

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE LOS ANGELES ZOO AND BOTANICAL GARDENS
AND
THE GREATER LOS ANGELES ZOO ASSOCIATION
FOR
CONCESSION OPERATIONS**

This Memorandum of Understanding (MOU) is entered into as of July 1, 2016, between the City of Los Angeles through the Zoo Department (Zoo) and the Greater Los Angeles Zoo Association (GLAZA) for concession operations at the Zoo.

1. Governance

Operating Agreement

The City of Los Angeles (City), through the Zoo, entered into an Operating Agreement with GLAZA for the purpose of obtaining assistance in establishing, developing, beautifying and improving the Zoo (Los Angeles City Council File No. 94-0989-S1). The Operating Agreement was dated July 1, 1997, executed on September 29, 1997 and expires on September 29, 2022. In accordance with Section III of the Operating Agreement, the General Manager of the Zoo (Zoo Director) is authorized to enter into one or more memorandum of understanding with GLAZA, on behalf of the City, as sub-agreements to the Operating Agreement. This MOU details what the parties have agreed to perform, the consideration to be exchanged between the parties and the terms of performance.

Concession Agreement

A separate agreement, titled "Concession Agreement Between the City of Los Angeles and Greater Los Angeles Zoo Association" (Concession Agreement) defines the contractual relationship between the City and GLAZA whereby the City has granted to GLAZA the exclusive right and privilege to operate and maintain all approved concessions on Zoo premises (executed February 1981). The Term of the Concession Agreement began February 12, 1981 and was to expire February 11, 2006. The Operating Agreement however extended the term of the Concession Agreement to February 11, 2016. By its action on February 10, 2016, the City Council approved the First Amendment to the Operating Agreement and extended the term of the Concession Agreement to August 31, 2016 (C.F. 14-0600-S223). By its action on August 24, 2016, the City Council approved the Second Amendment to the Operating Agreement and extended the term of the Concession Agreement through August 31, 2017 with a six month renewal option, to allow time for the issuance of the new Concessions RFP and the selection of a proposed vendor, subject to the review of the City Attorney as to form (C.F. 14-0600-S223).

Concession Services Agreement

In accordance with Section IV.A of the Operating Agreement, the City granted GLAZA the authority to subcontract for concession services pursuant to a Request for

Proposals process meeting all City requirements. As a result, GLAZA executed an agreement (titled the Concession Services Agreement for Los Angeles Zoo by and between Greater Los Angeles Zoo Association and Service America Corporation – Service System Associates, A Joint Venture) (Services Agreement) with Service America Corporation/Service System Associates (Concessionaire). The Services Agreement was executed October 1, 1997, and was to expire September 30, 2007, which term was extended by GLAZA. The Services Agreement states that any option to renew shall be at the sole discretion of GLAZA, and will be exercised by giving Concessionaire a preliminary notice of renewal not later than six months prior to the ending of the then current term. Concessionaire has the right to decline any option renewal by providing GLAZA with written notice within 30 days of receiving the option renewal. Since the execution of the original Services Agreement, the following amendments have been executed:

(First) Amendment to Services Agreement

GLAZA and Concessionaire entered into a (First) Amended Agreement which provided for additional capital investment by Concessionaire and a modified commission structure. The Amended Agreement was executed July 1, 2001.

Second Amendment to Services Agreement

GLAZA and Concessionaire entered into a Second Amendment to the Services Agreement which provided for an extension of the term of the agreement from September 30, 2007 to September 30, 2009 along with certain modifications to terms and conditions. The Second Amendment was executed on May 3, 2007.

Third Amendment to Services Agreement

GLAZA and Concessionaire entered into a Third Amendment to the Services Agreement which provided for an extension of the term of the agreement from September 30, 2009 to September 30, 2011 along with certain modifications to terms and conditions. The Third Amendment was executed on September 30, 2009.

Fourth Amendment to Services Agreement

GLAZA and Concessionaire entered into a Fourth Amendment to the Services Agreement which provided for an extension of the term of the agreement from October 10, 2011 through February 11, 2016. The Fourth Amendment was executed on December 11, 2014.

Fifth Amendment to Services Agreement

GLAZA and Concessionaire entered into a Fifth Amendment to the Services Agreement which provided for an extension of the term of the agreement from February 12, 2016 through August 31, 2016. The Fifth Amendment was executed on June 17, 2016.

Sixth Amendment to Services Agreement: Under Negotiation

In July 2016, GLAZA informed Concessionaire of its desire to negotiate a Sixth Amendment to the Services Agreement which will extend the term of the agreement

from September 1, 2016 through August 31, 2017. GLAZA is now in negotiations for the terms and conditions of this Sixth Amendment.

Execution Authority

Pursuant to the Operating Agreement, each sub-agreement may have a maximum term of three years and is subject to the approval of the City Attorney as to form and legality and shall conform with and carry out the objectives and strategies in the Los Angeles Zoo Business and Marketing Plan (Plan), as approved by the City Council.

On September 23, 2014, the City Council approved the Zoo’s updated Three-Year Business and Marketing Plan dated July, 2014 (C.F. 14-0600-S223). The Plan, developed by the Zoo and GLAZA and which covers Fiscal Years 2014-15 through 2016-17, outlines four primary goals that focus on the Zoo campus, conservation, community and human capital. The Plan also contains strategies for achieving established goals and includes key metrics and assumptions utilized in the development of the Plan.

2. Term of MOU

This MOU is effective for a one-year period during the parties’ fiscal years which run July 1, 2016 to June 30, 2017 (“Term”). The Program Description and budgets below reflect activity during the entire fiscal year. The Zoo and GLAZA may amend this MOU by written agreement during its term should they mutually agree to change the program outlines and budget.

3. Program Description

This MOU covers the concession operation at the Zoo, including, but not limited to, food services, vending of food products, gift shops, tram services, rental of wheelchairs and strollers, vending of special products such as plastic animals, pennies and photos, catering and the rental of Zoo facilities by outside groups.

3.1 *Main Concessions* - As of October 1, 1997, GLAZA sub-contracted with Concessionaire, granting them (i) the sole and exclusive right to operate the food and refreshment and gift shop concessions, (ii) the sole and exclusive right to sub-contract the operation of vending machines, tram operations and stroller and wheelchair rental concessions, and (iii) the right to be the “preferred” non-exclusive caterer at the Zoo. GLAZA took over the site rental responsibilities in 2013, pursuant to the Marketing and Public Relations and Site Rentals and Catered Events.

Estimated Budget: Concessions Revenue, Commissions, Transfers and Adjustments for the Fiscal Year July 1, 2016 to June 30, 2017.

<i>Category</i>	<i>Amount</i>
Total Gross Revenue	\$ 11,239,994
Less In-house Catering	<u>(100,832)</u>

Total Commissionable Revenue	\$ 11,139,162
Commissions	\$ 2,244,874
Less Transfer to City	(1,113,916)
Less GLAZA Admin Fee	<u>(334,175)</u>
Remainder to Zoo Surplus Development Fund	\$ 796,783

3.1.1 Estimated Commissions for 2016-17 of \$2,244,874 have been budgeted by GLAZA and Concessionaire and reviewed by the Zoo.

3.1.2 In accordance with the Services Agreement, Section 1R and Section 16D, catering contracted by the Zoo or GLAZA is exempt from commissions.

3.1.3 *Annual Commission Enhancement* - Concessionaire will pay to GLAZA an Annual Commission Enhancement based on annual attendance for each contract year (October 1 to September 30) beginning October 1, 2007. As this enhancement is additional commission, but not additional gross commissionable revenue, the full amount goes to the Zoo Surplus Development Fund.

3.1.4 In accordance with the Concession Agreement, 10% of the preceding month's Gross Commissionable Revenue (from concessions receipts as defined in Section VI of said Agreement,) will be transferred monthly to the Zoo Department by the 15th day of the following month.

3.1.5 As mutually agreed upon, and as a continuation of past practice, 3% of the Gross Commissionable Revenue will be retained by GLAZA as an administrative fee and to cover administrative costs including, but not limited to, insurance, legal support, taxes, consultants for on-going operations and long-term planning and staff time related to the management and oversight of the Concessionaire and the Services Agreement.

3.1.6 The remaining commission (including the Annual Commission Enhancement) will be placed in a separate GLAZA fund. The net surplus in this account at the end of each fiscal year will be transferred to the Zoo Surplus Development Fund, restricted to use by the Zoo Director. On an annual basis, the Zoo Director will present a budget to GLAZA authorizing expenditures of part or all of the accumulated surplus in the Zoo Surplus Development Fund.

3.2 *Special Vending* - The concession operation at the Zoo has always included some sub-contracted machines vending products other than food. These machines are owned and maintained by other companies who remit to GLAZA a portion of the revenue collected in the machines.

Estimated Budget: Special Vending Revenue and Transfers for the Fiscal Year July 1, 2016 to June 30, 2017.

<i>Category</i>	<i>Amount</i>
Special Vending Revenue	\$ 158,311
Special Vending Commissions	\$ 69,294
Less Transfer to City	(15,831)
Less GLAZA Admin Fee	(4,749)
Remainder to Zoo Surplus Development Fund	<u>\$ 48,714</u>

3.2.1 Estimated Special Vending Commissions for 2016-17 of \$69,294 have been budgeted by GLAZA and reviewed by the Zoo.

3.2.2 As mutually agreed upon, and in conformity with Main Concessions, 10% of the preceding month's Special Vending Revenue will be transferred monthly to the Zoo by the 15th day of the following month. 3% of the Special Vending Revenue will be retained by GLAZA as an administrative fee and to cover administrative costs including, but not limited to, insurance, legal support, taxes, consultants for on-going operations and long-term planning and staff time related to the management and oversight of the providers of Special Vending.

3.2.3 The remaining Special Vending Commissions will be placed in a separate GLAZA fund. The net surplus in this account at the end of each fiscal year will be transferred to the Zoo Surplus Development Fund, restricted to use by the Zoo Director, as outlined in 3.1.6 above.

3.3 *Exclusive or Official Product and Service Agreements* - As part of the Zoo's operations, GLAZA and/or the Concessionaire may have opportunities for product or service exclusivity in exchange for rights, benefits and privileges (financial and in-kind). Negotiations of any and all agreements shall be conducted together with the Zoo Director or his designee and GLAZA. Subsequent product or service exclusivity agreements shall represent a mutual agreement between the Zoo and GLAZA on the disposition of benefits received in exchange (financial and in-kind), shall be in writing and shall not extend beyond one year and shall be approved by the CAO and City Attorney.

4. Other Matters

4.1 Monthly financial statements will be provided to the Zoo Director or his designee. Reports will provide gross revenue, sales per visitor (where appropriate), commission computation and distribution of funds to Zoo, GLAZA, and Zoo Surplus Development Fund. The Zoo Director or his designee(s) and the GLAZA President or her designee(s) will meet on a regular basis to review the finances of Concessions operations and Special Vending contractors. GLAZA will seek the Zoo's advice in matters pertaining to the management of the Concessions and Special Vending.

4.2 Zoo Director will be a voting member of the Concessions Committee of the GLAZA Board of Trustees.

4.3 The Concessions Committee will meet to monitor vendor selection, quality, cost, safety, customer service and other issues.

4.4 The Concessions Committee will review with Concessionaire and contractors the required capital investment as outlined in their Agreements.

4.5 The Concessions Committee will develop tools and strategies, including market research and consulting, to be in concert with the Zoo's development of a new Master Plan and with the Zoo's updated Three-Year Business and Marketing Plan.

4.6 The City has authorized GLAZA to prepare an RFP for a concessionaire and to begin the RFP process and to determine the optimal term for the agreement between GLAZA and the concessionaire selected through the RFP process that would provide the Zoo with the optimal benefits. GLAZA is working with the Concessions Committee and an outside consultant to make this determination which shall be reported back to City Council.

5. Miscellaneous Provisions

5.1 *Choice of Law & Venue* - Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the City of Los Angeles. Unless where preempted by Federal laws, this MOU shall be enforced and interpreted under the laws of the State of California and the City of Los Angeles, without any regards to the conflict of law principles. Parties hereby agree to submit to the exclusive jurisdiction of and venue in the courts of competent jurisdiction in the County of Los Angeles in any disputes related to or arising out of this MOU.

5.2 *Merger* - This MOU along with the Operating Agreement and Concession Agreement constitute the full agreement of the Parties with respect to the subject matter hereto and supersedes all prior agreements or MOUs, whether written or oral, with respect to such subject matter.

5.3 *No Intended Third Party Beneficiaries* - Parties herein do not in any way intend to create or confer any benefits to any third party.

5.4 *Waivers* - The failure to exercise any remedy or to enforce any right provided in this MOU shall not constitute a waiver of such remedy or right or of any other remedy or right provided herein. A Party shall be deemed to have waived any remedies or rights hereunder only if such waiver shall be in writing expressly.

5.5 *Assistance* - During the term of this MOU, each Party shall provide such reasonable assistance and cooperation as the other Party may require in connection with performance of the duties and obligations of each Party under this MOU.

5.6 *Assignment* - GLAZA shall not, by contract, operation of law, or otherwise, assign any rights under this MOU (in whole or in part), or delegate performance of any of obligations under this MOU without the Zoo's prior written consent.

5.7 *Headings* - Article and section headings used in this MOU are inserted for convenience only and are not intended to be part hereof or in any way to define, limit, describe or to otherwise be used in interpreting the scope and intent of the particular provisions to which they refer.

5.8 *Representation and Counseling* - Each Party was represented by legal counsel during the execution of this MOU.

5.9 *References to Other Agreements* – All references in this MOU to other agreements or past practices are for reference purposes only, and do not purport to provide validity or interpretation to the reference, the dates of execution, the term of the agreements or the stated purpose or authority of the agreements. The references are mere recitals without legal authority.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

FOR: The CITY OF LOS ANGELES,
Municipal Corporation
Acting by and through its
Zoo Department

For: GREATER LOS ANGELES ZOO A
ASSOCIATION (GLAZA)

By: _____
JOHN R. LEWIS
General Manager
Zoo Department

By: _____
CONNIE M. MORGAN
President
GLAZA

Date: _____

Date: _____

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

ATTEST:
HOLLY L. WOLCOTT, City Clerk

By: _____
DOV S. LESEL
Assistant City Attorney

By: _____
Title: _____

Date: _____

Date: _____

TERM OF THIS AGREEMENT: July 1, 2016 to June 30, 2017

Executed this ____ day of _____, 2016.

BUSINESS TAX REGISTRATION CERTIFICATE NO: _____

AGREEMENT NO: _____