

**CITY OF LOS ANGELES**  
INTER-DEPARTMENTAL CORRESPONDENCE

0150-11358-0000

Date: May 7, 2019

To: Health, Education, Neighborhood, Parks, Arts, and River Committee

From: Richard H. Llewellyn, Jr., City Administrative Officer

Sharon M. Tso, Chief Legislative Analyst

Subject: **SIXTH AMENDMENT TO THE OPERATING AGREEMENT (OPERATING AGREEMENT) BETWEEN THE CITY OF LOS ANGELES AND THE GREATER LOS ANGELES ZOO ASSOCIATION (C.F. 14-0600-S223)**

**RECOMMENDATIONS:****That the Council subject the approval of the Mayor:**

Approve the attached Sixth Amendment to the Agreement between the City of Los Angeles and the Greater Los Angeles Zoo Association (GLAZA) (Amendment) for the management of concessions at the Los Angeles Zoo through September 29, 2022 and authorize the Zoo Director to execute the Amendment subject to the approval of the City Attorney as to form (Attachment A).

**That the Council:**

1. In accordance with Section 7 of the Amendment, instruct GLAZA, with the assistance of the City Administrative Officer (CAO), Chief Legislative Analyst (CLA), Zoo Department and Office of the Controller, to:
  - a. Establish a cost allocation methodology that GLAZA would utilize to clearly identify the direct and indirect costs of administering the concessions contract and that considers best accounting practices for non-profits to monitor these types of costs within 30 days of execution of this Amendment;
  - b. Complete the cost allocation study and submit it to the City for review and approval no later than October 1, 2019; and
  - c. Report on the status of the cost allocation study to the Health, Education, Neighborhoods, Parks, Arts and River Committee monthly or as requested by the Committee Chair.
2. Instruct the CAO, CLA, with assistance from the Zoo Director and City Attorney, to negotiate a new agreement between the City of Los Angeles and GLAZA since the

existing Operating Agreement will expire on September 29, 2022 and transmit a proposed agreement to the Council for approval within 120 days.

3. Instruct the CAO, CLA, with assistance from the City Attorney, to incorporate the provisions of the Amendment in the proposed agreement, as appropriate, and any additional concession related requirements which may be necessary.
4. Instruct the Offices of the CAO and the CLA, with assistance from the Zoo Director and City Attorney, to incorporate the terms of all relevant Memoranda of Understanding (MOU), including but not limited to, the Marketing MOU between the Zoo and GLAZA into the new agreement.
5. Authorize the CAO, CLA, with the assistance of the City Attorney and Zoo Director, to make technical adjustments to Amendment.

### **FISCAL IMPACT STATEMENT**

There is no General Fund impact. GLAZA will receive a fixed fee of \$275,000 for the 2019-2020 fiscal year for the administration of the concessions contract to be paid from revenue received from concessions at the Zoo. Upon approval by Council, the Concession Services Agreement between GLAZA and the selected concessionaire provides a minimum guarantee of \$2,500,000 in annual revenue. Under the terms of the proposed Amendment, the Zoo will receive 80 percent of the commission payments made by the concessionaire to GLAZA in accordance with the terms of the Concession Services Agreement, which at a minimum will result in annual revenue to the Zoo of \$2.0 million. Under the existing agreement, the Zoo receives 10 percent of gross commissionable revenue, which is estimated to be approximately \$1.1 million for the 2018-19 Fiscal Year.

### **SUMMARY**

The Los Angeles Zoo is an important cultural, educational and recreational institution in the City of Los Angeles. The long-standing partnership with GLAZA is important to the future success of the Zoo. The modernization of the existing agreements with GLAZA will strengthen the relationship with the City and further support the Zoo in achieving its mission. This proposed Sixth Amendment is the first step in cementing our long-term partnership in the future. GLAZA and the City are in mutual agreement on the terms of the proposed Sixth Amendment with the exception of the Concession Management Fee of \$275,000, which is discussed in greater detail below.

On February 12, 1981, the City and GLAZA executed the "Concession Agreement between the City of Los Angeles and the Greater Los Angeles Zoo Association" that grants GLAZA the right to operate all approved concessions at the Zoo (1981 Concession Agreement). The 1981 Concession Agreement was set to expire on February 11, 2006, but was extended by the Operating Agreement for ten years to February 11, 2016. It has subsequently been extended through multiple amendments to the Operating Agreement.

On November 6, 2018, the Council approved a joint report from the CAO and CLA that instructed the Zoo, with assistance from the CAO, CLA and the City Attorney, to negotiate a new

Concession Agreement with GLAZA to replace the existing 1981 Concession Agreement. The Council further instructed that this new Concession Agreement between the City and GLAZA be transmitted for approval concurrently with the selection of a new concessions operator at the Zoo. In order to accommodate the RFP and selection process of the new concessions operator, the Council authorized City staff to execute the Fifth Amendment to the Operating Agreement on February 19, 2019. Under the Fifth Amendment, the 1981 Concession Agreement expires on August 16, 2019.

GLAZA completed the selection process for the new concessionaire and a report recommending the selection of Systems Services Associates (SSA) as the new concessionaire was transmitted to Council on April 17, 2019 (C.F.14-0600-S223). As instructed by the Council, the CAO and CLA are transmitting this report related to a new concessions agreement between the City and GLAZA to be considered concurrently with their report. GLAZA and the City are in agreement on the terms proposed in the Amendment except for the contract administration fee discussed below. City staff is recommending a flat fee and GLAZA would like to retain a percentage-based fee.

## **SIXTH AMENDMENT TO THE OPERATING AGREEMENT BETWEEN THE CITY AND GLAZA**

Our Offices, the Zoo, the City Attorney and GLAZA met on multiple occasions throughout March and April 2019 to develop an agreement to replace the current 1981 Concession Agreement. In an effort to consolidate separate agreements with GLAZA into a single agreement, GLAZA and the City mutually agreed to amend the existing Operating Agreement to include the provisions related to concessions as detailed in this report and Attachment A rather than execute a separate concession agreement with GLAZA.

The proposed Amendment will have a term effective through the end of the current Operating Agreement, which expires on September 29, 2022. The Amendment requires GLAZA to remit into the Zoo Enterprise Fund 80 percent of the revenue collected from SSA under the terms of the proposed Concession Services Agreement, which at a minimum will result in annual revenue to the Zoo of \$2.0 million. The remaining 20 percent will be used to pay GLAZA's Contract Administration Fee and the balance will be deposited in the Zoo Surplus Development Fund (ZSDF). These funds will be restricted to use by the Zoo as determined by the Zoo Director. The Zoo Director will advise GLAZA of projected expenditures for all or part of the ZSDF funds annually.

### Contract Administration Fee

Under the 1981 Concession Agreement, GLAZA currently retains three percent of the Gross Commissionable Revenue as an administrative fee 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 current Concessionaire and the Services Agreement. In order to accurately align GLAZA's fee with the actual costs to administer the contract, our Offices requested information from GLAZA concerning their direct and indirect costs associated with the administration of concessions. After careful review and discussion with GLAZA regarding the costs they submitted, it was determined that the costs to

administer the concession contract were substantially less than the fee that had been retained by GLAZA in previous years. GLAZA reported that the direct cost is \$185,295 and \$92,648 in overhead costs for a total cost of \$277,943 for one full-time equivalent position for fiscal year 2019. In 2018, the City paid GLAZA \$366,598 for contract administration. As part of its due diligence efforts, City staff also reviewed historical data that GLAZA provided to the Office of the Controller as part of the audit from April 2018, entitled "Greater Transparency and Accountability at the Los Angeles Zoo" (Audit) that also demonstrated that the costs to administer the concession contract were less than the fee retained by GLAZA. City staff recommends and has discussed with GLAZA transitioning to a flat fee for concession contract administration. Under the proposed Amendment, City staff proposes to pay GLAZA \$275,000 for administration of the concessions contract in the 2019-20 fiscal year, which takes into account their cost estimates for fiscal year 2019 and historical cost information.

For future years, the Amendment requires GLAZA to submit an annual cost allocation study to the City with documentation on the direct and indirect costs associated with the administration of the Concession Services Agreement by October 1st. The City will review and approve the proposed cost allocation study and the requested fee for the upcoming fiscal year. Adjustments to the flat fee, including any increases to the fee for additional services that support other Zoo initiatives, will be considered as part of the City's annual budget process. The intent of the study is to delineate clearly, direct and indirect expenses related to contract administration.

#### Additional Concession Revenue

The proposed Amendment authorizes GLAZA to enter into sponsorship agreements and requires that 100 percent of these monies be dedicated to marketing the Zoo. GLAZA, in consultation with the Zoo Director, will make decisions concerning the use of these funds. In addition, all such sponsorship agreements and revenue sharing from said agreements will be in writing and will be conducted with the Zoo Director. This will formalize GLAZA's current processes and engage the Zoo in the sponsorship agreement discussions.

The proposed Amendment also provides guidelines on additional funding that may be received by GLAZA from the SSA. Section 10 of the Amendment requires that GLAZA, SSA and the Zoo Director to mutually agree upon the use of the additional funds. Furthermore, if the additional funding exceeds a total of \$50,000 in any given year, Council approval will be required.

#### **2018 OFFICE OF THE CONTROLLER AUDIT**

The terms of the proposed Amendment consider the recommendations included in the Audit. The Audit recommendations focused on the need to establish stronger fiscal controls and oversight of the revenue sharing arrangements with GLAZA. The Audit further recommended the establishment of metrics and that the current revenue sharing agreements be re-evaluated and clearly define direct and indirect costs authorized to be charged by GLAZA for the administration of not only concessions, but all revenue generating programs.

The proposed Amendment addresses these recommendations, along with a number of issues, by:

- Ensuring that the Zoo benefits from the revenue potential from the new commission structure associated with the selection of a new concessionaire;
- Providing GLAZA with a fixed contract administration fee of \$275,000 for concession administration for the 2019-2020 fiscal year;
- Requiring GLAZA to submit a cost allocation study annually on October 1<sup>st</sup> that clearly delineates direct and indirect costs associated with contract administration and aligns review of the Contract Administration Fee with the Zoo's annual budget preparation process;
- Ensuring consistency with the new Concession Services Agreement between GLAZA and SSA; and
- Requiring GLAZA to submit monthly financial statements regarding the gross revenue from concessions and reports related to all revenue generated and projected, which provides for better accounting, control and transparency of costs.

Attachment B summarizes the Audit recommendations and details how the Amendment addresses these recommendations.

## **NEXT STEPS**

If approved, the proposed Amendment will be incorporated into the existing Operating Agreement between the City and GLAZA. The Operating Agreement and the provisions of the proposed Amendment will be effective immediately. However, the City will pay the flat fee starting on July 1, 2019 and GLAZA will continue to receive its current fee of three percent of Gross Commissionable Revenue until June 30, 2019.

### Operating Agreement between the City and GLAZA

The existing Operating Agreement will expire on September 29, 2022, it is critical for negotiations of a new long-term agreement begin immediately. Our Offices, with assistance from the Zoo Director and the City Attorney, should undertake the negotiation of a new agreement with GLAZA and present that agreement to Council for approval with 120 days.

During the negotiations of the new agreement, the terms of the proposed Amendment and any necessary refinements or modifications can be discussed and potentially incorporated into a new agreement. As recommended in the Audit, City staff will also review agreements from other municipal zoos with operating arrangements similar to that of the Zoo and GLAZA to incorporate best practices into any new agreement.

The new agreement should also include, at a minimum, the following:

- Detailed description of the roles and responsibilities of both GLAZA and the Los Angeles Zoo;
- Provisions of Amendment No. 6 to the Operating Agreement concerning the administration of concessions;
- Elimination of the practice of separate Memoranda of Understanding and incorporate the terms of all existing separate Memoranda of Understanding into one agreement between the City and GLAZA;

- Provisions addressing all activities currently included in Memoranda of Understanding as attachments to the agreement;
- Revenue sharing policies for membership, nighttime ticketed events, catering, site rentals, and any other programs as necessary;
- Requirements for tracking and reporting of administrative costs;
- Requirements for tracking and auditing of all revenue sources;
- Ability of the City to appoint members to the GLAZA Board;
- Policies and Procedures to address use of funds, capital campaigns, ownership of funds; and
- Clearly delineated cost allocation plan for all revenue sharing arrangements, including membership, nighttime ticketed events, catering, site rentals, concessions, marketing and any other programs as necessary.

*RHL: SMT: KEK: YC: MTS: CBS 08190062c*

**SIXTH (6<sup>th</sup>) AMENDMENT  
TO THE 1997 OPERATING AGREEMENT  
BY AND BETWEEN THE CITY OF LOS ANGELES (“CITY”)  
AND THE  
GREATER LOS ANGELES ZOO ASSOCIATION (“GLAZA”)  
RELATING TO THE  
1980 CONCESSION AGREEMENT**

This sixth (6<sup>th</sup>) amendment (“**Amendment**”) dated as of May\_\_\_\_, 2019, to the agreement entitled Operating Agreement by and between the City of Los Angeles, a Municipal Corporation and the Greater Los Angeles Zoo Association, a California Nonprofit Corporation (CF No. 94-0989-S1), dated as of July 1, 1997 (“**Operating Agreement**”), replaces all future Memorandum of Understanding (MOU) for concession operations between City and GLAZA referenced in the Operating Agreement and terminates and replaces the concession agreement between the City and GLAZA for the concessions at the Los Angeles Zoo and Botanical Gardens (“Zoo”) entitled Concession Agreement between the City of Los Angeles and the Greater Los Angeles Zoo Association (“**Concession Agreement**”) entered into as of February 12, 1981, granting GLAZA the right to operate all approved concessions at the Zoo by amending Section IV of the Operating Agreement. The Operating Agreement expires September 29, 2022. Section IV B of the Operating Agreement originally extended the term of the Concession Agreement by ten years, to February 11, 2016.

The 1<sup>st</sup> Amendment to the Operating Agreement, amended Section IV (Amendments to Concession Agreement between City and GLAZA), subsection B (Term) of the Operating Agreement, by extending the term of the Concession Agreement to August 31, 2016.

The 2<sup>nd</sup> Amendment to the Operating Agreement amended Section IV (Amendments to Concession Agreement between City and GLAZA); subsection B (Term) of the Operating Agreement, by extending the term of the Concession Agreement to August 31, 2017.

The 3<sup>rd</sup> Amendment to the Operating Agreement amended Section IV (Amendments to Concession Agreement between City and GLAZA), subsection B (Term), by extending the term of the Concession Agreement to August 31, 2018 (C.F. 14-0600-S223).

The 4<sup>th</sup> Amendment to the Operating Agreement amended Section IV by extending the Concession Agreement to February 17, 2019, with a six-month renewal option at the City's discretion, to allow time for the issuance of a Request for Proposals (RFP) for concessions, and the selection of the proposed vendor, subject to City Council approval (C.F. 14-0600-S223).

The 5<sup>th</sup> Amendment to the Operating Agreement amended Section IV (Amendments to Concession Agreement between City and GLAZA), subsection B (Term) by extending the term of the Concession Agreement to August 16, 2019 (C.F. 14-0600-S223).

This 6<sup>th</sup> Amendment to the Operating Agreement terminates and replaces the 1980 Concession Agreement by amending Section IV of the Operating Agreement as approved by City Council (C.F. 14-0600-S223) on \_\_\_\_\_, 2019, and this revised Section IV will terminate on the termination date of the Operating Agreement, except as otherwise provided.

**IV. AMENDMENTS TO CONCESSION AGREEMENT BETWEEN CITY AND GLAZA**

The 1980 agreement entitled "Concession Agreement between the City of Los Angeles and the Greater Los Angeles Zoo Association" whereby the City granted GLAZA the exclusive right to operate and maintain all approved concessions on Zoo premises is hereby fully incorporated into this Section IV of the Operating Agreement and amended as follows:

A. SUBCONTRACTING OF ZOO CONCESSIONS BY GLAZA

1. Selection of Operator for Zoo Concessions. Pursuant to City Council approval on November 6, 2018, GLAZA was authorized to issue a Request for Proposals ("RFP") for an operator to manage the concession operations at the Zoo ("**Operator**") pursuant to a Concessions Services Agreement that will be executed between GLAZA and the Operator ("**Concession Services Agreement**") for a ten-year period with a five-year option exercisable at the sole discretion of the City and GLAZA. The selected Operator and the Concession Services Agreement, as well as any amendments thereto, will be subject to City Council approval. GLAZA shall not directly or through another party, operate any concession business at the Zoo not in the approved Concession Services Agreement or in this Agreement.
2. Concession Operations. This Amendment applies to all concession operations 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 and all catering or catered events ("**Concession Operations**").
3. Commissions. GLAZA shall collect commissions and fees from Operator based on Operator's gross receipts from the various categories of Concession Operations as set forth in Section 11 – Concession Commissions - of the Concession Services Agreement.
4. Minimum Annual Guarantee. In the event the annual commissions and fees from Operator do not meet or exceed a minimum annual guaranteed amount, GLAZA shall collect from Operator the difference between the minimum annual guarantee set forth in Section 11 B. of the Concession Services Agreement ("**Minimum Annual Guarantee**") and the commissions and fees due and owed by Operator based on Operator's gross receipts.
5. Additional Commission. At the conclusion of the City's fiscal year, in addition to the above, GLAZA shall calculate and collect additional commission from an increased commission structure based on increases in annual Zoo attendance during daytime and nighttime hours ("**Additional Commission**"), as reflected in Section 11 C. of the Concession Services Agreement.
6. Vending Machines Revenue. The Concession Operations at the Zoo may include 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 ("**Special Vending Revenue**"). GLAZA shall annually provide Zoo with a list of the machines, their locations, products and gross revenue. All vending machines shall be approved by the Zoo Director in writing and the Zoo Director shall have the right to order removal of any vending machines upon thirty (30) days' notice in writing to GLAZA. The Special Vending Revenue shall be deposited into the Zoo Surplus Development Fund on the 15<sup>th</sup> of the month following receipt of the funds.



7. Concession Services; Contract Administration Fee

7.1 The City will pay GLAZA an administrative fee for the direct and indirect costs of administering the Concessions Services Agreement ("**Contract Administration Fee**"). The Contract Administration Fee shall consist of reimbursements: (1) for direct salary costs for positions directly managing the concessions, and (2) for allowable indirect costs similar to the approved City departmental cost allocation rate structure, paid by GLAZA for employee fringe benefits and administration and support to administer the Concessions Services Agreement. Employee fringe benefits consist of pension costs, health insurance, employee assistance, union dues and workers compensation costs. Administration and support consist of allowable support functions such as accounting, payroll, personnel, IT, insurance, legal, and audit costs.

7.2 For the period July 1, 2019, through June 30, 2020, the City will pay GLAZA a Contract Administration Fee of Two Hundred and Seventy Five Thousand Dollars (\$275,000) to administer the Concessions Services Agreement.

7.3 For the period July 1, 2020, through June 30, 2021, and annually thereafter, the Contract Administration Fee will be determined using a cost allocation study that GLAZA will submit annually on or before October 1 to coincide with the preparation of the Zoo Department's proposed budget for the upcoming fiscal year. The cost allocation study will be subject to review and approval by the City. The initial cost allocation study will be submitted by GLAZA on or before October 1, 2019. Requests for additional funding by GLAZA will be considered as part of the City's annual budget process.

7.4 GLAZA will retain 3 percent of the Gross Commissionable Revenue through June 30, 2019, to cover costs related to the management and oversight of the concessions.

8. Payments to the Zoo. GLAZA shall remit into the **Zoo Enterprise Trust Fund** eighty percent (80%) of all funds collected or to be collected from Operator for Concession Operations as specified in the Concession Services Agreement, from payments received or owed and due by Operator to GLAZA based upon the approved Commission Structure and the Minimum Annual Guarantee, along with supporting documents acceptable to and requested by City, within twenty (20) days from the time the funds are due and owing to GLAZA from Operator pursuant to the Concession Services Agreement.

GLAZA will transfer the remaining twenty percent (20%) collected from Operator for Concession Operations, as well as the commission from the Special Vending Revenue to the Zoo on a monthly basis by the 20th day of the following month, minus GLAZA's prorated share of the Contract Administration Fee into the **Zoo Surplus Development Fund**. Payment by Operator of the Commission Enhancement fees will be transferred into the Zoo Surplus Development Fund by September 30th of each year.

GLAZA shall provide monthly updates on deposits into the two Funds to the Zoo Director. The funds in the Zoo Surplus Development Fund will be restricted for use by the Zoo as determined by the Zoo Director, who will inform GLAZA of the anticipated expenditures of all or part of the accumulated funds in the Surplus Development Fund on an annual basis.

9. Agreements for Concession Product and Service Sponsorships; Marketing.

9.1 As part of the Zoo's operations, GLAZA may enter into contracts for products or services in exchange for rights, benefits and privileges (financial and in-kind). All such sponsorship agreements and revenue sharing arrangements derived from said agreements shall be in writing, shall be conducted together with the Zoo Director or designee. GLAZA shall seek and procure sponsorships from corporations and other sources whose corporate values align with the wholesome, family-friendly and conservation-focused nature of the Zoo. Sponsorship agreements shall be for family friendly and children appropriate products and GLAZA shall not seek nor procure sponsorships related to tobacco, firearms, federally controlled substances, adult entertainment (including adult book stores, adult theaters, adult websites or escort services, pornographic or obscene matters) or political election campaigns. Alcohol sponsorships shall be limited to evening events and alcohol products available for purchase by visitors over 21 years of age at Zoo facilities authorized and licensed to serve alcohol. GLAZA shall provide annual reports to the Zoo on all revenue (financial and in-kind) generated from all sponsorship agreements.

9.2 All concession sponsorship funds shall be used for Zoo marketing. Funds from all concession sponsorship agreements as well as any funds from contributions or other sources which are provided for Zoo marketing purposes shall be spent for Zoo marketing in consultation with the Zoo Director. GLAZA shall provide annual reports to the Zoo on all financial and in-kind revenue generated from concession sponsorship agreements.

10. Requests for Additional Funding from Operator. Any additional funding from Operator and their proposed uses shall be mutually agreed upon between Operator, GLAZA and the Zoo Director. If such additional funding exceeds \$50,000 annually from Operator, it shall require an amendment to the Concession Services Agreement between GLAZA and Operator and approval by City Council. GLAZA shall promptly notify the Zoo Director of any such funding requests and their proposed uses.

11. Financial Report Requirements and Related Items.

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

11.2 The Zoo Director may attend the meetings and provide input and guidance to the Concessions Committee of the GLAZA Board of Trustees which monitors vendor selection, quality, cost, safety, customer service and other issues such as Operator's required capital investment and shall provide regular reports to the City on the status of those investments and compliance with the Concession Services Agreement. Any working groups or committees at the staff level shall include Zoo employee participation as determined by the Zoo Director.

11.3 GLAZA shall comply with its obligations pursuant to the Concessions Services Agreement with Operator, including that all concession premises, facilities and equipment are properly maintained; that the services, signage, advertising, merchandise and food are appropriate in type, quality, cost and quantity in accordance with best concession practices; that it and Operator have appropriate licenses and permits, that any hazardous conditions, and/or safety and security deficiencies and violations are immediately brought to the Zoo's attention and promptly corrected; that there is no interference with the public's enjoyment of the Zoo premises including the use of the concession premises and surrounding areas; prohibit using the premises for any purpose not essential to the authorized operations; and that the Concession Operations are open to the public during the hours and days the Zoo is in operation as more fully set forth in the Concession Services Agreement.

11.4 City shall have full and absolute control of the Zoo premises including those used for concessions at all times and make such changes as deemed necessary by City. City and Zoo shall have the right to periodically enter upon and inspect all concession premises to determine if GLAZA and Operator are complying with the terms and conditions herein and in the Concession Services Agreement.

11.5 Repair, Maintenance and Replacement. GLAZA shall be responsible for ensuring that the Operator complies with Section 15 of the Concession Services Agreement related to the repair, maintenance, and replacement provisions. In the event that the Operator fails to comply with the provisions of Section 15 of the Concession Services Agreement, GLAZA shall be solely responsible for the cost and expense of all repairs, alterations, improvements, renewals, renovations or replacements to the Zoo facilities necessitated by Operator's operation, directly or through Operator, and transmit to the Zoo Director all reports relative to such repairs, maintenance and replacements as specified in Section 15. All alterations, repairs, renovations and improvements shall be done to the standards established by the City for construction or renovation of City buildings. The Zoo reserves the right to complete any repairs, alterations, improvements, renewals, renovations or replacements required under Section 15 of the Concession Services Agreement and GLAZA will reimburse the Zoo for all costs and expenses.

## 12. Performance Metrics

12.1 Annual Revenue Projections and Monthly Financial Reports. During the term of the Agreement, GLAZA shall be responsible for providing detailed annual revenue projections with monthly financial reports including explanations for deviations from the projections. GLAZA shall also provide operational reports detailing revenue by category of concession, i.e. food, retail, trams, catering, etc. GLAZA shall use its best effort to ensure that all sales by Operator generate business analytic reports such as full price sales and discounted/ member sales where feasible, preferably by utilizing a point-of-sale system that can track and monitor sales. GLAZA shall report to the City on whether Operator has satisfactorily performed on all evaluations of Concession Operations and service as measured by 'secret shopper' reviews, health and safety compliance reviews and customer service feedback.

12.2 Data Points and Reasons for Variances. Relevant Concession Operations' data points shall include: food, merchandise and amenities revenue, including food, merchandise

and amenities revenue per capita and revenue provided to the Zoo; concession product and service sponsorship revenue received and concession product and service sponsorship revenue provided to the Zoo. In addition, GLAZA shall provide the City with a monthly profit and loss statement on concession sales with a breakdown of expenses and net income reflecting actual vs. budget comparisons of shared revenue along with detailed reasons for any variances and the proposed actions to achieve the budgeted and contemplated projections and revenue goals and an annual income statement and balance sheet for the concession operations prepared by an independent CPA.

12.3 Cost Containment. GLAZA shall work with the Operator and Zoo to develop policies and procedures to ensure reasonableness of costs associated with the concession operations.

### 13. Miscellaneous Provisions

13.1 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. Unless preempted by Federal law, this Agreement shall be enforced and interpreted under the laws of the State of California and the City, without regard to conflict of law. The parties agree to submit to the exclusive jurisdiction and venue in the courts of competent jurisdiction in the County of Los Angeles in any disputes related to or arising out of this Agreement.

13.2 Merger. This Agreement constitutes the full agreement between GLAZA and the City with respect to the subject matter hereto and supersedes all prior agreements or MOUs, whether written or oral, with respect to such subject matter.

13.3 No Intended Third Party Beneficiaries. Parties herein do not in any way intend to create or confer any benefits to any third party, including Operator.

13.4 Waivers. The failure to exercise any remedy or to enforce any right provided in this Agreement 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 waiving the remedy or right.

13.5 Assistance. During the term of this Agreement, 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 Agreement.

13.6 GLAZA shall not, by contract, operation of law or otherwise, assign any rights under this Agreement (in whole or in part) or delegate performance of any of obligations under this Agreement, without the Zoo's prior written consent and approval by City Council.

13.7. Each party was represented by legal counsel on this Amendment.

13.8 All references to other agreements or past practices are for reference purposes only, and do not purport to provide validity or interpretation to the reference or the stated purpose or authority of the agreements, but are mere recitals without legal authority.

13.9. The provisions of City Standard Terms and Conditions (Rev. 10.17, V-3) are incorporated herein and replace the previous Standard Terms and Conditions, and shall be incorporated into all of GLAZA's contracts for concessions and sponsorships at the Zoo. All references to Contractor in the City Standard Terms and Conditions shall refer to GLAZA for purposes of this Agreement.

13.10 GLAZA shall comply with all employment laws, including dealing with its employee bargaining representatives and/or labor unions.

13.11 GLAZA directly or through Operator, shall pay all personal property or business taxes including but not limited to sales tax and possessory interest tax.

13.12 Record retention. GLAZA shall maintain records as requested by City for itself and those records of Operator provided to GLAZA for a period of five years and make the records available to City for inspection and audit during normal business hours.

13.13 GLAZA is an independent contractor and not an agent or employee of City, and shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees or agents to be an agent or employee of City or Zoo.

13.14 GLAZA shall hold the Zoo and City and their boards, officers, agents, and employees harmless from all claims, demands, damages, and costs or expenses in connection with this Agreement.

13.15. GLAZA shall immediately notify the Zoo Director of any acts of dishonesty, and directly or through Operator, provide City with a single limit fidelity bond covering acts of dishonesty etc. as approved by the City Risk Manager for the term of the Agreement.

13.16 Disputes. In the event any dispute regarding the interpretation of the Agreement cannot be resolved between GLAZA and the Zoo, the matter shall be referred to City Council, unless GLAZA exercises its rights to have the dispute determined in a court of law.

## B. TERM

The Concession Agreement previously extended to August 16, 2019, is hereby terminated and replaced by the language of this 6<sup>th</sup> Amendment to the Operating Agreement.

## C. TERMINATION OF SECTION IV OF THE OPERATING AGREEMENT

1. At any time during the duration of the Operating Agreement, City may at its discretion and for any reason, terminate this Section IV of the Operating Agreement upon 180 days prior written notice to GLAZA.

2. In the event that GLAZA is in material breach of or is in default on any terms or conditions of this Section IV of the Operating Agreement, the City may terminate this Section as specified under Section XV. C. of the Operating Agreement.

Sixth Amendment to the 1997 Operating Agreement  
by and between the Zoo and GLAZA  
Relating to the 1980 Concession Agreement

3. Upon termination of this Section IV of the Operating Agreement, the City may elect to assume any or all of GLAZA's contracts for concessions or the City may reject and cancel any or all of GLAZA's concession services agreements and related contracts in accordance with Section 31 O. of the Concession Services Agreement.

4. All contracts entered into by GLAZA for an approved Zoo concession or sponsorship agreement shall provide notice to the contractor of the language contained in this Section.

**IN WITNESS WHEREOF**, the parties hereto have cause this Sixth Amendment to the Operating Agreement to be executed by their respective authorized representatives.

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

**CITY OF LOS ANGELES**  
LOS ANGELES ZOO  
& BOTANICAL GARDENS

By: \_\_\_\_\_  
DOV LESEL, Assistant City Attorney

By: \_\_\_\_\_  
(Print name) \_\_\_\_\_, Zoo Director

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**GREATER LOS ANGELES ZOO ASSOCIATION**

By: \_\_\_\_\_  
, President

DATE: \_\_\_\_\_

ATTEST:  
HOLLY L. WOLCOTT, City Clerk

By: \_\_\_\_\_  
Deputy City Clerk

City Business License Number \_\_\_\_\_

Internal Revenue Service Taxpayer Identification Number \_\_\_\_\_

Agreement Number \_\_\_\_\_

2018 Controller Review of Zoo and GLAZA Relationship

Accountability and Performance Metrics	How the Sixth Amendment to the Operating Agreement Addresses the Recommendations
<p>1. Establish stronger fiscal controls and oversight of revenue-sharing arrangements with GLAZA, such as by requiring GLAZA to submit annual actual versus budget comparisons of shared revenues per MOU, and comparing GLAZA's reported revenues and expenses to GLAZA's general ledger of historical detailed trial balances.</p>	<p><b>Section A. (12.1)</b> Annual Revenue Projections and Monthly Financial Reports. During the term of the Agreement, GLAZA shall be responsible for providing detailed annual revenue projections with monthly financial reports including explanations for deviations from the projections. GLAZA shall also provide operational reports detailing revenue by category of concession, i.e. food, retail, trams, catering, etc. GLAZA shall use its best effort to ensure that all sales by Operator generate business analytic reports such as full price sales and discounted/ member sales where feasible, preferably by utilizing a point-of-sale system that can track and monitor sales. GLAZA shall report to the City on whether Operator has satisfactorily performed on all evaluations of Concession Operations and service as measured by 'secret shopper' reviews, health and safety compliance reviews and customer service feedback.</p>
<p>2. Enhance oversight of the Concessions program by requiring the internal controls used by the Concessionaire to be reviewed on a periodic basis, to ensure completeness and accuracy of reported revenues. In addition, as specified by the Concessions Agreement, require: a) the submission of a monthly profit and loss statement on concession sales each month with a breakdown of expenses and net income for concession activity; and b) the annual submission of an income statement and a balance sheet for the concessionaire's concession operations, prepared by an independent Certified Public Accountant.</p>	<p><b>Section A. (11.1)</b> Monthly financial statements will be provided by GLAZA to the Zoo Director or designee. Reports will provide gross revenue broken down by source, sales per visitor (where appropriate), commission computation and distribution of funds to Zoo, GLAZA and Zoo Surplus Development Fund. The Zoo Director or designee(s) and the GLAZA President or designee(s) will meet on a regular basis to review the finances of Concession Operations and Special Vending operations. GLAZA will seek the Zoo Director's advice in matters pertaining to the management of the Concessions, Special Vending and sponsorships.</p> <p><b>Section A. (12.2)</b> Relevant Concession Operations' data points shall include: food, merchandise and amenities revenue, including food, merchandise and amenities revenue per capita and revenue provided to the Zoo; concession product and service sponsorship revenue received and concession product and service sponsorship revenue provided to the Zoo. In addition, GLAZA shall provide the City with a monthly profit and loss statement on concession sales with a breakdown of expenses and net income reflecting actual vs. budget comparisons of shared revenue along with detailed reasons for any variances and the proposed actions to achieve the budgeted and contemplated projections and revenue goals and an annual income statement and balance sheet for the concession operations prepared by an independent CPA.</p>
<p>3. Work with GLAZA to develop adequate policies and procedures to ensure reasonableness of costs. These could include a requirement to issue RFPs and/or obtain quotes from vendors for frequent purchases or purchases more than a certain dollar amount, as well as ensuring retention of related documentation that justifies the vendor selection.</p>	<p><b>Section A. (1)</b> Pursuant to City Council approval on November 6, 2018, GLAZA was authorized to issue a Request for Proposals ("RFP") for an operator to manage the concession operations at the Zoo ("Operator") pursuant to a Concessions Services Agreement that will be executed between GLAZA and the Operator ("Concession Services Agreement") for a ten-year period with a five-year option exercisable at the sole discretion of the City and GLAZA. The selected Operator and the Concession Services Agreement, as well as any amendments thereto, will be subject to City Council approval. GLAZA shall not directly or through another party, operate any concession business at the Zoo not in the approved Concession Services Agreement or in this Agreement.</p> <p><b>Section A. (11.2)</b> The Zoo Director may attend the meetings and provide input and guidance to the Concessions Committee of the GLAZA Board of Trustees which monitors vendor selection, quality, cost, safety, customer service and other issues such as Operator's required capital investment and shall provide regular reports to the City on the status of those investments and compliance with the Concession Services Agreement. Any working groups or committees at the staff level shall include Zoo employee participation as determined by the Zoo Director.</p>

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Accountability and Performance Metrics	How the Sixth Amendment to the Operating Agreement Addresses the Recommendations
<p>4. In consultation with the CAO and CLA, develop a robust set of performance metrics, using the potential data points identified by this review while considering City expectations, to facilitate monitoring GLAZA's performance in areas related to their contractual responsibilities. Compare the results over time, and to other similarly sized/situated zoos.</p>	<p><b>Section A. (12.2)</b> Relevant Concession Operations' data points shall include: food, merchandise and amenities revenue, including food, merchandise and amenities revenue per capita and revenue provided to the Zoo; concession product and service sponsorship revenue received and concession product and service sponsorship revenue provided to the Zoo. In addition, GLAZA shall provide the City with a monthly profit and loss statement on concession sales with a breakdown of expenses and net income reflecting actual vs. budget comparisons of shared revenue along with detailed reasons for any variances and the proposed actions to achieve the budgeted and contemplated projections and revenue goals and an annual income statement and balance sheet for the concession operations prepared by an independent CPA.</p>
Public Transparency	How the Sixth Amendment to the Operating Agreement Addresses the Recommendations
<p>5. Include GLAZA's federal form 990 forms for multiple years on the Zoo's website, and include GLAZA's policy on executive compensation.</p>	<p><b>Not Included</b></p>
<p>6. Ensure all agreements with GLAZA clearly delineate the estimated dollar value of all "in-kind" support (e.g., facilities, free admissions for members, value of merchandise discounts to members, in-kind staff support, etc.) provided by the City to GLAZA and GLAZA to the City.</p>	<p><b>Section A. (9.1)</b> As part of the Zoo's operations, GLAZA may enter into contracts for products or services in exchange for rights, benefits and privileges (financial and in-kind). All such sponsorship agreements and revenue sharing arrangements derived from said agreements shall be in writing, shall be conducted together with the Zoo Director or designee. GLAZA shall seek and procure sponsorships from corporations and other sources whose corporate values align with the wholesome, family-friendly and conservation-focused nature of the Zoo. Sponsorship agreements shall be for family friendly and children appropriate products and GLAZA shall not seek nor procure sponsorships related to tobacco, firearms, federally controlled substances, adult entertainment (including adult book stores, adult theaters, adult websites or escort services, pornographic or obscene matters) or political election campaigns. Alcohol sponsorships shall be limited to evening events and alcohol products available for purchase by visitors over 21 years of age at Zoo facilities authorized and licensed to serve alcohol. GLAZA shall provide annual reports to the Zoo on all revenue (financial and in-kind) generated from all sponsorship agreements.</p>
<p>7. GLAZA should make publically available via the internet, all detailed transactions related to payroll expenses, purchases, revenues, etc.</p>	<p><b>Not Included</b></p>



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Consolidation & Clarification of Agreements	How the Sixth Amendment to the Operating Agreement Addresses the Recommendations
<p>8. Renegotiate and clarify all agreements and MOUs with GLAZA, preferably consolidating into a single agreement. Further, consider and evaluate the following items during renegotiations:</p>	<p>The Sixth Amendment to the 1997 Operating Agreement replaces the 1981 Concessions Agreement.</p>
<p>A) Revising the revenue-sharing terms by discontinuing the practice of GLAZA's deducting its expenses from revenues shared with the Zoo Department, and consider allocating a fixed percentage of gross program revenues be distributed between the Zoo Department and GLAZA. If such a revision is not pursued, ensure the agreement(s) clearly delineate the direct and indirect expenses (if any) that are authorized to be deducted by GLAZA from shared revenues.</p>	<p><b>Section A. (7.1)</b> The City will pay GLAZA an administrative fee for the direct and indirect costs of administering the Concessions Services Agreement ("Contract Administration Fee"). The Contract Administration Fee shall consist of reimbursements: (1) for direct salary costs for positions directly managing the concessions, and (2) for allowable indirect costs similar to the approved City departmental cost allocation rate structure, paid by GLAZA for employee fringe benefits and administration and support to administer the Concessions Services Agreement. Employee fringe benefits consist of pension costs, health insurance, employee assistance, union dues and workers compensation costs. Administration and support consist of allowable support functions such as accounting, payroll, personnel, IT, insurance, legal, and audit costs.</p> <p><b>Section A. (7.2)</b> For the period July 1, 2019, through June 30, 2020, the City will pay GLAZA a Contract Administration Fee of Two Hundred and Seventy Five Thousand Dollars (\$275,000) to administer the Concessions Services Agreement.</p> <p><b>Section A. (7.3)</b> For the period July 1, 2020, through June 30, 2021, and annually thereafter, the Contract Administration Fee will be determined using a cost allocation study that GLAZA will submit annually on or before October 1 to coincide with the preparation of the Zoo Department's proposed budget for the upcoming fiscal year. The cost allocation study will be subject to review and approval by the City. The initial cost allocation study will be submitted by GLAZA on or before October 1, 2019. Requests for additional funding will be considered as part of the City's annual budget process.</p>
<p>B) Ensure all applicable agreements with GLAZA, and any contracts GLAZA has with the Concessionaire, have consistent terms and accurately describe any discounts provided to Zoo Department employees, GLAZA employees, and Zoo volunteers, while conforming to City rules and regulations and mandated ethics disclosure policies.</p>	<p><b>Section A. (10)</b> Requests for Additional Funding from Operator. Any additional funding from Operator and their proposed uses shall be mutually agreed upon between Operator, GLAZA and the Zoo Director. If such additional funding exceeds \$50,000 annually from Operator, it shall require an amendment to the Concession Services Agreement between GLAZA and Operator and approval by City Council. GLAZA shall promptly notify the Zoo Director of any such funding requests and their proposed uses.</p> <p><b>Section A. (13.2)</b> Merger. This Agreement constitutes the full agreement between GLAZA and the City with respect to the subject matter hereto and supersedes all prior agreements or MOUs, whether written or oral, with respect to such subject matter.</p>