to the Society, or any other monies paid to the City for the maintenance, operation or improvement of the ZOO AND PARK by any public or private person or entity. The City agrees to pay all such funds to the Society promptly in accordance with any terms or conditions required by the payor or donor of any such funds.

12. EQUIPMENT: The City further agrees to allow the Society to use, at no cost to the Society, all equipment, supplies and tools used at the ZOO AND PARK for park and zoo maintenance, excluding the equipment used by the City's roving maintenance crews. The Society shall be responsible for the maintenance and replacement of said equipment during the term hereof. Upon the expiration of this Agreement, such property, if usable, or its equivalent value, shall revert to the City, unless the City

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declines to accept it.

13. SOCIETY OBLIGATIONS: The parties agree that it is the intent of this Paragraph 13, and the subparts thereof, that the Society shall be solely responsible for all maintenance, management and rehabilitation of ZOO AND PARK. Maintenance includes, but is not limited to, animals, grounds, buildings, equipment, security and administration and staffing thereof. The Society further agrees that it will be responsible for proper budget and financial reporting for those maintenance, management and rehabilitation responsibilities stated hereinabove; for all licenses, fees, possessory interest taxes, if applicable, and all regulations relative to the care, feeding, importing and exporting of animals. The Society shall pay and be responsible for all charges for the furnishing of gas, water, electricity, telephone service and other public utilities to the leased premises during the term of this agreement and for the removal of garbage and rubbish from said premises. The Society further agrees that all animals at the ZOO AND PARK shall be maintained in a manner consistent with comparable zoo standards and in accordance with applicable Federal, State, County, or City rules and regulations.

14. BOARD OF TRUSTEES: The Board shall consist of twenty-five members, one of whom shall be the President of the Docent Council and the remaining Board members shall be selected from a broad cross section of the people of the Bay Area which reflects the cultural diversity within the Oakland Community/East Bay area. An Executive Director for the Society shall be employed

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by the Board. The Executive Director shall be responsible for the efficient operation of the business of the Society, and shall exercise supervision of all employees, purchasing and actions of the Society, subject to the direction of the Board, and shall perform such other duties as may be prescribed by the Board from time to time. A copy of the Nonprofit Corporation's Articles of Incorporation and all currently approved Bylaws, and any Constitution and Amendments shall be submitted to the Office of Parks and Recreation within thirty (30) days of the date of execution of this Agreement. Any amendments to these documents shall be submitted to the Office of Parks and Recreation within thirty (30) days after the Board of Trustees' approval.

14. INSURANCE:

(1) Liability Insurance - The Society agrees to procure, carry and maintain at all times during the term of this Agreement, Comprehensive General Liability Insurance with a limit of not less than Four Million (\$4,000,000.00) Dollars to protect and indemnify the City of Oakland, its Council members, officers, agents and employees. Such coverage shall include Bodily Injury, Property Damage, Product Liability, Completed Operations, Auto Blanket Contractual, Personal Injury, Employees Added as Additional Insured, Liquor Law Liability, Owners and Contractors Protective, Incidental Medical Malpractice, Broad Form Property Damage, Cross Liability or Severability of Interest Clause. The Society shall designate the City of Oakland, its Council members, officers, agents and employees as an additional insured on said policies.

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(2) Property Insurance - The Society agrees to procure, carry and maintain at all times during the term of this Agreement, at Society's sole expense, fire insurance and extended coverage on improvements at the ZOO AND PARK in an amount equal to ninety percent (90%) of the replacement cost of each improvement. In the event that the Society determines that certain improvements constructed of non-flammable materials and unlikely to burn are disproportionately expensive to insure, then the Society may exclude such improvements from coverage subject to prior review and approval by the City Manager. The City Manager or his designee may require, whenever deemed necessary, a review of the insured improvements as to insured values and items covered. The deductible limit of this coverage is not to exceed Five Thousand (\$5,000.00) Dollars per occurrence.

(3) Workers Compensation Insurance - The Society shall provide Workers Compensation Insurance to insure the Society's employees as required by the Labor Code of the State of California and shall include employers liability with limit not less than One Million (\$1,000,000.00) Dollars. The Society shall specify that every volunteer is a volunteer for the East Bay Zoological Society and not the City of Oakland.

(4) A certificate or certificates evidencing such insurance coverage required herein shall be filed with the Office of the City Manager, and Office of Parks and Recreation, prior to the commencement of the terms of this Agreement, and said certificate shall provide that such insurance coverage will not be

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canceled or reduced without at least thirty (30) days' prior written notice to the City. At least thirty (30) days' prior to the expiration of any such policy, a certificate showing such coverage has been renewed, is in the process of being renewed, or extended, shall be filed with the City. If such coverage is canceled or reduced, the Society shall within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage file with the City a certificate showing that the required insurance has been reinstated, or is in the process of being reinstated, or provided through another insurance company or companies.

15. NONDISCRIMINATION: In carrying out the maintenance and improvements of the subject property, in determining the appropriate fees to be charged pursuant to Paragraph 8, subparagraphs (a) through (d), the Society shall endeavor to establish programs and charges that will make the subject property and facilities attractive and available to all levels of economic, racial and academic interest in the community, provided that the Society's goal of financial self-sufficiency is not thereby endangered. The Society further agrees that it shall not discriminate against any employee or applicant for employment because of race, religion, sex, sexual orientation, color, national origin, age or handicap and that such provisions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other form of compensation, and

selection for training, including apprenticeship. The Society shall submit to the City for review a workforce profile showing the race/ethnicity and sex of all current employees. Should the City determine that women and minorities are under-utilized in various job groupings, the City shall require the Society to submit, prior to execution of the contract, an Affirmative Action Plan which sets specific and attainable goals with dates for hiring and promotion to correct the identified under-utilization. The City may request the submission of workforce data periodically during the life of the contract.

16. HOLD HARMLESS: Irrespective of any insurance carried by the Society, the Society agrees to protect, indemnify and hold the City and its officers, agents and employees harmless from any and all damages and injuries arising in any manner out of the performance of this Agreement by the Society, its contractors and their respective employees, subcontractors, vendors, guests and invitees, including those amounts not covered by any insurance carried by the Society, and to defend the City in any third party lawsuits resulting therefrom. The City agrees to protect, indemnify and hold the Society and its officers, agents and employees harmless from any and all damages and injuries arising from the acts or omissions of the City, its contractors (excepting the Society) and their respective employees, subcontractors, vendors, guests and invitees (excepting those of the Society), and to defend the Society in any third party lawsuits resulting therefrom.

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17. DEFAULT BY THE SOCIETY: In the event the Society defaults or fails to perform under any of the obligations hereunder, the City Manager shall give written notice hereof to the Society expressly stating the nature of said default or nonperformance. The Society shall have sixty (60) days from receipt of said notice to correct said default or nonperformance, and in the event of the Society's failure to do so, the City, in addition to any other legal or equitable rights it may have, may do any or all of the following:

(a) Terminate this Agreement upon written notice to the Society; or

(b) Direct the Society to assign its interest in and to this Agreement to a party designated by the City Council without compensation to the Society, or

(c) Perform itself whatever corrective measures are deemed necessary, which cost of such services plus administrative overhead shall be charged to and paid by the Society to the City upon demand.

18. MONITORING: The City Council shall continually review the Society's performance to insure the success and quality thereof under the terms and conditions of this Agreement.

19. ASSIGNMENT OF INTEREST: The Society shall not assign this Agreement, either in whole or in part, without the prior written approval of the City Council. The City shall not assign this Agreement to a private corporation, firm or individual without the prior written approval of the Society, except as herein

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provided.

20. INUREMENT: This agreement shall be and is hereby binding on the successors of the parties hereto.

21. PARKS AND RECREATION ADVISORY COMMISSION: Any and all matters with respect to this Agreement that require policy approval by the City Council, not including administrative decisions by the City Manager that need no such approval, shall be first submitted to the PARKS AND RECREATION ADVISORY COMMISSION which shall, in turn, submit same to the City Council in conformance with procedures then in effect.

22. PERSONAL CONTRACT: The qualifications and identity of East Bay Zoological Society, Inc. are of particular concern to the City. Because of those qualifications and identity, the City has entered into this Agreement. No voluntary or involuntary successor in interest of the Society shall acquire any rights or powers under this Agreement unless so approved by the City Council, and until such successor is in compliance with the applicable rules, procedures and regulations of the Federal Government, the State of California, the County of Alameda and the provisions of this Agreement.

23. PERMANENT IMPROVEMENTS: At the conclusion or termination of the agreement, or any renewals to the Agreement, all permanent fixtures shall become the property of the City, except as set forth under Paragraph 9 (c), CONCESSIONAIRES.

24. EASEMENT: The Society agrees the City shall retain all rights and duties with respect to the granting and issuance of

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any and all easements on the property known as "Knowland Park" to third parties, provided such easements do not interfere with the operation of the ZOO AND PARK. The City shall retain all monies, profits, and fees collected pursuant to the granting of such easement rights to any and all third parties. As a courtesy to the Society, the City shall notify the Society of the granting of any such easements prior to the effective date of said easement.

25. ILLEGALITY OF CONTRACT: In the event that any of the obligations under this Agreement shall become null and void by Federal, State or local law, or in the event the future performance of the conditions or terms of this Agreement becomes a hardship for the parties to perform because of Federal, State or local law which is enacted, or court decision rendered, the parties may amend the Agreement to conform with Federal, State or local law, or the City may, at its option, terminate this Agreement. The City shall not be liable to the Society for any loss or damage or any nature suffered or claim to be suffered by the Society by reason of any modifications to the Agreements or its terminations.

26. WASTE OR NUISANCE: The Society shall not commit or permit the commission by others of any waste on said premises; the Society shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code on said premises; and the Society shall not use or permit the use of said premises for any unlawful purpose.

27. WAIVER OF BREACH: The waiver by the City of any breach by the Society of any of the provisions of the Agreement

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shall not constitute a continuing waiver or a waiver of any subsequent breach by the Society either of the same or a different provision of this Agreement.

28. **HOLDOVER:** Should the Society hold over and continue maintaining and operating the ZOO AND PARK after the end of the term on this agreement, with the expressed or implied consent of the City, such holding over shall be construed as a continuation of the agreement from month-to-month and upon the same terms and conditions as herein provided for the previous agreement. Any holdover shall terminate upon the commencement of a new agreement.

29. **NOTICES:** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to the City by the Society or the Society by the City shall be in writing and shall be deemed duly served and given when deposited in the United States mail, first-class postage prepaid, addressed as follows:

<u>CITY</u>	<u>SOCIETY</u>
City of Oakland	East Bay Zoological Society
Office of the City Manager	P. O. Box 5238
475 - 14th Street	9777 Golf Links Road
Oakland, CA 94612	Oakland, CA 94605
Attn: Avon Manning	Attn: Dr. Joel Parrott

IN WITNESS WHEREOF, the City Manager of the City of Oakland has caused the name of the City of Oakland to be affixed

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hereto; and the East Bay Zoological Society, Inc., has caused its name and seal to be hereunto affixed, all in quadruplicate, the day and year first above written.

CITY OF OAKLAND
municipal corporation

EAST BAY ZOOLOGICAL SOCIETY, INC. a
nonprofit public interest corporation

By: _____
Title: _____

By: _____
Sheldon Ramsay, President

Approved as to Form and Legality

Assistant City Attorney

Accounting Office No. _____

sr:PRAC/Council:b:\zoongmt.lse

Exhibit A

RE: 4069 IN: 201
75-117100

NO. 75-117100

RECORDED

1975 AUG 18 AM 11:19

RENE C. DAVIDSON
ALAMEDA COUNTY, CA.

14404

1 Recording Requested by:
2 City of Oakland and State of California
3 Document Entitled to Free Recordation
4 Pursuant to Government Code Section 6103
5 Not Subject to California Documentary
6 Stamp Act

7 When Recorded Mail To:
8 City of Oakland
9 Parks and Recreation Department
10 1520 Lakeside Drive
11 Oakland, California 94612

12 I. J. TAX DUE

DH

Space above for Recorders Use

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AGREEMENT AND QUITCLAIM DEED

Grantor: State of California
Grantee: City of Oakland
Project: Knowland State
Arboretum and Park

THIS INDENTURE, made and entered into this 4th day of March
1975, by and between the STATE OF CALIFORNIA, acting through the Department of
Parks and Recreation, and the CITY OF OAKLAND, a municipal corporation;

W I T N E S S E T H:

WHEREAS, pursuant to Chapter 753, Statutes of 1973 of the State of
California the Director of Parks and Recreation with the approval of the
Director of General Services may convey those certain lands and improvements
thereon known as the Knowland State Arboretum and Park to the CITY OF OAKLAND,
a municipal corporation, for public park purposes;

1 NOW, THEREFORE, THE STATE OF CALIFORNIA, acting by and through its
2 Director of Parks and Recreation, pursuant to Chapter 753, Statutes of 1973,
3 for valuable consideration receipt of which is hereby acknowledged, does hereby
4 convey to the CITY OF OAKLAND, a municipal corporation, for public park purposes
5 all right, title and interest of the STATE OF CALIFORNIA in and to all that
6 certain real property situated in the City of Oakland, County of Alameda, State
7 of California within Knowland State Arboretum and Park and described as follows:

8
9 Parcel A:

10 All that certain real property described in the DEED from the
11 ALAMEDA COUNTY ZOOLOGICAL SOCIETY, a California Corporation to
12 the State of California, dated October 29, 1948, and recorded
as document number AD64184 on September 21, 1949 in Book 5892,
Page 341, Official Records of Alameda County, California.

13 Excepting and reserving therefrom to the State of California
14 all that certain real property described as PARCEL ONE in that
15 certain AGREEMENT between the DEPARTMENT OF PARKS AND RECREATION,
16 Division of Beaches and Parks and the DEPARTMENT OF PUBLIC WORKS,
Division of Highways dated February 9, 1965, and recorded as
document number AX78897 on June 8, 1965, in Reel 1523, Image
365, Official Records of Alameda County, California.

17 Parcel B:

18 All that certain real property described in the DEED from
19 W. L. MAYNARD, INCORPORATED to the State of California,
dated October 16, 1956, and recorded as document number
20 AM11912 on February 1, 1957 in Book 8276, Page 155, Official
Records of Alameda County, California.

21 Parcel C:

22 All that certain real property described in the DEED from J. A.
23 CLAPPER and BEULAH CAROL CLAPPER, his wife, to the State of
California, dated November 30, 1956, and recorded as document
24 number AM40665 on April 23, 1957, in Book 8346, Page 127,
Official Records of Alameda County, California.

25 Parcel D:

26 All that certain real property described in the DEED from
27 HOWARD WATT and ALMA WATT, Husband and Wife, to the State of
California, dated April 19, 1957, and recorded as document

1 number AM83139 on August 21, 1957, in Book 8448, Page 169,
2 Official Records of Alameda County, California.

3 Parcel E1:

4 All that certain real property described in the DEED from
5 LLOYD F. BAMBAUER, JOHN P. BAMBAUER, GEORGE B. BAMBAUER,
6 LOUISE L. STRUVE, who acquired title as Louise L. Bambauer,
7 DOLORES REINHART, MARIAN BERNSTEIN, MOLLIE VAN NORTWICK, who
8 acquired title as Mollie See, CECILE MORROW, PETER DE MONT
9 and NELLIE K. BAMBAUER, to the State of California, dated
10 August 30, 1957, and recorded as document number AP37264
11 on April 15, 1958, in Book 8646, Page 311, Official Records
12 of Alameda County, California.

13 Parcel E2:

14 All that certain real property described in the TRUSTEE'S
15 DEED from BANK OF AMERICA NATIONAL TRUST AND SAVINGS
16 ASSOCIATION, a national banking association, as Trustee
17 under the will of GEORGE R. DEMONT, alias, Deceased, to the
18 State of California, dated April 23, 1957, and recorded as
19 document number AP37265 on April 15, 1958, in Book 8646,
20 Page 317, Official Records of Alameda County, California.

21 Parcel E3:

22 All that certain real property described in the DEED from
23 W. L. MAYNARD, INCORPORATED, to the State of California,
24 dated October 16, 1956, and recorded as document number
25 AP37266 on April 15, 1958, in Book 8646, Page 320, Official
26 Records of Alameda County, California.

27 Parcel F:

All that certain real property described in the DEED from
W. L. MAYNARD, INCORPORATED, a California corporation, to the
State of California dated November 21, 1962, and recorded as
document number AU25249 on February 11, 1963, in Reel 797,
Image 647, Official Records of Alameda County, California.

Parcel G:

All that certain real property described as PARCELS FOUR AND
FIVE in that certain AGREEMENT between the DEPARTMENT OF PARKS
AND RECREATION, Division of Beaches and Parks and the DEPARTMENT
OF PUBLIC WORKS, Division of Highways dated February 9, 1965,
and recorded as document number AX78897 on June 8, 1965, in
Reel 1523, Image 365, Official Records of Alameda County,
California.

Excepting and reserving from Parcels, A, B, C, D, E1, E2, E3,
F, and G above to the State of California all right, title

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and interest it may have in and to all deposits of minerals, including oil and gas, in such land and to the State of California or persons authorized by the State of California the right to prospect or mine, and remove such deposits from such property without, however, the right to enter upon the surface of the land or any part of said subsurface of the land within one hundred (100) feet of the surface thereof.

This conveyance is made upon the condition that in the event the CITY OF OAKLAND, a municipal corporation, ceases to use the property for public park purposes, the hereinabove described property shall revert to the STATE OF CALIFORNIA.

It is mutually agreed by the parties hereto that the agreement and lease dated December 1, 1949 and the amendments thereto dated May 15, 1958, and September 22, 1966, between the parties hereto for the operation of Knowland State Arboretum and Park are hereby terminated.

IN WITNESS WHEREOF, the parties have executed this instrument the date first hereinabove appearing.

RECEIVED
JUL 14 1975
[Signature]
Chief Land Agent

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION
Herbert Rhodes, Director

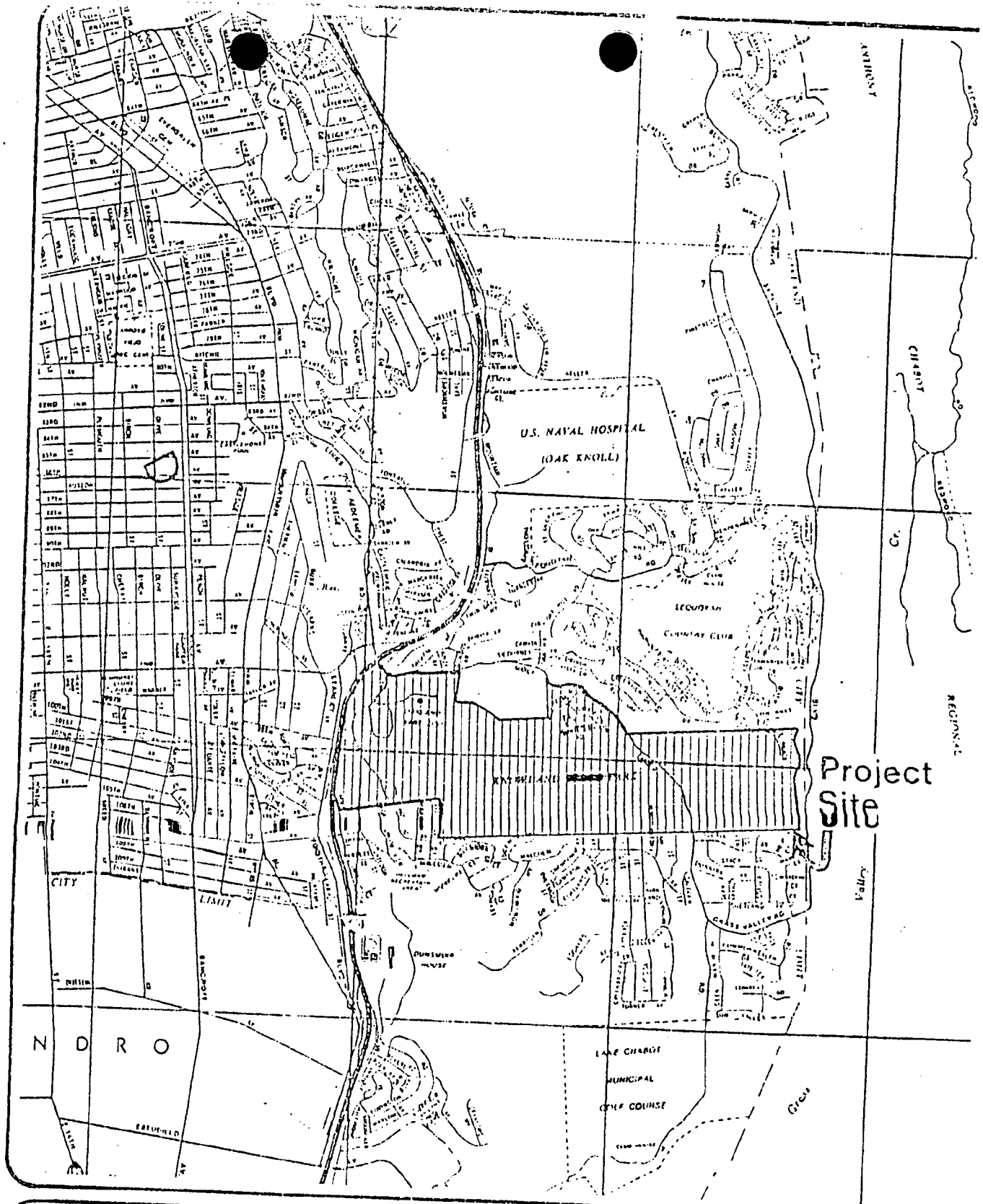
By _____
CITY OF OAKLAND, a municipal corporation

By *[Signature]* ASSISTANT
CITY MANAGER

[Signature]

By *[Signature]* City Manager

[Handwritten notes]



Site Location Map

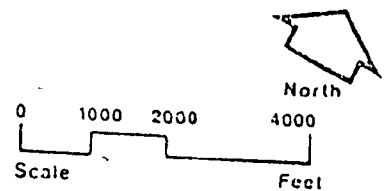


Figure No. 2

Exhibit B