

0150-11889-0000

T R A N S M I T T A L

TO The City Council	DATE 07/01/2021	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 4	

**ZOO – GREATER LOS ANGELES ZOO ASSOCIATION AND SERVICE SYSTEMS
ASSOCIATES GROUP, LLC – FIRST AMENDED AND RESTATED AGREEMENT FOR ZOO
CONCESSIONS**

Approved and transmitted for your consideration. The Council has 60 days from the date of receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a). See the City Administrative Officer report attached.



(Matt Szabo for)

ERIC GARCETTI
MAYOR

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: June 25, 2021

CAO File No. 0150-11889-0000

Council File No. 14-0600-S223

Council District: 4

To: The Mayor

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

Reference: Letter to the Mayor from the Zoo Department dated April 26, 2021; referred by the Mayor on May 5, 2021

Subject: **ZOO CONCESSIONS – FIRST AMENDMENT TO GREATER LOS ANGELES ZOO ASSOCIATION/SERVICE SYSTEMS ASSOCIATES GROUP, LLC AGREEMENT**

RECOMMENDATION

That the Council, subject to the approval of the Mayor, authorize the Greater Los Angeles Zoo Association (GLAZA) to execute the First Amended and Restated Agreement with Service Systems Associates (SSA) for the management of concession services at the Los Angeles Zoo and Botanical Gardens (Zoo), to modify the commission rate structure during a two-year recovery period, and extend the term of the existing Agreement by two years, for a total of twelve years with an option to renew for an additional five-year term, subject to the approval of the City Attorney as to form.

SUMMARY

In 1997, the City executed an Operating Agreement (C-95894) with GLAZA for services which include concessions operations. The Operating Agreement allows GLAZA to subcontract the Zoo's concessions operations subject to the City's contracting requirements. The sixth and most recent amendment to the Operating Agreement (C-95894-6) allows for amendments to the Concessions Services Agreement subject to Council approval.

In August 2019, with Council approval (C.F. 14-0600-S223), GLAZA executed a ten-year agreement with one five-year extension with SSA for concessions services. The terms of the agreement included commission rates paid to the Zoo based on tiered gross revenue, and capital investment based on an amortization schedule for the term of the contract.

On March 13, 2020, the Zoo closed to the public due to the pandemic. The Zoo reopened on August 26, 2020, at limited capacity in accordance with State and local safety protocols. The Zoo once again closed to the public on December 7, 2020 as a result of the State's Regional Stay Home Order. The second closure continued until February 16, 2021 once again with limited capacity. The Zoo was closed for a total of eight months. Additional restrictions for restaurants and retail

operations further impacted SSA’s ability to generate revenue. As a result of the closures, SSA is estimated to have lost approximately \$1.35 million in the 2020 calendar year.

Contract Amendment

Similar to the Griffith Park Greek Theatre, concessionaires have worked with their business partners to amend agreements to allow for recovery from the financial losses of the pandemic. The amendment recommends the addition of a two-year recovery period that would begin upon execution of the agreement and add an additional two years to the term of the agreement. The total term of the agreement will be 17 years (twelve years with a five year renewal option).

Commission Rates

The commission rates will be adjusted and are based on the rates in the 1997 Concessions Agreement. After the two-year recovery period the commission rates will revert back to the 2019 agreement.

Current Agreement (2019) Commission Rate Structure		
Category	Gross Revenue	Commission
Food	\$0 - \$3M	24%
Food	\$3M - \$5M	25%
Food	\$5 - \$7M	26%
Food	\$7M +	27%
Retail	ALL	34%
External Catering		18%
Tram		20%
Stroller Rental		10%
Wheelchair Rental		30%
Photos		50%
Caricature		50%
Vending		40%

Two-Year Recovery Commission Rate Structure		
Category	Gross Revenue	Commission
Food	\$0 - \$1M	12.25%
Food	\$1M - \$1.5M	14.50%
Food	\$1.5M - \$2.5M	20%
Food	In excess of \$2.5M	23.60%
Retail	\$0M - \$1M	15.50%
Retail	\$1M - \$1.5M	18%
Retail	\$1.5M - \$2.5M	19%
Retail	In excess of \$2.5M	22%
External Catering		16.50%
Tram		15%
Stroller Rental		10%
Wheelchair Rental		30%
Photos		50%
Caricature		50%
Vending		40%

As a result of the pandemic, SSA launched an eCommerce platform that was included in the current agreement ahead of schedule. In order to develop the online retail and mobile order food sales channels, the amendment reduces the commission rates for these categories by two percent during years three through six. Beginning in year seven through the end of the agreement, eCommerce sales will return to the current (2019) food and retail commission rates.

During the two-year recovery period it is estimated that the Zoo will experience total net revenue reduction of \$1.0 million compared to the original agreement. In 2021-22, the estimated revenue reduction is approximately \$400,000 at 50 percent capacity. In 2022-23, the revenue reduction is estimated to be \$600,000 at full capacity. The current agreement includes a minimum annual guarantee (MAG) of \$2.5 million. The contract amendment suspends the MAG during the two-year recovery period.

Capital Investment

In the current agreement SSA will invest \$3.0 million in the first five years and \$3.0 million in the second five years. The contract amendment increases the investment to \$6.2 million based on a straight line amortization over the full 12-year term as follows:

- \$700,000 invested in 2021, which includes \$200,000 to fund technology advancements to enhance mobile and online capabilities.
- \$2.5 million invested between 2022 and 2024.
- \$3.0 million to be amortized over the remaining seven years (2025 to 2031).

Council approval of the First Amendment is required as Council approved the original agreement. To the best of our knowledge, SSA has complied with all standard provisions for City contracts, as well as City contracting requirements.

FISCAL IMPACT STATEMENT

The approval of the recommendation in this report maintains revenue generation at a reduced rate for a two-year recovery period. This will reduce revenue to the Zoo Enterprise Trust Fund by approximately \$1.0 million, or \$400,000 in 2021-22, and \$600,000 in 2022-23. The anticipated revenue reduction for 2021-22 has already been addressed in the 2021-22 Adopted Budget. It is anticipated that a supplemental General Fund appropriation of \$600,000 may be necessary to cover the anticipated revenue losses in 2022-23.

FINANCIAL POLICIES STATEMENT

The recommendation in this report complies with the City's Financial Policies inasmuch as current operations will be funded by current revenues.



April 26, 2021

CONTACT:

Mei Kwan, Assistant General Manager
(323) 644-4203

Honorable Eric Garcetti
Mayor, City of Los Angeles
200 S. Spring Street
Los Angeles, CA 90012

Attn: Heleen Ramirez, Legislative Coordinator

"Creating dynamic experiences to connect people and animals"

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Vice President

Margot Armbruster

Christopher Hopkins

Daryl Smith

Richard Lichtenstein
ex officio member

Denise M. Verret
Chief Executive Officer
& Zoo Director

EXECUTIVE DIRECTIVE NO. 3 TRANSMITTAL: REQUEST AUTHORITY FOR THE ZOO THROUGH ITS OPERATING AGREEMENT WITH THE GREATER LOS ANGELES ZOO ASSOCIATION TO EXECUTE A CONTRACT AMENDMENT TO THE CONCESSION SERVICES AGREEMENT FOR THE LOS ANGELES ZOO BY AND BETWEEN THE GREATER LOS ANGELES ZOO ASSOCIATION AND SERVICE SYSTEMS ASSOCIATES GROUP, LLC.

Transmitted for your review, approval and further processing is the proposed first amendment and restatement of the Agreement for Concession Services for the Los Angeles Zoo between the Greater Los Angeles Zoo Association (GLAZA) and Service Systems Associates Group, LLC (SSA). This amendment serves to address and mitigate the financial impact of the Zoo closures on concessions operations due to the COVID-19 Pandemic.

RECOMMENDATIONS

The General Manager of the Zoo Department respectfully requests that the Mayor:

1. Approve the proposed first amendment and restatement of the Agreement for Concessions Services for the Los Angeles Zoo between the Greater Los Angeles Zoo Association (GLAZA) and Service Systems Associates Group, LLC (SSA);
2. Authorize GLAZA to extend the term of the Agreement by two years for a total of twelve years with an option to renew for an additional five year term;
3. Authorize GLAZA in coordination with the Zoo to make any necessary technical changes to the amendment consistent with the intent of these actions to implement the amendment; and
4. Authorize GLAZA to execute the amendment on behalf of the Zoo and the City, subject to the approval of the City Attorney as to form.

BACKGROUND

The Los Angeles Zoo has operated as a safe, affordable family destination for the Los Angeles community for over 50 years and has served over 80 million visitors.



An Equal
Employment
Opportunity
Employer

Accredited by the Association
of Zoos and Aquariums

Member of the American
Alliance of Museums

Member of the California Association
of Zoos and Aquariums

The Zoo has operated continuously over these years and is open daily except for Thanksgiving and Christmas day.

In 1997, the City executed a 25-year Operating Agreement (Contract C-95894) with the Greater Los Angeles Zoo Association (GLAZA) for various services including financial assistance and other support services including concessions operations. The Operating Agreement granted GLAZA the authority to subcontract the Zoo's concessions operations pursuant to City contracting requirements. The sixth and most recent amendment to the Operating Agreement (C-95894-6) also provides the ability to amend the Concessions Services Agreement subject to Council approval.

In Fiscal Year 2018-19, GLAZA issued a Request for Proposals for Zoo Food and Beverage and Retail Service Operations (C.F. No. 14-0600-S223) to replace the previous contract held by a joint partnership between Sodexo (formerly Centerplate) and Services Systems Associates. In August 2019, with the approval of the City Council (C.F. No. 14-0600-S223), GLAZA executed a 10-year agreement with Service Systems Associates Group (SSA), LLC with one 5-year extension option. The terms of the agreement included categorized commission rates paid to the Zoo based on a tiered gross revenue structure, as well as a capital investment and amortization schedule based on the term of the contract.

As a result of the COVID-19 pandemic, the Zoo closed to the public on March 13, 2020 in conformance with state and local mandatory health directives. The initial closure continued for a period of over five months until the Zoo was able to reopen on August 26, 2020 at limited attendance capacity in accordance with local health protocols. On December 7, 2020, the Zoo was again mandated to close as a result of the State's Regional Stay Home Order. This closure continued until the Zoo's current reopening on February 16, 2021, again with limited attendance capacity in accordance with local health protocols. In total, the Zoo was closed for approximately eight months. Additionally, restrictions for operating restaurant and retail operations while the Zoo was allowed to be open further impacted the ability for the concessionaire to generate and maximize revenue and continue to be in effect.

The effects of the pandemic have impacted the concessions industry tremendously with SSA losing an estimated \$1.35M in calendar year 2020. In response to financial challenges, concessionaires in the industry have worked with their business partners to develop modified agreements to assist in alleviating and recovering from some of the impact.

PROPOSED AMENDMENT

The Zoo and GLAZA both agree and recommend an amendment to the Concessions Agreement to allow for a recovery period which will be in the best interests of the Zoo and the concessionaire. The COVID-19 pandemic continues to limit Zoo and concessions operations from operating at full capacity into the foreseeable future, therefore, requiring a reassessment and restructuring of revenue potential and

mitigation of financial impact. As a result, GLAZA and the Zoo propose an amendment to the concessions agreement based on the terms outlined below.

Term

The proposed amendment recommends an interim addition of a two-year recovery period which would begin upon execution of the amendment and continue for a period of two years. This would also require an extension of the total term of the agreement from ten to twelve years while maintaining the option to extend the agreement for an additional five years which was included in the original agreement. This amendment adds an additional two years to the original Concessions Agreement for a total term of 17 years.

Commission Rate Structure

During the two-year recovery period, commission rates would be adjusted and based on the rates set forth in the 1997 Concessions Agreement. At the end of the two-year recovery period, the commission rates would be restored to the rates as defined in the 2019 agreement.

The table that follows outlines the comparison of the current and proposed commission rate structure during the two-year recovery period.

CURRENT AGREEMENT COMMISSION RATE STRUCTURE		
Category	Gross Revenue	Commission %
Food	\$0 - \$3M	24%
Food	In excess of \$3 - \$5M	25%
Food	In excess of \$5 - \$7M	26%
Food	In excess of \$7M +	27%
Retail	ALL	34%
External Catering		18%
Tram		20%
Stroller Rental		10%
Wheelchair Rental		30%
Photos		50%
Caricature		50%
Vending		40%

PROPOSED TWO-YEAR RECOVERY PERIOD COMMISSION RATE STRUCTURE		
Category	Gross Revenue	Commission %
Food	\$0 - \$1M	12.25%
Food	In excess of \$1 - \$1.5M	14.5%
Food	In excess of \$1.5 - \$2.5M	20%
Food	In excess of \$2.5M	23.6%
Retail	\$0 - \$1M	15.5%
Retail	In excess of \$1 - \$1.5M	18%
Retail	In excess of \$1.5 - \$2.5M	19%
Retail	In excess of \$2.5M	22%
External Catering		16.5%
Tram		15%
Stroller Rental		10%
Wheelchair Rental		30%
Photos		50%
Caricature		50%
Vending		40%

The chart that follows provides a total commissions comparison between the current and proposed rate structures based on projected annual attendance during the two-year recovery period covering Fiscal Years 2021-22 and 2022-23. As outlined in the Operating Agreement between the City and GLAZA, the Zoo receives 80% of the net commission and

the remaining 20% is retained by GLAZA for its Contract Administration Fee up to \$275,000 per year.

TOTAL CONCESSIONS COMMISSIONS COMPARISON

**FY 2021-22 Proposed Budget
ATTENDANCE @ 902,746***

	CURRENT AGREEMENT				PROPOSED TWO-YEAR RECOVERY PERIOD			
	SALES	RATE	COMMISSION	SHARE TO ZOO	SALES	RATE	COMMISSION	SHARE TO ZOO
Food Sales	\$3,282,625	24.1%	\$790,656	\$632,525	\$3,282,625	17.7%	\$582,200	\$465,760
Retail Sales	\$1,427,925	34.0%	\$485,495	\$388,396	\$1,427,925	16.0%	\$229,166	\$183,333
Tram Sales	\$138,457	20.0%	\$27,691	\$22,153	\$138,457	15.0%	\$20,769	\$16,615
Sub-contract Income	\$130,792	50.0%	\$65,396	\$52,317	\$130,792	23.6%	\$30,867	\$24,694
Vending	\$29,997	40.0%	\$11,999	\$9,599	\$29,997	40.0%	\$11,999	\$9,599
TOTAL	\$5,009,796	27.6%	\$1,381,237	\$1,104,990	\$5,009,796	17.5%	\$875,000	\$700,000

*FY 2021-22 Attendance based on proposed budget at 50% capacity level.

**FY 2022-23 Projected
ATTENDANCE @ 1,600,000***

	CURRENT AGREEMENT				PROPOSED TWO-YEAR RECOVERY PERIOD			
	SALES	RATE	COMMISSION	SHARE TO ZOO	SALES	RATE	COMMISSION	SHARE TO ZOO
Food Sales	\$5,507,934	24.5%	\$1,352,063	\$1,081,650	\$5,507,934	20.1%	\$1,107,373	\$885,898
Retail Sales	\$3,172,104	34.0%	\$1,078,515	\$862,812	\$3,172,104	17.5%	\$555,200	\$444,160
Tram Sales	\$295,457	20.0%	\$59,091	\$47,273	\$295,457	15.0%	\$44,319	\$35,455
Sub-contract Income	\$253,256	50.0%	\$126,628	\$101,302	\$253,256	50.0%	\$126,628	\$101,302
Vending	\$126,005	40.0%	\$50,402	\$40,322	\$126,005	40.0%	\$50,402	\$40,322
TOTAL	\$9,354,756	28.5%	\$2,666,700	\$2,133,360	\$9,354,756	20.1%	\$1,883,921	\$1,507,136

*FY 2022-23 Attendance assumes a return to pre-pandemic levels with no capacity restrictions.

Attendance for FY 2021-22 during the first year of the recovery period is based on the Department’s proposed budget estimate for FY 2021-22 and assumes that the Zoo will be operating at 50% capacity in accordance with Los Angeles County Health Department protocols. In Fiscal Year 2022-23, the attendance assumptions include a return to full operating capacity and restoration of attendance close to pre-pandemic levels.

Based on these operating levels, the net revenue reduction as a result of the proposed modified rate structure is approximately \$400,000 in FY 2021-22 and \$600,000 in FY 2022-23 for a total reduction of approximately \$1 million.

eCommerce and Mobile Sales

As part of the original agreement, the concessionaire had planned to launch an eCommerce platform, and as a result of the pandemic, this endeavor was accelerated. In order to build the retail eCommerce and mobile food sales channels, the proposed amendment reduces the commission rate for these categories by 2% starting at the end of the recovery period and through the end of Year 6. Beginning in Year 7 through the end of the agreement (Year 12) and any extension, eCommerce retail sales and food web sales will be calculated at the current (2019) food and retail commission rates. Additionally, the capital investment plan will contribute \$200,000 to directly support technology infrastructure for this platform.

Minimum Annual Guarantee

The current agreement provides for a minimum annual guarantee of \$2.5 million to the Zoo for all sales. The proposed amendment suspends the minimum annual guarantee for the two years during the recovery period.

Capital Investment and Amortization Structure

The current agreement provides for \$6 million in capital investments over the ten-year term, amortizing \$3 million in the first five years and \$3 million in the second five years.

The proposed amendment increases SSA's investment to \$6.2 million based on a straight-line amortization over the full 12-year term (original ten years plus two-year recovery period). The outlay will be as follows:

- \$700,000 invested in 2021 of which \$200,000 will go immediately to fund technology advancements to enhance mobile and online capabilities;
- \$2.5 million invested between 2022 and 2024; and
- \$3 million balance to be amortized over the remaining seven years (2025 to 2031).

CONCLUSION

The uncertainties associated with the COVID-19 pandemic have caused GLAZA and the Zoo to review its operational protocols, capacity and revenue impacts and its effects on concessions operations. The proposed agreement recommends modified rates and terms that take into consideration financial impact to both parties and provides a reasonable recovery period and eventual restoration of terms that create mutual benefit in the interest of both parties.

The Mayor's Fiscal Year 2020-21 Cost Containment Measures Memorandum dated June 24, 2020, reaffirmed by the Mayor's Fiscal Year 2020-21 Instructions for Fiscal Restraint dated September 11, 2020, directed departments to suspend the execution of new contracts, with limited exceptions for contracts that 1) are essential to public health and safety, 2) generate revenue, or 3) are legally mandated. The operations facilitated under this contract are necessary for direct revenue generation to support the Zoo. Therefore, request for exemption for approval of execution of the proposed amendment is requested.

FISCAL IMPACT STATEMENT

The proposed concessions amendment maintains continued revenue generation at a modified and reduced rate for a two-year recovery period that extends the current concessions agreement from ten to twelve years. The net reduction in revenue over the two-year recovery period would result in an estimated \$1 million revenue reduction based on the current vs. proposed rate structure. Based on continued modified operating protocols, the Zoo will continue to require a General Fund appropriation through FY 2021-22 and potentially through FY 2022-23 to support its operating budget. The net reduction in concessions revenue will increase the General Fund appropriation to the department by a total of \$1 million over the two-year period.

Prepared By:



Mei Kwan
Assistant General Manager

Approved By:



Denise M. Verret
General Manager

ATTACHMENT

Proposed First Amended and Restated Agreement for Concessions Services between GLAZA and SSA Group, LLC

cc: Albert Griego, Office of the City Administrative Officer
Steve Houchin, Office of the City Attorney

FIRST AMENDED AND RESTATED AGREEMENT

FOR

CONCESSION SERVICES AGREEMENT

for

THE LOS ANGELES ZOO

between

THE GREATER LOS ANGELES ZOO ASSOCIATION

and

SSA Group, LLC

TABLE OF CONTENTS

INTRODUCTION AND RECITALS

Section 1	DEFINITIONS.....	2
Section 2	RIGHTS AND RESPONSIBILITIES	5
Section 3	REPRESENTATIONS AND WARRANTIES OF GLAZA.....	5
Section 4	REPRESENTATIONS AND WARRANTIES OF OPERATOR	6
Section 5	PREMISES	6
	A. Premises Delivered on an "As Is" Basis	
	B. Use of Premises	
	C. Right of Inspection and Access to Premises	
	D. Equipment	
	E. Utilities	
	F. Garbage Removal	
	G. Security	
	H. Parking	
Section 6	TERM	8
Section 7	SERVICES AND OPERATING RESPONSIBILITIES	9
	A. Licenses and Permits	
	B. Quality, Pricing, and Merchandising	
	i. Quality of Good Sold	
	ii. Menus	
	iii. Healthy Food Options	
	iv. Alcoholic Beverage Services	
	v. Pricing	
	vi. Employee Concession Discounts	
	vii. Office Coffee Service	
	C. Catering Services	
	i. Preferred Caterer	
	ii. Sharing of Commission	
	iii. Catering of Alcoholic Beverages	
	iv. Cater of Zoo- and GLAZA-Hosted Conferences and Meetings	
	v. Catering Booking and Coordinating	
	vi. Catering Deposits	
	vii. Indemnification and Insurance Requirements for Outside Caterers	
	D. Transaction Receipts	
	E. Hours of Operation	

- F. Equipment
- G. Preventive Maintenance, Repairs, and Equipment Replacement
- H. Insurance for Loss of Equipment and Facilities
- I. Inventory
- J. Customer Satisfaction Surveys
- K. Secret Shopper Service
- L. Daily Operations Reports
- M. Health, Safety and Security of Zoo Patrons and Employees
- N. Cleanliness
- O. Concessions Promotions
- P. Signage
- Q. Diversion of Business
- R. Conduct
- S. Disorderly Persons

Section 8 OPERATOR'S PERSONNEL..... 17

- A Personnel
- B. Qualified Personnel
- C. Insurance
- D. Background Screening of Employees
- E. General Manager of Concessions and Key Personnel
- F. Reassignment of Personnel
- G. Uniforms and Identification
- H. Drug-Free Workplace
- I. Freedom from Tuberculosis
- J. Employee Training
 - i. General Training
 - ii. Alcohol Service Training

Section 9 PRODUCT SPONSORSHIP RIGHTS..... 20

- A Sponsorships, General
- B. Alcoholic Beverage Sponsorships
- C. Other Sponsorships
- D. Pepsi Sponsorship
- E. ICEE Sponsorship

Section 10 INSURANCE 21

- A Insurance Requirements
- B. Subrogation
- C. Third Parties' Insurance Requirements
- D. Form of Insurance
- E. Disclosure of Limitations
- F. Acceptable Insurers
- G. Notice of Cancellation
- H. Proof of Insurance
- I. Miscellaneous

Section 11	CONCESSION COMMISSIONS	23
	A Commissions, Generally	
	B. Minimum Annual Guarantee	
	C. Additional Commission	
	D. Payment of Minimum Annual Guarantee	
	E. Payment of Additional Commission	
	F. Statement of Gross Receipts, Reports	
	G. Profit and Loss Reports	
	H. Maintenance of Records	
	I. Audit	
	J. Independent Audit	
	K. Excluded Services	
	L. No Right to Set-Off	
Section 12	CAPITAL INVESTMENT	25
	A. Capital Investment	
	B. Capital Investment Schedule	
	C. Expenditure of Capital Investment	
	D. Retention of Capital Investment	
	E. Delay	
	F. Budget	
	G. Notice of Delay	
	H. Capital Investment Amortization	
	I. Effect of an Early Termination on Capital Investment	
	J. Transfer of Title	
	K. Accounting	
	L. Operator Expenses	
	M. Expenditures for Proprietary and Non-Proprietary Equipment	
	N. Equipment Rental	
Section 13	OPERATIONS AUDITS	29
	A. Operations Audits, Generally	
	B. Operations Audits Results	
Section 14	COMPLIANCE WITH CITY CONTRACT PROVISIONS	29
	A. Contractor Responsibility Ordinance	
	B. First Source Hiring Ordinance	
Section 15	REPAIR, MAINTENANCE, AND REPLACEMENT.....	30
	A. Plumbing	
	B. Equipment Operation	
	C. Electrical	
	D. Repairs/Renovations	
	E. Pest Control	
	F. Exhaust Hoods	
	G. Preventive Maintenance	
	H. Painting	
	I. Walls	

	J. Tile	
	K. Doors	
	L. Carts and Cart Storage Building	
	M. Furniture	
	N. Trams	
	O. Strollers and Wheelchairs	
	P. Vending Machines	
Section 16	USE OF GLAZA'S OR THE ZOO'S INTELLECTUAL PROPERTY	32
	A. Generally	
	B. No Use of Operator Information	
	C. No Conveyance of Intellectual Property	
	D. Grant of License	
Section 17	INDEMNIFICATION	32
	A. Indemnification by Operator	
	B. Indemnification by GLAZA, the City, or the Zoo	
Section 18	PROHIBITED ACTS	33
Section 19	PERFORMANCE AND PAYMENT BONDS	35
	A. Performance Bond	
	B. Use of Bond to Mitigate Damages	
	C. Payment Bond and Form	
Section 20	TAXES, PERMITS, AND LICENSES	36
	A. Licenses and Permits	
	B. Suspension or Revocation of Operator's Licenses	
	C. Payment for Permits and Licenses, Collection of Taxes	
	D. Taxes	
Section 21	LAWS AND REGULATIONS	37
Section 22	RELATIONSHIP OF THE PARTIES	37
Section 23	SECURITY	38
Section 24	FACILITY CLOSING AND/OR INTERRUPTION OF SERVICES	38
	A. Partial Closings	
	B. Complete Zoo Closings	
	C. Vision Plan	
Section 25	SUSPENSION OF SERVICES FOR LABOR DISPUTES	39
Section 26	TERMINATION	39
	A. Removal of Employees, Property	
	B. Bringing Current of Financial Accounts	
	C. Termination by GLAZA for Cause	
	D. Termination by GLAZA and the Zoo without Cause	
	E. Amendments to operator's Corporate Structure	

F. Purchase of License	
Section 27 NO ASSIGNMENT; SUBCONTRACTING	41
A. No Assignment	
B. Subcontracting of Services	
Section 28 NOTICES	42
A. Notices to GLAZA	
B. Notices to Operator	
Section 29 GOVERNING LAW	43
Section 30 ARBITRATION	43
Section 31 MISCELLANEOUS	43
A Waiver	
B. Entire Agreement	
C. Amendment	
D. Severability	
E. Confidentiality	
F. Captions and Headings	
G. Attorneys' Fees	
H. Further Acts	
I. Good Faith	
J. Time	
K. Rights of Third Parties	
L. Force Majeure	
M. Limited Liability of GLAZA and the City	
N. Authority	
O. City Assumption of GLAZA's Rights and Responsibilities	
Section 32 INCORPORATION OF DOCUMENTS	45

EXHIBITS

Exhibit A	OPERATOR'S PROPOSAL
Exhibit B	CONCESSIONS PREMISES
Exhibit C	INVENTORY OF EQUIPMENT, SMALLWARES, AND FIXTURES
Exhibit D	CITY OF LOS ANGELES GOOD FOOD PURCHASING GUIDELINES FOR FOOD SERVICE INSTITUTIONS
Exhibit E	CONCESSIONS ITEMS TO BE OFFERED FOR SALE AT THE
Exhibit F	ZOO OFFICE COFFEE SERVICE EQUIPMENT, BEVERAGES
Exhibit G	AND SUPPLIES SAMPLE CUSTOMER SURVEY CARD
Exhibit H	CAPITAL INVESTMENT BUDGET AND SCHEDULE
Exhibit I	QUALITY CONTROL SCORECARD
Exhibit J	CITY STANDARD PROVISIONS (10/17; v.3)
Exhibit K	CITY OF LOS ANGELES CONTRACTOR RESPONSIBILITY
Exhibit L	ORDINANCE CITY OF LOS ANGELES FIRST SOURCE HIRING ORDINANCE

LOS ANGELES ZOO CONCESSION SERVICES AGREEMENT

THIS FIRST AMENDED AND RESTATED AGREEMENT (“AGREEMENT”) is made and entered into this _____ day of _____, 2021, by and between the GREATER LOS ANGELES ZOO ASSOCIATION, a California nonprofit 501(c)(3) corporation (hereinafter referred to as "GLAZA") and SSA Group, LLC ("Operator"), a Colorado limited liability company. GLAZA and Operator may hereafter be referred to individually as a "Party" and collectively as "Parties."

WHEREAS, The Los Angeles Zoo, located at 5333 Zoo Drive in Griffith Park, Los Angeles, California (the "Zoo"), is owned and operated by the City of Los Angeles (the "City"). The Zoo Department is headed by the General Manager/Zoo Director and is a City Council-controlled department of the City, with an advisory Zoo Commission; and

WHEREAS, GLAZA was formed in 1963 for the purpose of assisting in the establishment, development, beautification and improvement of the Zoo, GLAZA has been granted, pursuant to an Operating Agreement, a Concession Agreement and annual Memoranda of Understanding between GLAZA and the City (collectively, the "City Agreements"), the exclusive right and privilege to maintain and operate all approved concession operations at the Zoo including, but not limited to, food and beverage sales, catering, liquor sales, souvenir and retail sales, vending machine operations, tram and/or other transportation systems and the sale and rental of miscellaneous items at the Zoo for the benefit of Zoo patrons ("Concessions"). Pursuant to the Operating Agreement, the City has the right to terminate the Concession Agreement with GLAZA upon 180 days' prior written notice and assume, through the Zoo Department, any or all of GLAZA's contracts for Concessions; and

WHEREAS, the Los Angeles City Council ("Council") instructed GLAZA to prepare a Request for Proposals ("RFP") for the management of Concessions at the Los Angeles Zoo; and

WHEREAS, GLAZA and City evaluated the proposals received from concession operators using an evaluation panel comprised of representatives from GLAZA, the City, and technical experts in the fields of concessions and Zoo management; and

WHEREAS, Operator's proposal attached hereto as Exhibit A received the highest score and was recommended and selected by GLAZA's Board and the City Council to manage the Los Angeles Zoo Concessions in accordance with the terms and conditions of this Agreement; and

WHEREAS, Council approved the Agreement on November 6, 2018 (CF# 14-0600-S223); and

WHEREAS, Section IV.A.1 of Sixth Amendment to the 1997 Operating Agreement (C-95894-6) allows for amendments to the Concession Services agreement subject to Council approval; and

WHEREAS, on December 17, 2019, the Parties entered into an agreement for Operator to assist the City and GLAZA in providing the public with premium, high-quality food and beverages, catering, liquor sales, retail, vending machine operations, tram service, photo booth, stroller and wheelchair rentals and other services at the Los Angeles Zoo (the “Original Agreement”); and

WHEREAS, the Parties desire to extend the Original Agreement term by an additional 24 months to allow for a recovery period due to the impact of closures (from March 13, 2020 through August 25, 2020 and December 7, 2020 through February 15, 2021) and modified operations at reduced capacity at the Zoo as a result of the COVID-19 Pandemic; and

WHEREAS, such Zoo closures require SSA to cease all concession operations except for minimal online retail sales; and

WHEREAS, modified operations at reduced capacity required by health protocols limit the capacity of concession operations; and

WHEREAS, the Parties desire to amend certain terms of the Original Agreement to mitigate the financial impact of the Zoo closures and modified operations on SSA due to the COVID-19 Pandemic; and

WHEREAS, the Parties desire to restate the Original Agreement in its entirety, together with any new amendments; and

WHEREAS, the Parties agree to amend the Original Agreement to be effective on the date of execution of this First Amended and Restated Agreement (“Effective Date”);

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter to be kept and performed by the respective Parties, it is agreed as follows:

SECTION 1. DEFINITIONS

For the purpose of this Agreement, the following words and phrases are defined and shall be construed as hereinafter set forth:

Alcoholic Beverages	The exclusive sale and serving of alcoholic beverages at the Zoo and at any catered event held at the Zoo, except as provided herein.
Agreement	This Concession Services Agreement, as the same may be amended from time to time as provided herein
Capital Investment	Funds contributed by Operator and agreed to be invested and used to benefit the Parties to this Agreement as set forth fully in Section 12 herein. It is understood, as delineated herein, that the concessionaire shall remit to GLAZA any unspent balances of Capital Investment remaining at each Investment Deadline during the Term.
Catering City	The City of Los Angeles, as more fully defined in the recitals in this Agreement
Commencement Date Concession or Concessions	The first day of the Term of this Concession Services Agreement. The Concessions operations at the Los Angeles Zoo including, but not limited to, food & beverage sales, catering, liquor sales, employee meals, in-house conferences and meetings, souvenir and retail sales, vending machine operations, tram and/or other transportations systems, and the sale and rental of miscellaneous items at the Zoo to be operated by the Operator pursuant to the terms and conditions of this Agreement.
Contract Year GLAZA	A fiscal year period (July 1st through June 30th)
Gross Receipts	All receipts due or earned by Operator from all Services provided pursuant to the terms of this Agreement, including, but not limited to, (a) receipts from the sale of Concessions, rentals, merchandise and other Services; (b) amounts due to Operator from any subcontractor, e.g. vending machines and specialty food booths; (c) service charges collected on Catering sales that are not amounts paid directly to Operator's employees; and (d) Operator's mark-up on any charges such as rental fees for events, if any, less (i) retail sales taxes and other direct taxes imposed upon the receipts collected, (ii) billed service charge, tips and gratuities paid directly to Operator's employees, and (iii) discounted employee food. Gross Receipts shall not include deductions for returns, allowances, or rebates. SSA Group, LLC, as more fully defined in the recitals in this Agreement.

**Operator Outside
Caterer**

Any caterer used by GLAZA or the Zoo on Zoo grounds other than Operator, as permitted under the terms of this Concession Services Agreement.

**Personnel Preferred
Caterer**

The Operator of the Concessions at the Zoo shall be the preferred caterer for GLAZA and Zoo events and functions and private site rentals at the Zoo.

Premises

The Premises authorized by the Zoo for use by Operator as defined in Section 5 herein, and as may be amended from time to time.

Proprietary Equipment

Any equipment, fixtures, and/or signage installed by Operator at the Zoo that can only be used by Operator due to logo or name identification or other special or exclusive need or use of Operator. Such Proprietary Equipment shall not be considered a part of Operator's Capital Investment obligation hereunder unless such Proprietary Equipment can be modified in such a way that a successor operator can utilize such equipment and is willing to accept such equipment in the event of termination of this Agreement.

Services

Services shall have the meaning assigned to it in Section 7 of this Agreement.

Smallwares

Shall include, but not be limited to, service ware for cafes and concessions locations, such as bowls, platters, and baskets; catering service ware, such as buffet equipment, coffee service equipment, china, silver, and glassware; and kitchen pots, pans, utensils, and other equipment that is not attached, fixed or considered a permanent improvement. The term of the Services to be provided under this Agreement, as defined in Section 6 herein. The Los Angeles Zoo, as more fully defined in the recitals in this Agreement.

Zoo Attendance

For the purposes of Section 11.C herein, Zoo Attendance means attendees of the Zoo, admitted through the front gate during the regular operating hours of the Zoo and during all evening events as calculated by the Zoo and GLAZA as of the date of this Agreement. This includes paid and non-paid attendees, members, school groups, small children, hosts and guests at catered events. Zoo Attendance as herein defined, shall not include off-site outreach programs, or educational groups or programs in which participants do not have access to the Services. Zoo Attendance shall not include employees, volunteers, or independent contractors who are providing services for Operator, City, or

GLAZA. The daily business records maintained by the City and GLAZA in connection with its admissions function shall be authoritative as to the Zoo Attendance number. GLAZA shall provide Operator with daily and monthly reports of attendees. Monthly reports of attendees, with nighttime attendance certified by GLAZA's authorized representative, shall be utilized by the parties to determine Zoo Attendance. GLAZA shall provide Operator with monthly Zoo Attendance reports within fifteen (15) days after the end of each calendar month, provided that GLAZA may adjust any monthly Zoo Attendance report up to, but no later than, fifteen (15) days after that month's end. Based on adjustments made by the Zoo, GLAZA retains the right to adjust total annual attendance within ninety (90) days following the close of the fiscal year.

Zoo-Hosted Food and Beverage Services

All Concessions paid for by the Zoo or GLAZA at Zoo- and GLAZA-sponsored events, including, but not limited to, donor events, member events, volunteer events, Zoo or GLAZA conferences or office meetings, Board meetings and others. Operator shall provide Zoo-Hosted food and beverage Services at a 30% discount off of the average price actually charged to others for such services. Operator will report, but pay no commission on, Gross Receipts from such Zoo- Hosted Food and Beverage Services.

Zoo Patrons

Attendees of the Zoo, admitted through the front gate during the regular operating hours of the Zoo and during all evening events. This includes paid and non-paid attendees, members, school groups, small children, hosts and guests at catered events, and guests of GLAZA or the Zoo.

SECTION 2. RIGHTS AND RESPONSIBILITIES

GLAZA, as authorized by the City under the terms of the Concession Agreement between GLAZA and the City, hereby grants Operator, subject to the terms and conditions in this Agreement, the right and obligation (i) to operate and manage the Los Angeles Zoo Concessions; (ii) to provide Concessions during the hours of operation and in such location(s) in the Zoo as GLAZA requires; (iii) to provide Alcoholic Beverage Services with respect to Concessions and Catering at the Zoo to the extent the Zoo and GLAZA require; (iv) to provide tram and tour operations at the Zoo; (v) to act as the Zoo's Preferred Caterer; and (vi) to perform such other obligations and services as the parties may mutually agree in writing (collectively the "Services"). Operator shall report to and take direction from GLAZA and the Zoo with regard to all aspects of the Services. All operational plans and details must be pre-approved in writing by GLAZA and the Zoo.

Operator shall manage and operate the Services on a year-round basis pursuant to applicable City codes, rules, regulations, ordinances and laws including, without limitation, Zoo policies, levels of noise, accounting procedures and public/private access.

Operator shall provide food and beverage services, related restaurant management, Catering services, retail operations and other services at the Los Angeles Zoo on all days, except Christmas Day, during all Zoo hours and after-hours events as required by GLAZA.

The Zoo reserves the right to develop or improve the Premises as needed, without interference or hindrance; however, the Zoo and GLAZA shall consider and request Operator's views and operational perspectives.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF GLAZA

GLAZA hereby represents, warrants, and covenants that as of the date hereof, and unless otherwise set forth below, continuing throughout the Agreement Term:

- A. No agreement or understanding exists between GLAZA and any third party to reserve or grant any right to provide any of the Services referenced herein, except for catered events by an Outside Caterer permitted from time to time by GLAZA.
- B. GLAZA is authorized by the City to enter into this Agreement with Operator, and the individual executing this Agreement on behalf of GLAZA is authorized to do so.
- C. Entering into this Agreement shall not cause GLAZA to be in default of any agreement with respect to the Zoo.
- D. In the event GLAZA's rights under this Agreement are affected or terminated as a result of actions by the City, Operator waives any right of recovery or damages from GLAZA or the City and such actions shall not be a default of this Agreement by GLAZA or the City. Without limiting any of the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the parties and their respective

successors and permitted assigns.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF OPERATOR

Operator hereby represents warrants and covenants that unless otherwise set forth below, and continuing throughout the Term:

- A. The execution and delivery of this Agreement shall not cause Operator to breach or be in default of any agreement to which Operator is a party or may be bound.
- B. No consents or approvals are necessary under any agreement to which Operator may be a party or may be bound in connection with the execution and delivery of this Agreement by Operator.
- C. Operator will at all times cooperate with GLAZA and the Zoo and comply with GLAZA and the Zoo's requests (that are not in contravention of the terms of the Agreement) in connection with the operations of the Zoo including in the areas of the Zoo not subject to this Agreement.
- D. Operator shall not interfere or obstruct any activities of an Outside Caterer on Zoo ground including the use of all kitchen facilities as directed by GLAZA and the Zoo Operator may establish reasonable rules and policies for Outside Caterer's use of facilities.
- E. Operator, its employees, agents, contractors, vendors or subcontractors shall not act or fail to act, in a manner that would negatively affect GLAZA's or City's liability including but not limited to causing GLAZA's insurance premiums, including but not limited to, workers' compensation, fire and liability, to increase or be canceled.

SECTION 5. PREMISES

The Premises authorized by the Zoo for use by Operator shall only include the food, beverage and merchandise stand locations, cart storage, warehouse, office space, stroller rental and vending machine spaces noted on Exhibit B hereto which is incorporated herein by reference. The current Premises include:

Food and Beverage Concession

- Zoo Grill
- Reggie's
- Zoo Grill Kiosk
- Mahale Kiosk
- Churro Factory
- Gorilla Grill
- Cafe Pico
- Central Kitchen

- Mahale Cafe
- La Casita (Fork in the Road)

Retail Concessions and Other Premises

- International Marketplace
- Rainforest Traders
- Stroller and wheelchair and photo booth locations
- Office Space
- Warehouse
- Tram
- Vending Locations

- A. **Premises Delivered on an "As Is" Basis.** GLAZA and the Zoo shall provide access to those Premises on an "as is" basis for use in accordance with this Agreement. The Premises may be changed, modified, reduced, increased or eliminated by GLAZA and the Zoo from time to time and without obligation or compensation to Operator. Notwithstanding the foregoing, it is agreed and understood that "as is" condition is not intended to make Operator responsible for any asbestos removal and/or toxic or hazardous materials that exist in these areas as of the commencement of the Term. Operator shall provide written notice of such conditions to GLAZA, who shall cause the removal or correction of such conditions within a reasonable time at no cost to Operator.
- B. **Use of Premises.** Operator shall not use or permit the Premises to be used, in whole or in part, for any purpose other than as set forth in this Agreement, except with prior written consent of GLAZA and the Zoo, nor allow any use in violation of any present or future laws, ordinances, rules or regulations relating to sanitation or the public health, safety or welfare in connection with the use of the Premises. Operator expressly agrees at all times to maintain, use and operate the Premises in a safe, clean, wholesome and sanitary condition, and in compliance with any and all laws, ordinances and rules and regulations relating to public health, safety or welfare and City and GLAZA standards and directives.
- C. **Right of Inspection and Access to Premises.** GLAZA and the Zoo, their authorized representatives, agents and employees shall have the right to enter upon the Premises at any and all times, and such inspections may be used to determine if Operator is complying with the terms and conditions of this Agreement and to evaluate Operator. The inspections may provide a basis for action by GLAZA and the Zoo to terminate, renew or deny the extension option or for any other appropriate action.

Equipment. Unless otherwise noted herein, all fixtures, Smallwares and equipment located in the Premises are owned by the City and shall be delivered to Operator in an "as is" condition and shall be returned to City at the end of the Term in as good repair and operation condition as received. A complete inventory shall be taken by Operator and audited by GLAZA at the commencement of the Term and attached hereto as **Exhibit C**. All

replacement equipment shall become the property of the City upon termination of this Agreement, including Smallwares.

- D. **Utilities.** All utilities, i.e., water, sewer, gas and electricity shall be provided at no charge or cost to Operator as long as the utilities are available at no cost to GLAZA Operator shall be responsible for the repair and maintenance of utilities, including plumbing and electricity, but only from the point where such utilities enter a facility operated by Operator, unless caused by Operator's negligence. Operator shall exercise utility conservation efforts. If in GLAZA's sole and exclusive opinion, Operator is still not utilizing reasonable utility conservation efforts after two (2) written notices, GLAZA may require Operator, at Operator's sole cost and expense, to install utility-conservation devices in the Premises. If Operator does not install such devices within thirty (30) calendar days after receiving written notice, GLAZA reserves the right to install such devices and invoice Operator for the associated costs. In the event that GLAZA becomes responsible for payment of utilities, GLAZA will pass such costs through to Operator without mark-up. If the rate of utilization is more than standard usage, Operator shall be responsible for the extra cost.
- E. **Garbage Removal.** Garbage removal will be provided at no cost to Operator from a central location. Operator, at its sole cost, shall deliver all garbage resulting from or related to the Services in appropriately sealed bags to the central location, sorted by recyclables, etc. as directed by GLAZA.
- F. **Security.** Standard security measures within the Zoo will be provided at no cost to Operator. Any extra security necessary for events or Concessions cash control shall be the responsibility of Operator including, but not limited to, cash room and transportation of cash for deposit in a financial institution.
- G. **Parking.** Parking will be made available for Operator's employees and contractors at specified lots.

SECTION 6. TERM

The initial term of the Agreement shall be twelve (12) years, commencing on August 29, 2019 and terminating on August 28, 2031. Additionally, there shall be one five (5) year extension option, exercisable in GLAZA's and the City's sole discretion on 180 days' prior written notice. In the event that the Parties have neither negotiated a new agreement nor terminated this Agreement with no fewer than six (6) months' written notice, this Agreement shall continue on a month-to-month basis pursuant to the same terms and conditions herein.

For purposes of this Agreement, a Contract Year will be defined as a fiscal year period (July 1st to June 30th). The initial Contract Year shall be the period from the Commencement Date of this Agreement through and including June 30, 2020. The final Contract Year shall be the period from July 1st through the termination date of

the same fiscal year.

Neither City nor GLAZA shall be liable to Operator for any reason because of an action to decline to exercise the five (5)-year extension option or to disapprove renewal of the Agreement.

SECTION 7. SERVICES AND OPERATING RESPONSIBILITIES

Operator shall, at all times during the Term of this Agreement, provide oversight and management of the Concessions and Premises at the Zoo. Operator shall report to and take direction from GLAZA's designated representative and the Zoo's designated representative on all aspects of the Services. All of Operator's operational plans, planning and capital improvement plans shall require prior written approval of GLAZA and the Zoo. Additionally, Operator agrees to provide the following Services and comply with the following responsibilities and conditions:

- A. **Licenses and Permits.** Operator shall obtain, at its sole expense, any and all permits, approvals and licenses that may be required in connection with the operation of the Concessions including, but not limited to, business licenses, health permits, police, fire and Building and Safety permits. All permits, approvals and licenses shall be posted in the appropriate areas on a year- round basis.

- B. **Quality, Pricing and Merchandising.** Operator shall provide the Services in a manner consistent with the needs and requirements of Zoo Patrons as defined by GLAZA and the Zoo. All, prices, portions and merchandise mark-ups items to be sold or rented must be approved in writing by GLAZA and the Zoo prior to being offered for sale. The Services shall be of excellent quality and acceptable to GLAZA and the Zoo based on any benchmarks which may be provided to Operator from time to time, and to Zoo Patrons as received from feedback provided through social media monitoring, secret shoppers and quantitative and qualitative feedback results given in person, via text message, Web and phone interviews, and/or surveys conducted by Operator or GLAZA
 - i. **Quality of Goods Sold.** All Concessions sold by Operator shall be of the finest quality, wholesome and pure, and will conform in all respects to all applicable federal, state and City regulations. Operator shall offer for sale to Zoo Patrons a full range of fresh and pre-packaged food items and beverages (alcoholic and non-alcoholic). Operator expressly agrees to comply with the City's Good Food Purchasing Guidelines for Food Service Institutions, attached hereto as **Exhibit D**. Operator shall not offer for sale any food or beverage items which are adulterated, misbranded, impure, spoiled, expired, of poor quality or otherwise unfit for consumption and, to the extent any such items are discovered, they shall be immediately removed from any food preparation or service area. Operator shall report monthly to GLAZA and the Zoo concerning quality control and ensure that all deficiencies are corrected in a timely manner. Operator shall not use artificial trans-fat (e.g. industrially created partially hydrogenated plant oils) in the preparation of food products. All packaged food shall be free of trans-

fat. Energy drinks will not be served at the Zoo. No peanuts or peanut related products shall be served at the Zoo.

- ii. **Menus.** Operator shall develop innovative menus which emphasize variety, nutrition, quality, local and ethnic products and which focus on farm-fresh, seasonal foods that reflect the diversity and culture of Los Angeles, subject to the review and approval of GLAZA and the Zoo. GLAZA and the Zoo may require other food, beverages and supplies for selected events, programs and activities (subject to restrictions on prices provided herein). In no event shall Operator provide any food, beverages or merchandise for sale without the prior written approval of GLAZA. Operator shall present new menus and tasting sessions twice annually, no later than the first day of March and the first day of September for GLAZA's and the Zoo's review and approval, along with all analytical data as cross reference.
- iii. **Healthy Food Options.** Operator shall offer for sale to the public an appropriate selection of food and refreshment items, which shall include a variety of healthy choice options for food and beverages. This includes the availability of fresh fruits and fresh vegetables, bottled water, 100% juice, beverages which contain at least 50% fruit juice with no added sweeteners and healthy snacks.
- iv. **Alcoholic Beverage Services.** Operator shall provide Alcoholic Beverage Services for Zoo Patrons and Catering to the extent required by GLAZA and the Zoo.
- v. **Pricing.** Operator shall establish and control the reasonable pricing of all items available for sale at the Zoo in the manner described below, subject to the review and written approval of GLAZA and the Zoo. Operator shall post all Concession prices and items for sale prominently on signs approved by GLAZA. Attached hereto as **Exhibit E** is a detailed listing of all Concessions items to be initially offered for sale. Any changes to **Exhibit E** shall be submitted in writing to GLAZA for review, comment and approval at least thirty (30) calendar days in advance of the proposed effective date of change. In setting sales prices for Concessions, Operator shall ensure that such prices shall be no higher than similar items in other tourist attractions in the Los Angeles area. Upon request by GLAZA and not less than annually, Operator will provide a written survey comparing the prices of a minimum of twenty (20) top-selling Zoo Concessions items to other, local benchmarks and competitive, well-known brand concepts. This information will also be provided to the Zoo. To the extent Operator seeks to increase the price of any Concessions item, Operator shall first obtain GLAZA's written approval.
- vi. **Employee Concession Discounts.**
 - a) Operator shall offer Zoo and GLAZA employees, docents and volunteers ("Personnel") all food and beverage available for sale at the Zoo at a fifty percent (50%) discount from the price actually charged to Zoo Patrons and others for such items.

- b) Operator shall offer Zoo and GLAZA employees, docents and volunteers ("Personnel") all retail items available for sale at the Zoo at a thirty percent (30%) discount from the price actually charged to Zoo Patrons and others for such items.
 - c) Mondays through Fridays, Operator shall offer a planned daily lunch special for Personnel, in a quantity and quality similar to that served to Zoo Patrons and others, at a fifty percent (50%) discount off the average price that would be charged to Zoo Patrons and others for such a meal.
 - d) Mondays through Fridays, beginning no later than 8:30 a.m., Operator shall offer breakfast items for Personnel at a fifty percent (50%) discount off the average price that would be charged to Zoo Patrons and others for such breakfast items.
 - e) Operator will report, but pay no commissions on, Gross Receipts from such Personnel sales.
 - f) Operator may make the same discount structure available to its on-site employees.
- vii. **Office Coffee Service.** Operator shall provide, or cause to be provided, at no additional cost to GLAZA or the Zoo, office coffee, filtered water dispensers, hot tea and appropriate condiments in the Zoo and GLAZA offices for GLAZA and Zoo employees during the Term. Two (2) one hundred (100) cup coffee makers shall be set up for staff each morning and three (3) additional, individual-cup coffee makers located in GLAZA's and the Zoo's administrative office areas shall be supplied by Operator. Operator agrees to provide the equipment, beverages and supplies as detailed on **Exhibit F** hereto. Such equipment, beverages and supplies shall be presented to GLAZA and the Zoo for approval and shall be of a quality standard established by GLAZA from time to time.

C. Catering Services.

- i. **Preferred Caterer.** GLAZA shall first refer all Catering, GLAZA and Zoo-Hosted Food & Beverage Service inquiries to Operator, who shall provide high-quality menu choices at reasonable market pricing. If GLAZA and the Zoo determines that the quality of food does not meet GLAZA, the Zoo or the City's standards, in GLAZA or the Zoo's sole and exclusive discretion, GLAZA and the Zoo may request the chef be transferred, or, if GLAZA or the Zoo determines that Operator is not able to satisfy the customer's desired menu, price/budget, service, experience, or other criteria, GLAZA or the Zoo may authorize the use of an Outside Caterer. Notwithstanding the foregoing, GLAZA and the Zoo will sponsor occasional events that involve serving and selling food and beverage items, such as but not limited to Brew at the Zoo, Roaring Nights, and Zoo Lights. Operator may participate in these events, but will not be the exclusive caterer.

- ii. **Sharing of Commission.** In the event an Outside Caterer is contracted for an event, GLAZA shall not be obligated to share with Operator any commissions received.
- iii. **Catering of Alcoholic Beverages.** Operator shall be the sole provider of alcoholic beverage service for all events at the Zoo. Notwithstanding the forgoing, GLAZA or the Zoo may invite alcoholic beverage providers to GLAZA and/or Zoo sponsored events if the product and/or services are donated.
- iv. **Catering of Zoo- and GLAZA-Hosted Conferences and Meetings.** Operator shall provide Catering for Zoo- or GLAZA- sponsored conferences and meetings at a thirty percent (30%) discount off the average price actually charged to Zoo Patrons and others for such services. This includes, but is not limited to, internal meetings, lunch meetings and Board meetings. Operator will report, but pay no commissions on, Gross Receipts from such services
- v. **Catering Booking and Coordinating.** The booking and coordinating of all catered events at the Zoo (excluding the Zoo parking lot) shall be handled by GLAZA. GLAZA shall be responsible for generating the appropriate paperwork and receiving the appropriate approvals relating to the provision of Services for such events in a timely manner from all necessary Zoo divisions. Prior to the commencement of the Term of this Agreement, GLAZA will develop booking guidelines that GLAZA may change from time to time. Operator shall be bound by the guidelines. The intent of such policy shall be to emphasize events that will maximize the use of the Zoo and clearly relate to the Zoo's mission. GLAZA reserves the right not to approve any group, organization or corporation that wishes to stage an event at the Zoo that may not, in GLAZA's sole and exclusive opinion, present GLAZA and/or the Zoo in a favorable way.
- vi. **Catering Deposits.** Any deposits that have been received by the current operator for the catering of events taking place after the Commencement Date of this Agreement shall be transferred to Operator upon the Commencement Date of this Agreement. Operator agrees to perform and execute any and all catering for events on the books prior to July 1, 2019, based on the terms and conditions agreed between the current operator and the customer. For any and all events that are booked after July 1, 2019, but before August 29, 2019, to be executed after August 29, 2019, Operator shall provide input and review of catering and approve menus, pricing, and other terms and conditions of the event catering.
- vii. **Indemnification and Insurance Requirements for Outside Caterers.** If an Outside Caterer is utilized for any event, GLAZA shall require the Outside Caterer (i) to provide indemnification in favor of GLAZA, the City, the Zoo and Operator which is not less than the provisions set forth in Section 17 below; (ii) to name GLAZA, the City, the Zoo and Operator as additional insureds on the comprehensive general liability and umbrella insurance required to be maintained by the Outside Caterer (which insurance, along with any other

insurance, may be less than GLAZA's insurance requirements set forth in Section 10 below; and (iii) to deliver certificates of insurance and endorsements to GLAZA, the City, the Zoo and Operator at least forty-eight (48) hours prior to the event. In addition, GLAZA shall require the Operator, with respect to the provision of alcoholic beverages, to (i) provide indemnification in favor of the Outside Caterer which is not less than the provisions set forth in Section 17 below; (ii) provide that the Outside Caterer shall be an additional insured on the liquor liability portion of the comprehensive general liability insurance required to be maintained by Operator under Section 10 below; and (iii) deliver a certificate of insurance to the Outside Caterer at least forty-eight (48) hours prior to the event.

D. Transaction Receipts.

- i. On request, Operator shall offer receipts to Zoo Patrons for every transaction.
- ii. Operator shall at all times have a sign placed within twelve (12) inches of any cash register, in clear view to the public, and in minimum one-inch lettering, which states: *"If a receipt for this transaction is not provided on request, please contact the Greater Los Angeles Zoo Association at (323) 694-9993.*

E. Hours of Operation. Operator shall cause to be open and in full operation all of the Concessions during the Zoo's hours of operation, seven (7) days per week, and three hundred sixty-four (364) days per year. Notwithstanding the above, Operator may make a formal request to GLAZA to close certain Concessions areas during the Zoo's days and hours of operation based on a schedule proposed by Operator and approved in writing by GLAZA at least fourteen (14) calendar days prior to the dates requested where the same shall indicate a proposed daily and weekly scheduling, indicating which stands, shops, carts and services are requested to be closed. All requests for closure or a reduction in hours of operation shall be accompanied by an economic analysis including past attendance statistics by date.

F. Equipment. Operator will provide all loose equipment (e.g. vending machines, merchandising fixtures and equipment, interior decor and display cases) in sufficient quantity for the operation of the Concessions. Operator shall repair and/or replace the same, if required, at Operator's sole cost and expense. Operator shall also provide and maintain at its sole expense all heavy and light duty equipment including, but not limited to, kitchen equipment, mobile food and beverage carts, point-of-sale systems, credit/debit card machines and new technology systems.

G. Preventive Maintenance, Repairs and Equipment Replacement. Operator shall allocate at least one and one-half percent (1.5%) of Gross Receipts on a

monthly basis for preventive maintenance of equipment and at least one percent (1%) of Gross Receipts on a monthly basis for Smallwares replacement. Operator shall report to GLAZA and the Zoo that these funds are available for these purposes. Operator shall develop an annual preventive maintenance and Smallwares purchase plan in conjunction with GLAZA and the Zoo and seek to expend such funds on a regular basis so the equipment and Smallwares are maintained and replaced on an optimal basis.

- H. **Insurance for Loss of Equipment and Facilities.** Operator shall insure all Concessions equipment and facilities for full replacement cost during the Term of this Agreement.
- I. **Inventory.** Operator acknowledges the seasonality of the operation of the Concessions and Services at the Zoo. Operator expressly agrees to maintain sufficient inventory of food, beverages, merchandise and supplies at all times in order to sustain its projected sales and provide excellent customer service. Further, Operator agrees to rotate merchandise to reflect changing and special exhibitions and changes of season.
- J. **Customer Satisfaction Surveys.** Operator shall make customer survey cards available to Zoo Patrons. A copy of such survey cards is attached hereto as **Exhibit G**. The initial form of such survey cards and any changes thereto, shall be subject to the prior written approval of GLAZA. Customer surveys shall be available in Spanish and English, in written and digital form with results accessible to both Operator and GLAZA and the Zoo. Within twenty-four (24) hours of receipt of any negative survey card, Operator will provide GLAZA a written description of any action(s) taken or to be taken by Operator in response to any complaints or problem areas noted. In connection with Catering events and services, Operator shall forward an approved survey card, together with a stamped, self-addressed reply envelope, to the Catering customer immediately following the catered event.
- K. **Secret Shopper Service.** Operator shall commission, at its sole expense, a monthly "secret shopper" service to visit the Concessions Premises and prepare a report sent directly to both Operator and GLAZA regarding the quality of the Concessions operations and Services. Operator will provide a report to GLAZA and the Zoo within five (5) calendar days of the secret shopper report with an explanation of Operator's resolution of any reported deficiencies.
- L. **Daily Operations Reports.** Operator shall provide GLAZA and the Zoo with daily, written reports on operations, including Gross Receipts and any operational issues with respect to the facilities, operations or Zoo Patrons.
- M. **Health, Safety and Security of Zoo Patrons and Employees.** Operator shall comply with all applicable federal, state, City, municipal, and Zoo fire, safety

and health laws, ordinances, rules and regulations. Operator shall train its employees to respond to fire, civil defense, bomb threats, earthquakes and other emergencies based on procedures established by the Zoo. Additionally, the Operator agrees to the following duties and responsibilities:

- i. Operator, through a GLAZA-approved third party, shall pay for and perform health and safety inspections of the Premises monthly and send the inspection reports directly to GLAZA. GLAZA reserves the right to perform its own health and safety inspections at any time, and if the conditions at any of the Concessions Premises do not meet appropriate standards, GLAZA may direct Operator to take necessary action, which may include closing one or more of the Concessions Premises. If there are any infractions by the Operator, Operator will reimburse GLAZA, at Operator's sole cost and expense, for the reasonable costs incurred in any GLAZA- commissioned third-party inspection of the Premises.
 - ii. Operator agrees that it will immediately notify GLAZA of all known cases of communicable diseases, skin infections or food poisoning contracted by its employees, Zoo or GLAZA employees, volunteers, docents or Zoo Patrons. Operator shall promptly report to GLAZA the details of any such case, the action it has taken to remedy the case and any action it has taken to prevent recurrence.
 - iii. Operator shall immediately notify GLAZA of any fire, accident or safety hazard that occurs at any Concessions Premises under the control of Operator. Within twenty-four (24) hours of notice, Operator shall take reasonable measures to remedy any condition in any Concessions Premises which is unsafe, unhealthy or dangerous.
 - iv. GLAZA and the Zoo reserve the right to perform their own health and safety inspections at any time, and if the conditions at any Concession Premises do not meet appropriate standards, GLAZA and the Zoo may direct Operator to take necessary action, which may include closing one or more Concession Premises.
- N. **Cleanliness.** Operator shall ensure the Premises are always maintained in a safe and clean condition and will work in conjunction with GLAZA and the Zoo to keep the Premises clean, uncluttered and sanitary at all times. Operator agrees to respond and correct any instruction of GLAZA and the Zoo immediately or to provide a written response with twenty-four (24) hours of necessary corrective action.
- i. **General.** Operator shall maintain all food service equipment, kitchen serving equipment, guest serving equipment and merchandising equipment including, but not limited to, all Smallwares, carts, tables and chairs in a clean and sanitary condition at all times. This shall include daily cleaning and maintenance of all facilities, office spaces, storage areas, the cart storage building and trams yard, as well as all floors, seating/dining areas in and around Concessions stands and

perimeter areas (within twenty (20) feet of each building/structure) according to GLAZA and Zoo standards to maintain appearance and cleanliness standards in a manner satisfactory to GLAZA and the Zoo.

- ii. **Garbage Removal.** Operator shall provide receptacles and bags for garbage removal covering a perimeter of fifty (50) feet from all Concessions Premises to dumpsters or areas designated by GLAZA for removal by the Zoo, and shall cause the same to be removed no less than on a daily basis.
 - iii. **Grease Disposal.** Operator will have all grease generated by its Services placed in an Operator-supplied grease barrel and will remove the grease therefrom when no more than three quarters (3/4) full or monthly, whichever comes first. Operator will provide written documentation to GLAZA regarding the frequency of grease removal and identification of the disposal location.
- O. **Concessions Promotions.** Operator shall be responsible, at its sole expense, for the promotion and advertising of the Services, as well as for the creation of brochures, presentation decks and other promotional materials for Catering, special exhibitions and other such Services as may be required by GLAZA and the Zoo from time to time. The Parties shall meet by mutual agreement on a regular basis to develop an annual marketing program for the Services. Promotional materials, including any language used on radio, television or social media shall be pre-approved in writing the GLAZA and the Zoo. Any use of the name, marks, logo, image and other intellectual property of the Zoo or GLAZA shall be pre-approved in writing by the Zoo and GLAZA.
- P. **Signage.** All signage for the Services deemed necessary by Operator shall be the sole financial responsibility of Operator and shall not be considered a Capital Investment. All signage must have prior, written design and placement approval by GLAZA and the Zoo. The Zoo will provide directional signage to the Concessions locations, the design of which shall be at the sole discretion of the Zoo. Under no circumstances shall Operator use or display temporary or paper signs that do not fit the standards of GLAZA and the Zoo.
- Q. **Diversion of Business.** Operator shall not divert, cause, allow or permit to be diverted any business from the Zoo and shall take all reasonable measures to develop, maintain and increase the business conducted by it under this Agreement.
- R. **Conduct.** Operator and its representatives, agents, subcontractors, servants and employees shall at all times conduct its business in a quiet and orderly manner to the satisfaction of GLAZA and the Zoo.
- S. **Disorderly Persons.** Operator shall use its best efforts to permit no intoxicated person or persons, profane or indecent language or boisterous or loud conduct

in or about the Premises and will call upon the aid of Zoo security personnel to assist in maintaining peaceful conditions. Operator shall not knowingly allow the use or possession of illegal drugs, narcotics or controlled substances in the Premises.

- T. **Annual Review.** Operator shall conduct a modification and capital improvement review (the "Improvement Review") outlining proposed modifications to Services (as described in Section 7 herein) and capital planning for the upcoming Contract Year with representatives of both GLAZA and the City no less than ninety (90) days prior to the commencement of each Contract Year. At the conclusion of each Improvement Review, Operator shall provide minutes of the proposed and subsequent approval (or dis-approval of) Services and capital plans which shall be memorialized in writing by the Parties. Operator shall conduct an annual review (the "Annual Review") of the previous year's performance within ninety (90) days following the close of the fiscal year. Operator shall provide written minutes of the annual performance review.

SECTION 8. OPERATOR'S PERSONNEL

- A. **Personnel.** Operator shall recruit, train, supervise, direct, discipline and, if necessary, discharge any and all personnel working in Concessions. All employees shall be employees of Operator and not of GLAZA or the Zoo. Operator shall be solely responsible for all employer obligations in connection with its employees, including without limitation, salaries, overtime, all local, State and Federal payroll taxes, workers' compensation insurance, pension, and health and welfare benefits. Operator shall develop a protocol, subject to GLAZA and Zoo approval, for the engagement of any employee or subcontractor. Operator's protocol shall comply with all applicable City, State, and/or Federal labor laws. Staffing levels shall be based on Zoo attendance projections and labor standards in accordance with requirements established by GLAZA and the Zoo.
- B. **Qualified Personnel.** Operator will, in the operation of the Concessions, employ or permit the employment of only such personnel as will assure a high standard of service to the public. All personnel will be trained in accordance with Operator's submitted training plan prior to starting work at the Premises. All such personnel, while on or about the Zoo grounds, shall be neat in appearance and directed to be courteous at all times and shall be appropriately attired in conjunction with agreed upon appearance standards, with badges or other suitable means of identification. Operator shall prohibit persons employed by Operator, while on or about the Zoo grounds, to be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment. In the event an employee engages in such inappropriate

behavior, GLAZA or the Zoo may direct Operator to remove that person from the Zoo grounds or from employment at the Zoo. Operator will create an employee handbook that will delineate these requirements to be signed by all employees. GLAZA and the Zoo will review the handbook to ensure that it complies with all required Zoo and applicable City policies.

- C. **Insurance.** Operator shall indemnify and hold harmless GLAZA and the Zoo and carry sufficient insurance acceptable to the City's Risk Manager and GLAZA for any and all acts or actions of Operator's employees interfacing with any person or entity, including GLAZA and Zoo employees, GLAZA guests, Zoo Patrons, GLAZA, the Zoo and the City.
- D. **Background Screening of Employees.** At Operator's sole cost and expense, Operator will properly screen using Live Scan and conduct a background check of all job candidates prior to hiring to reduce the possibility of Operator hiring any person who would pose a security or other risk to Zoo Patrons, the Zoo or Zoo/GLAZA employees, docents, volunteers or facilities.
- E. **General Manager of Concessions and Key Personnel.** The General Manager and other key personnel shall be identified to GLAZA and the Zoo by name and responsibilities. Changes to key personnel are subject to the reasonable written approval by GLAZA and the Zoo. Subject to written approval of GLAZA and the Zoo, Operator shall employ an on-site, full-time General Manager who shall have primary day-to-day operating responsibility for the Concessions and Services during the Term of this Agreement. GLAZA shall have the right to interview and approve Operator's General Manager and other key personnel prior to their assignment to the Zoo. Changes to the General Manager and other key personnel must be approved by GLAZA and the Zoo.
- i. Such person must be a qualified and experienced manager or supervisor of Concession operations, vested with full power and authority to accept service of all notices provided for herein regarding the operation of the Concessions, including the quality and prices of Concessions goods and services and the appearance, conduct and demeanor of Operator's agents, servants and employees. The General Manager shall be available and on-site during regular business hours and, at all times during that person's absence, a responsible subordinate shall be in charge and available.
 - ii. Operator agrees that its on-site General Manager will have at least ten (10) years of food, beverage, catering and merchandise general management experience in a similar place of public attraction (e.g. a zoo, amusement park or theme park, airport, stadium, arena or other similar public facility) with gross annual revenues of at least Five Million U.S. Dollars (\$5,000,000).
 - iii. The General Manager shall devote the greater part of his or her working time and attention to the operation of the Concessions and shall promote, increase and develop the Concession business. During the days and hours established for the operation of the Concessions, the General Manager's full attention

shall be directed to the operation of the Concession business.

- iv. The General Manager will serve as the primary and direct liaison to GLAZA, and shall be responsible for developing and maintaining consistent and regular communication, meetings and reporting of all Concessions activities and issues.
- v. At the commencement of the Term, Operator's General Manager shall be Brent Heinisch. Operator agrees that there shall be no change of this point of contact without the prior written approval of GLAZA, which shall not be unreasonably withheld.
- F. **Reassignment of Personnel.** If GLAZA or the Zoo objects to any employee of Operator, Operator will remove that employee from the Zoo premises. Operator shall have the right and sole discretion whether to discharge or transfer the employee to another non-Zoo location.
- G. **Uniforms and Identification.** Non-management employees of Operator must be appropriately uniformed and identifiable when performing their work assignments at the Zoo. Operator must submit samples of uniforms and other employee apparel to GLAZA for prior written approval no later than ninety (90) calendar days prior to the commencement of the Term, and within ninety (90) calendar days prior to the Operator making any substantive change to the uniforms during the Term. Uniforms must be kept in a neat and clean condition at all times. Operator will provide, at its sole cost and expense, all uniforms and identification badges required and will require the wearing of such at all times when employees are on-duty at the Zoo.
- H. **Drug-Free Workplace.** Operator shall maintain a drug-free workplace and not allow the manufacture, distribution, dispensing, possession or use of an illegal controlled substance by Operator's employees, and maintain a non-smoking environment in all interior and exterior areas of the Premises and surrounding areas, except in designated areas of the Zoo parking lots.
- I. **Freedom from Tuberculosis.** Prior to commencing work at the Zoo, and annually thereafter, all Operator's employees preparing food, and others as required by statute (e.g. Section 5163 of the California Public Resources Code) or directive of GLAZA or the Zoo, shall have received tuberculosis tests at Operator's sole cost and expense. Operator shall maintain detailed records of this testing for all its employees at the Zoo and shall provide GLAZA with certificates on applicable employees indicating freedom from communicable tuberculosis. In the event Operator does not fully comply with this testing requirement, Operator shall be in default of this Agreement.
- J. **Employee Training.** Operator shall at all times employ adequately trained personnel to provide the Services. Operator shall maintain a trained relief staff to substitute for Operator's regular personnel, if necessary.

- i. **General Training.** Operator shall develop a formal orientation and training program for all managers, chefs and line-level employees, as well as part-time and seasonal staff. Training shall be both experiential as well as task based and include, but not be limited to, non-discrimination training and sexual harassment training. Operator shall work with GLAZA to include a Zoo immersion course and other on-site training as well as use of training software, as applicable and approved by GLAZA. The proposed training program shall be submitted for prior approval to GLAZA no later than ninety (90) calendar days prior to the beginning of the Term and within sixty (60) calendar days prior to Operator making substantive changes to the training program during the Term.
- ii. **Alcohol Service Training.** All employees involved in the sale, service and distribution of alcoholic beverages shall be trained in effective alcoholic awareness, which includes training based on any applicable laws of California. This training shall include the State of California Department of Alcoholic Beverage Control (ABC) sanctioned training of the Licensee Education on Alcohol and Drugs Alcohol Seller/Server Training Program (LEAD) and may include, without limitation, policies and procedures developed by Operator dealing with alcohol management and a nationally recognized program such as "Techniques for Effective Alcohol Management" (or "TEAM") or "Techniques for Intervention Procedures by Servers of Alcohol (or "T.I.P.S.") or "ServSafe Alcohol" (or "ServSafe"). Operator shall provide GLAZA with certificates on applicable training for all employees involved in the sale, service and distribution of alcoholic beverages. Operator will not knowingly service intoxicated or under-age persons and will coordinate with, and immediately notify Zoo security of any known or observed safety concerns, use of illegal substances or improper use of alcohol that pose immediate threats of safety to Zoo Patrons, intoxicated individuals or employees.

SECTION 9. PRODUCT SPONSORSHIP RIGHTS

- A. **Sponsorships Generally.** GLAZA, with approval from the City, from time to time enters into sponsorship arrangements with food, beverage and merchandise suppliers. These sponsorship arrangements may require the exclusive or featured use of certain food, beverage or merchandise products at the Zoo. GLAZA, rather than Operator, retains all sponsorship rights including, but not limited to alcoholic and non-alcoholic pouring rights. Operator will honor and comply with such arrangements. GLAZA shall not enter into a sponsorship arrangement with a supplier for goods or services that may result in wholesale pricing to Operator that is in excess of pricing already available to Operator on the general market, for products that are inappropriate for the Zoo or with

sponsors whose corporate values do not align with the Zoo. Sponsorship arrangements shall avoid products or suppliers of tobacco, firearms, controlled substances, adult entertainment or political election campaigns. All such sponsorships, agreements and revenue sharing arrangements, including extensions or renewals of existing arrangements, shall be in writing and subject to the Zoo Director's approval. Alcohol sponsorships shall be limited to evening events, except for beer and wine sales, and all alcohol products available for purchase shall only be for visitors over 21 years of age at Zoo facilities authorized and licensed to serve alcohol.

- B. **Alcoholic Beverage Sponsorships.** In the event GLAZA receives alcoholic beverages as a contribution from any source for service at GLAZA events, Operator shall provide service of such beverages at no additional cost to GLAZA.
- C. **Other Sponsorships.** GLAZA, with approval from the City, may enter into other sponsorships from time to time that may affect the products Operator is able to sell at the Zoo. GLAZA will keep Operator informed of sponsorships related to this Agreement, and Operator agrees it will not sell or promote any food, beverages or merchandise that would cause GLAZA to be in breach of any of its current or future sponsorship agreements.
- D. **Pepsi Sponsorship.** Pepsi Beverages Company ("Pepsi") has an agreement with GLAZA for exclusive rights for most non-alcoholic beverages sold at the Zoo for a ten (10) year period ending January 31, 2024. Further, Pepsi has first right of renewal based on the best terms and conditions GLAZA can negotiate from others. Pepsi provides all required dispensing equipment at no cost, including five (5) Pepsi-identified mobile distribution carts. Pepsi provides vending machines to dispense Pepsi and Ocean Spray products in quantities and locations as may be mutually agreed by and between GLAZA and Pepsi. GLAZA anticipates continuing its relationship as detailed herein for the duration of the sponsorship and retains the right to extend the same without compensation to Operator. Notwithstanding the forgoing, approximately ninety (90) to one hundred and eighty (180) calendar days prior to the expiration date of the sponsorship agreement, GLAZA will consult with Operator, Zoo and City before entering into new exclusive rights agreement with Pepsi. Operator agrees that it will not sell or promote any food, beverages, or merchandise that would cause GLAZA to be in breach of its agreement with Pepsi.
- E. **ICEE Sponsorship.** The ICEE Company ("ICEE") has an agreement with GLAZA for frozen drinks sold at the Zoo for a three (3) year period ending February 29, 2022. ICEE provides all the required dispensing equipment at no cost to GLAZA. Operator agrees that, if this agreement with ICEE is renewed beyond the current end date or if GLAZA enters into an agreement with another supplier of frozen drinks, it will not sell or promote any frozen drinks that would cause GLAZA to be in breach of its agreement with ICEE or a new supplier.

SECTION 10. INSURANCE

- A. **Insurance Requirements.** During the Term of the Agreement, and without limiting Operator's obligation to indemnify, hold harmless and defend GLAZA, the City and the Zoo, Operator shall maintain at its own expense, at a minimum, the amounts of insurance coverage listed below. Operator's policies for the insurance coverages shall be primary and non-contributory to any similar insurance and/or self-insurance that GLAZA, the City of Los Angeles, or the City of Los Angeles Department of the Zoo maintains. All policies shall include GLAZA, its Board of Trustees, boards officers, agents and employees, the City of Los Angeles, its officers and employees and the City of Los Angeles Department of the Zoo and its officers and employees as additional insureds by specific endorsement.
- i. Workers' Compensation in an amount equal to or greater than the statutory limits as required by the laws of the State of California as well as Employer's Liability Insurance in a minimum amount of \$1,000,000, including sexual harassment coverage. Coverage shall apply to all personnel employed either directly or by way of contract from any payroll or staffing service provider used by Operator and include a waiver of subrogation in favor of the City, the Zoo and GLAZA.
 - ii. Commercial General Liability insurance, or other comparable broad form general liability coverage, shall include but shall not be limited to coverage for bodily injury, property damage, advertising and personal injury, products- completed operations, host/liquor liability, fire, explosion liability, independent contractor coverage and contractual liability, in a minimum amount of \$10,000,000 per occurrence and \$17,000,000 in total.
 - iii. Operator shall maintain Auto Liability Insurance in a minimum amount of \$5,000,000 combined single limit.
 - iv. Direct damage "all risk" property insurance to cover damage to Concession premises and equipment. This policy shall include liability coverage for damage or harm to Zoo and/or GLAZA premises, animals and exhibits in a minimum amount of \$10,000,000 per occurrence.
- B. **Subrogation.** Operator hereby waives its right of subrogation on all insurance claims.
- C. **Third Party Insurance Requirements.** Subcontractors, vendors, individuals and entities hired by Operator to perform work on or about the Zoo or invited onto Zoo premises by Operator shall be subject to the applicable insurance requirements of this Agreement. Each contractor and subcontractor shall name GLAZA and the City of Los Angeles as additional insureds by specific endorsement. A copy of the endorsement shall be provided to GLAZA and the City Risk Manager.

- D. **Form of Insurance.** Operator may meet insurance requirements through separate, combination or package policies if those policies meet the required limits and the required scope of coverage and are from insurance carriers acceptable to GLAZA and the City. Umbrella and/or excess policy limits may be accepted to meet the required limits and the required scope of insurance.

- E. **Disclosure of Limitations.** Operator shall disclose to GLAZA any limits in any of the insurance policies or the required certificates of insurance, including any umbrella and/or excess liability policies.

- F. **Acceptable Insurers.** Insurance coverage must be procured from companies earning a minimum rating of A6 in Best's Rating Guide.

- G. **Notice of Cancellation.** All such insurance policies shall require a minimum thirty (30) calendar days' notice requirement to GLAZA and City prior to cancellation or material amendment or endorsement of any policy that would affect this Agreement.

- H. **Proof of Insurance.** As evidence that Operator has the required coverage, Operator shall provide the certificates of insurance and duplicate original policies to GLAZA and the City in a form acceptable to the Office of the City Administrative Officer, Risk Management and be uploaded to the City Risk Management website [www. Quickcomply.org](http://www.Quickcomply.org). In the event GLAZA does not receive this proof of insurance coverage at least thirty (30) calendar days prior to the Commencement Date, GLAZA may cancel this Agreement.

- I. **Miscellaneous.** Failure to maintain the required insurance shall constitute a material breach of this Agreement and shall give GLAZA the right to terminate this Agreement immediately. Operator expressly agrees that should GLAZA exercise this right, GLAZA shall not be held responsible for, and Operator shall have no claim or cause of action against GLAZA or City, for any incidental, consequential or other resulting damages (physical or monetary) caused directly or indirectly by such termination.

SECTION 11. CONCESSION COMMISSIONS

A. Concessions Commissions.

- (i). **Commissions Generally.** Except as noted below in Sections 11.A(ii) and (iii), on the 15th day of each month during the Term, Operator shall make a monthly commission payment to GLAZA based on the following percentages of the monthly Gross Receipts as defined in Section 1 above ("Commission"):

DEPARTMENT	GROSS RECEIPTS	COMMISSION
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Daytime Visitor Dining	\$0 up to \$3,000,000	24%
	In excess of \$3,000,000 up to \$5,000,000	25%
	In excess of \$5,000,000 upto \$7,000,000	26%
	In excess of \$7,000,000	27%
Catering Food & Beverage (external clients)	All Food & Beverage Gross Receipts	18%
Retail Merchandise	All Gross Receipts	34%
Tram Sales	All Gross Receipts	20%
Stroller Rentals	Operator Net after 3 rd Party Commission	10%
ECV Rentals	Operator Net after 3 rd Party Commission	30%
Photos & Caricature Art	Operator Net after 3 rd Party Commission	50%
Vending	All Gross Receipts	40%

(ii). **Commissions during the Recovery Period.** The Parties agree to calculate the concession commissions at temporarily reduced rates for twenty-four (24 months) following the Effective Date of this First Amended and Restated Agreement (“Recovery Period”). During the Recovery Period, on the 15th day of each month, Operator shall make a monthly commission payment to GLAZA based on the following percentages of the monthly Gross Receipts as defined in Section 1 above:

DEPARTMENT	GROSS RECEIPTS	COMMISSION
Daytime Visitor Dining	\$0 up to \$1,000,000	12.25%
	In excess of \$1,000,000 up to \$1,500,000	14.5%
	In excess of \$1,500,000 upto \$2,500,000	20%
	In excess of \$2,500,000	23.6%
Catering Food & Beverage (external clients)	All Food & Beverage Gross Receipts	16.5%
Retail Merchandise	\$0 up to \$1,000,000	15.5%
	In excess of \$1,000,000 up to \$1,500,000	17.5%
	In excess of \$1,500,000 upto \$2,500,000	18.5%
	In excess of \$2,500,000	22%
Tram Sales	All Gross Receipts	15%
Stroller Rentals	Operator Net after 3 rd Party Commission	10%
ECV Rentals	Operator Net after 3 rd Party Commission	30%
Photos & Caricature Art	Operator Net after 3 rd Party Commission	50%
Vending	All Gross Receipts	40%

(iii). **Exception for Commissions on Mobile and eCommerce Sales between the end of the Recovery Period and the end of Year 6.**

From the end of the Recovery Period through the end of Year 6 only, the Parties agree to exclude mobile and eCommerce sales from Gross Receipts, as defined in Section 1 above, and to calculate commissions on such sales separately. Mobile sales shall be defined as food and beverages purchased through a website on purchasers’ own handheld devices, such as a cell phone or tablet (“Mobile Sales”) and eCommerce shall be defined as retail purchases made through Operator’s online eCommerce store (“eCommerce”). On the 15th day of each month immediately

following the end of the Recovery Period through the end of Year 6, Operator shall make a monthly commission payment to GLAZA, for the previous month, based on the following percentages of the monthly gross receipts of Mobile and eCommerce sales of food/beverage and retail ("Mobile and eCommerce Commission")¹:

¹For clarity, Gross Receipts of Mobile and eCommerce sales of food and retail are not separately subject to the Gross Receipt Tiers in the referenced tables. For example, if SSA sold \$10,000 in eCommerce sales, that \$10,000 would be credited to the total Gross Receipts retail tier to determine the general retail sales tier. However, SSA would pay the commission rate associated with eCommerce on that \$10,000 and not the general retail commission tier rate.

DEPARTMENT	GROSS RECEIPTS	COMMISSION
Daytime Visitor Dining	\$0 up to \$3,000,000	22%
	In excess of \$3,000,000 up to \$3,500,000	23%
	In excess of \$5,000,000 upto \$7,000,000	24%
	In excess of \$7,000,000	25%
Retail Merchandise	All Gross Receipts	32%

B. Minimum Annual Guarantee. Notwithstanding the Commission payments above, Operator shall pay a minimum annual guarantee ("Minimum Annual Guarantee") to GLAZA on or before the first (1st) day of July of each Contract Year if the total monthly Commission payments referenced above in subsection 11.A. are not equal to or do not exceed the Minimum Annual Guarantee as set forth below. Notwithstanding the foregoing, during the Recovery Period, the Minimum Annual Guarantee shall be suspended, and Operator shall have no obligation to pay a Minimum Annual Guarantee during the twenty-four (24) month Recovery Period.

The Minimum Annual Guarantee for years one (1) through twelve (12), with the exception of the Recovery Period, shall be the amount of Two Million Five Hundred Thousand U.S. dollars (\$2,500,000) annually; and years thirteen (13) through seventeen (17) shall be the amount of Two Million Five Hundred Thousand U.S. dollars (\$2,500,000) annually, if GLAZA and the Zoo exercise the option to extend the Agreement.

Payment of the Minimum Annual Guarantee shall be prorated for the first and the final year of the Term.

With the exception of the Recovery Period, if by June 30th of each fiscal year, the total monthly Commission payments referenced in subsection 11.A. above are not equal to or do not exceed the Minimum Annual Guarantee, the difference between the actual Commission payment received and the Minimum Annual Guarantee will be due and payable by July 15th of the subsequent fiscal year, prorated as necessary for the first year of the Term and the final year of the Term.

C. Additional Commission based on Attendance. To ensure that the Zoo receives the full value of any attendance and related Concession sales increases, in addition to the Commission set forth in Section 11.A. and the Minimum Guarantee in Section 11.B. above, Operator shall pay additional Commission as a flat fee based on the attainment of certain attendance goals, as stated below with a bonus at the end of each six year period of the original Term and also at the end of the five-year extension if exercised by GLAZA and the Zoo, as applicable. This additional Commission will be due and payable by September 30th of the subsequent fiscal year.

Attendance	Commission Increase/Attendance Enhancement Food, Beverage & Retail
Above 1,900,000	\$20,000 per year, plus if exceeded for each of the first six (6) years of the Term, additional \$300,000, paid at end of year 6 (\$400,000 for years 6-12 and \$450,000 for years 13-17, if extended)
Above 2,000,000	\$40,000 per year, plus if exceeded for each of the first six (6) years of the Term, additional \$300,000, paid at end of Year 6 (\$400,000 for years 7-12 and \$450,000 for years 13-17, if extended)
Above 2,100,000	\$60,000 per year, plus if exceeded for each of first six (6) years of the Term, \$300,000 paid at end of year 6 (\$400,000 for years 7-12 and \$450,000 for years 13-17, if extended)

D. Payment of Minimum Annual Guarantee at End of Term. Except as set forth otherwise in this Agreement, beginning with any month-to-month extension after the end of the Term, Operator shall pay GLAZA, no later than the first (1st) day of each month, a monthly payment of One-Twelfth (1/12) of the previous Contract Year's

Minimum Annual Guarantee.

- E. Payment of Additional Commissions. If the Gross Receipts collected result in Additional Commission greater than the Minimum Annual Commission paid to GLAZA, Operator will pay such Additional Commission in excess of the Minimum Annual Guarantee to GLAZA no later than the twentieth (20th) calendar day of the month following the month in which such Gross Receipts were collected.
- F. Statement of Gross Receipts, Reports. Not later than fifteen (15) calendar days following the end of each calendar month during the Term, Operator shall provide GLAZA and the Zoo with a statement of Gross Receipts, by department and/or sales category, for the immediately preceding calendar month. Each monthly payment of commission shall be based upon the cumulative total of Gross Receipts during the applicable Contract Year, minus amounts previously paid during such Contract Year. In addition to the statement of Gross Receipts, Operator shall provide to GLAZA daily, weekly and/or monthly reports of customer counts, per capita spending, and other such statistical data as may be requested by GLAZA from time to time.
- G. Gross Profit Reports. Not later than fifteen (15) calendar days following the end of each calendar month during the Term, Operator shall provide GLAZA and the Zoo with a gross profit ("Gross Profit" defined herein as Gross Receipts less Operator cost of goods) statement by department and/or sales category for the immediately preceding calendar month.
- H. Maintenance of Records. Operator shall maintain complete and accurate financial records for all transactions involving the Zoo, including but not limited to those items that support sales revenue, such as cash register receipts and other sales receipts. These items shall be properly stored on the Premises and shall be kept for a minimum of five (5) years or until the completion of any applicable audit conducted at GLAZA's request, whichever is later. Such receipts shall not be destroyed or discarded until the resulting audit report has been accepted by GLAZA
- I. Audit. GLAZA and the City shall have the right to audit the books and records of Operator on an annual basis at a time and location as may be mutually agreed. If the result of any such audit establishes that Operator has overpaid GLAZA, such overpayment shall be credited against payments currently payable to GLAZA. If the audit reveals an underpayment to GLAZA, Operator shall pay GLAZA the difference plus a Five Percent (5%) underpayment fee and interest at the rate of twelve percent (12%) per annum or the maximum rate allowed by law, whichever is less, from the due date of the original payment. If the audit reveals a discrepancy in excess of Two Percent (2%) of the total amount of payments payable to GLAZA during any fiscal year, the cost of said audit shall be paid by Operator in addition to the underpayment fee.
- J. Independent Audit. Operator shall obtain at its own expense an annual audit of its

Gross Receipts collected in performance of the Services described herein performed by an independent accounting firm preapproved in writing by GLAZA and the Zoo.

- K. Excluded Services. Operator will report, but pay no commissions, on Gross Receipts from Zoo-Hosted Food and Beverage Services, Personnel meals, or in-house conferences and meetings catering.
- L. No Right to Off-Set. Operator shall not have the right to off-set the amount of any payment owed to GLAZA against amounts that GLAZA may owe to Operator.

SECTION 12. CAPITAL INVESTMENT

- A. Capital Investment. Operator shall expend a guaranteed minimum of six million two hundred thousand U.S. Dollars (\$6,200,000.00) for capital investments for the renovation, remodeling and equipping of the Concession ("Capital Investment") during the twelve-year Term of the Agreement. Operator shall invest the following sums by the following specified deadlines ("Investment Deadlines"): a guaranteed minimum of seven hundred thousand U.S. Dollars (\$700,000.00) by December 31, 2021, of which the Parties agree no less than two hundred thousand U.S. Dollars (\$200,000.00) shall be used to enhance technology on zoo grounds at concessions venues and for Operator's mobile and e-commerce sales; a guaranteed minimum of two million five hundred thousand U.S. Dollars (\$2,500,000.00) by December 31, 2024; a guaranteed minimum of three million U.S. dollars (\$3,000,000.00) by August 28, 2031 and a guaranteed minimum of three million U.S. dollars (\$3,000,000) during the five-year option period if exercised by the Zoo and GLAZA. Amounts charged against the Capital Investment commitment shall include only direct costs and shall not include overhead, indirect cost, or management fees of Operator or any related party. Any unspent amount remaining at the end of each Investment Period will be paid to the Zoo.
- B. Capital Investment Schedule. The Capital Investment shall be set out on a capital investment schedule to be presented to the Zoo and GLAZA in three (3) installments. The first installment of the investment schedule shall be due on the Effective Date of the Agreement. The second installment shall be due January 1, 2025, and if the extension option is exercised by GLAZA and the Zoo, the next installment schedule shall be due on August 29, 2031.
- C. Expenditure of Capital Investment. An initial schedule and timeline for the expenditure of One Hundred Percent (100%) of the Capital Investment is set forth in Operator's Proposal, attached hereto as Exhibit A. Operator shall prepare, complete, and submit to GLAZA for approval a finalized timeline for the expenditure of the Capital Investment no later than forty-five (45) calendar days following the Commencement Date of this amendment for the first installment; no later than March 31, 2022 for the second installment; no later than March 31, 2025 for the third installment; and if the extension option is exercised by GLAZA and the Zoo, no later than November 30, 2031 for the fourth installment. This timeline will indicate a completion date for the remodeling and renovation for each Investment Deadline period. Operator's timeline shall reflect any additional GLAZA and Zoo review and approval dates during the renovation period relating to equipment to be ordered, color choices, or other items

that were not part of the initial proposed timeline. The timeline will additionally be in compliance with all State, County and City (including, but not limited to, Los Angeles Department of Building and Safety, Los Angeles Fire Department, Los Angeles Department on Disability, Los Angeles Department of City Planning and the Cultural Heritage Commission) building codes and will include provisions for approval by City, County, and any other governmental agencies for needed permits, as well as application or submittal dates for these permits. Operator shall also submit a sustainability plan in compliance with the Los Angeles Green Building Code.

All improvements under the Capital Investment plan must be completed in a manner that minimizes disruption to Zoo Patrons and Zoo operations. The final Capital Investment plan may be impacted by the Zoo's Vision Plan. The details of the final Capital Investment plan shall be negotiated and approved by both GLAZA and the Zoo prior to commencement of improvements.

- D. Retention of Capital Investment. In the event Operator does not complete an approved renovation, remodeling and/or equipping and expend at least one hundred percent (100%) of the Capital Investment on or before the end of each Investment Deadline, Operator shall pay to the Zoo such unspent Capital Investment amount and the Zoo may use this amount at its sole discretion including improvements to the Concession. The parties agree that it would be impracticable for GLAZA to determine actual damages in such event; therefore, payment of the unexpended Capital Investment is a reasonable estimate of such damages and that such amount is not a penalty.
- E. Delay. If GLAZA, the Zoo, the City or the County of Los Angeles delay giving their respective approvals and/or permits, through no fault or cause of Operator, Operator's timeline for all items affected by such delays shall be extended for a period of time equal to such delay. If Operator misses submittal dates for permits per the timeline or such submittals are incomplete and have to be re-submitted for any reason within the control of Operator, the timeline will not be extended.
- F. Budget. A budget and schedule showing the uses of the Capital Investment is included in Exhibit H. The parties will appropriately revise the Capital Investment budget as the remodeling and renovation plans are finalized, including changes during the renovation period. In no event shall such a revision cause the guaranteed minimum Capital Investment set forth in Section 12 A. to be reduced.
- G. Notice of Delay. In the event of a delay, Operator shall provide GLAZA with written notice thereof within twenty-four (24) hours of the start of the delay, and include the reason for the delay and the estimated duration of the delay. Operator and GLAZA agree to work together to minimize the likelihood of a delay, and if such delay occurs, to minimize its duration. If the delay arises as a result of Operator's actions or inactions, then the damages detailed in Section 26 C. below shall apply.
- H. Capital Investment Amortization. An amount equal to Operator's guaranteed

minimum Capital Investment obligation will be a debt owed to the Zoo at the beginning of the Term and any unspent balance at the end of each Investment Deadline will be due and owing to the Zoo, to be paid within thirty (30) days of the Investment Deadline. Each guaranteed minimum Capital Investment obligation of Operator as specified in Section 12.A. above, shall be fully amortized, straight-line, no interest, from the in-service date of each improvement through the end of the Term on August 28, 2031. If GLAZA and the Zoo exercise the option to extend the Agreement, the additional guaranteed minimum Capital Investment obligation, as specified in Section 12.A. above, shall be fully amortized, straight-line, no interest, from the in-service date of each improvement through the end of the extension Term on August 28, 2036. The funds shall be considered fully amortized at the end of the Term, regardless of when the Capital Investment funds are spent and there shall be zero buy-back at the end of the initial Term or any extension Term.

- I. Effect of an Early Termination on Capital Investment. If the Agreement is terminated by GLAZA because of Operator's default or by Operator for any reason other than default by GLAZA or as may occur under Section 3 D., Operator will not be entitled to forgiveness of any unamortized amount of its Capital Investment, and only the Capital Investment for the applicable Investment Deadline, as outlined in Section 12.C above, shall immediately become payable to and the property of the Zoo to invest at its discretion in Concession improvements. In the event of the occurrence as described in Section 3.D herein, this Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.
- J. Transfer of Title. All rights, title and interest in and to the improvements, furniture, fixtures and equipment shall transfer to the Zoo at a time determined in writing by GLAZA, and shall be insured for full replacement cost by Operator until the transfer.
- K. Accounting. No later than ninety (90) calendar days following completion of any remodeling, renovation, refurbishment and equipping, and again after expenditure of any refurbishment funds, Operator shall provide GLAZA and the Zoo with a detailed written accounting (the "Capital Expenditure Accounting") of all expenditures in support of its Capital Investment and/or equipment replacement commitments, including, but not necessarily limited to original invoices from architects, contractors, materialmen, vendors, suppliers, and other third parties who provided goods, services and/or materials. The Capital Expenditure Accounting shall include only direct costs and shall not include overhead, indirect costs, or management fees of Operator or any related party. GLAZA shall have the right to audit and verify all such records, with costs charged to Operator, and Operator agrees to cooperate with any such audit. Upon GLAZA's review (and audit if it so chooses), GLAZA will notify Operator if it accepts the Capital Expenditure

Accounting as submitted, or if it proposes adjustments thereto. If GLAZA proposes adjustments, Operator may either accept the same or request arbitration pursuant to Section 30 herein.

- L. Operator Expenses. It shall be the responsibility of Operator to hire the architects, designers and all other contractors for the renovation including the planning, design and construction process, subject to GLAZA and the Zoo approval. Operator shall obtain all permits and build or renovate the facilities on a fixed-fee basis with Operator guaranteeing the completion. Any cost overruns not caused due to delays caused by GLAZA or the Zoo shall be the responsibility of Operator and shall not be charged against future Capital Investments.
- M. Expenditures for Proprietary and Non-Proprietary Equipment. Expenditures by Operator for Proprietary Equipment, signage or trade fixtures shall not constitute a Capital Investment. All non-Proprietary Equipment, including but not limited to Smallwares purchased through the Capital Investment shall become the property of GLAZA. Such Smallwares are not to be removed by Operator at the expiration or earlier termination of this Agreement. It shall be the Operator's responsibility to provide replacements for all broken, lost or damaged Smallwares and to provide an inventory annually throughout the Term to ensure the overall Capital Investment is maintained to the standards established by GLAZA and the Zoo. Notwithstanding the forgoing, the parties agree and understand that the expenditure for purchased Smallwares is not to be considered a Capital Investment.
- N. Equipment Rental. Operator shall have the right to lease or rent equipment or fixtures, which expense shall be considered an operating expense and not charged against the Capital Investment. Upon termination of the Agreement, Operator shall be responsible for returning all leased or rented equipment and fixtures with no liability to GLAZA or the Zoo. Operator shall be fully responsible for any damage thereto, including wear and tear and other charges owed to the third-party vendor.

SECTION 13. OPERATIONS AUDITS

- A. Operations Audits, Generally. In addition to any other such audits as may be required or contemplated by this Agreement, Operator shall be subject to periodic, monthly operating audits of the Concessions by GLAZA and/or a third party retained thereby. These audits shall be made available to the City. Such operations audits may include, but shall not be limited to, a comprehensive review of:
 - (a) Service quality, attentiveness, courteousness;
 - (b) Food quality, presentation, and merchandising;
 - (c) Sanitation practices and conditions;
 - (d) Personnel appearance;
 - (e) Training program techniques, schedules, and records;
 - (f) Safety conditions;

- (g) Operational performance from a financial perspective; and
- (h) Other related operational conditions and/or practices.

B. Operations Audit Results. Operator shall be notified in writing of conditions needing correction or improvement in writing. Operator shall promptly comply with any such notice, and correct any such condition within fourteen (14) calendar days of receipt of the written notice. Notwithstanding the foregoing, any corrections and/or improvements relating to health or safety must be corrected within twenty- four (24) hours of receipt of notice. The Operator shall reimburse GLAZA for actual out-of-pocket expenses for all audits throughout the Term. In addition to the foregoing, a GLAZA representative may track quality control monthly in all areas and maintain a scorecard in the form set forth in Exhibit I hereto to ensure compliance and that all deficiencies are corrected in a timely manner.

SECTION 14. COMPLIANCE WITH CITY CONTRACT PROVISIONS

Operator shall comply with the City Standard Provisions, dated October 2017 v.3, which are attached as Exhibit J. Contractor shall also be subject to the following City ordinances and requirements:

- A. Contractor Responsibility Ordinance. Operator is advised that this Agreement shall be subject to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance ("CRO"), attached as Exhibit K. The Responsibility Questionnaire submitted by Operator in its response to the Request for Proposals is attached as Exhibit K.
- B. First Source Hiring Ordinance. Operator shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance ("FSHO"). Operator shall refer to Exhibit L, "First Source Hiring Ordinance" for further information regarding these requirements.

SECTION 15. REPAIR, MAINTENANCE AND REPLACEMENT

- A. Plumbing. Operator, at its sole cost and expense, shall be responsible for all plumbing connections, clearing of backups and regular preventive maintenance of all drain lines for the operation of the kitchens within its assigned facilities. Operator shall not be responsible for the repair and replacement of plumbing pipes for the facility beyond the exterior walls, unless caused by Operator's negligence.
- B. Equipment Operation. Operator shall be responsible, at its sole cost and expense, for the operation, maintenance, repair and installation of any and all equipment (including the permanently installed equipment) used in the Concessions. Any new equipment installations or modifications shall be reviewed and approved in writing by GLAZA and the Zoo prior to installation.

- C. Electrical. Operator, at its sole cost and expense, shall be responsible for installing, maintaining, troubleshooting and providing preventive maintenance on electrical service, devices and equipment beyond the secondary power panels. Operator shall be responsible for maintaining and/or replacing any and all bulbs and for cleaning fixtures within its assigned building facilities. Operator shall not be responsible for providing utility service, except as stipulated in Section 5 E. above.
- D. Repairs/Renovations. The cost and expense of all repairs, alterations, improvements, renewals, renovations or replacements to the Zoo facilities necessitated by Operator's Services shall be borne solely by Operator subject to GLAZA's and the Zoo's prior written approval. In the event Operator's negligence causes any damage to any real or personal property of GLAZA or the Zoo, Operator, at its sole and exclusive cost, shall pay the cost of any and all necessary repairs, renewals and/or replacements, which expense shall not be counted against the guaranteed minimum Capital Investment.
- E. Pest Control. Operator, at its sole cost and expense, shall employ an approved pest control vendor and provide a copy of the contract and copies of such pest control company's inspection reports to GLAZA. Inspections shall occur not less than once per month. GLAZA may require Operator to perform additional treatments or service if pest control becomes a problem. Further, GLAZA reserves the right, at its expense, to appoint an independent hygienist to evaluate pest control and sanitation procedures and recommend improvements, as necessary. Operator shall comply with the hygienist's recommendations within a reasonable amount of time. Operator shall provide sealing/foaming of holes/openings to its facilities and equipment that may allow access by pests. Operator shall comply with any and all demands from the Zoo regarding pests and chemicals.
- F. Exhaust Hoods. Operator, at its sole cost and expense, shall be responsible for maintaining, servicing and cleaning all exhaust hoods and flues associated with its kitchen operations. This includes, but is not limited to, grease removal, maintenance and testing of fire suppression systems.
- G. Preventive Maintenance. Operator, at its sole cost and expense (pursuant to Section 7.G. above), shall establish a preventive maintenance program for all installed equipment, buildings, plumbing, electrical and other facilities covered under this Agreement. Operator shall maintain complete records of maintenance performed on all installed equipment, buildings, plumbing, electrical and other facilities covered under this Agreement. Operator shall complete and send a report to GLAZA and the Zoo no less than once per month, showing that Operator is adhering to all preventive maintenance procedures.
- H. Painting. Operator shall be responsible, at its sole cost and expense, for painting, touching-up and cleaning all walls, display cases and common areas within its designated service facilities and work areas.
- I. Walls. Operator is responsible, at its sole cost and expense, for cleaning, replacing

wall paper, repairing and replacing trim, as required, and performing all drywall repairs, as needed, within its designated facilities and work areas.

- J. Tile. Operator, at its sole cost and expense, shall clean and maintain all tile work within its designated facilities and work area. Operator shall also maintain any rubber floor trim and tile in good condition.
- K. Doors. Operator, at its sole cost and expense, shall maintain, repair and refinish all service doors incident to the Concessions Premises as well as other spaces, facilities and buildings occupied by Operator.
- L. Carts and Cart Storage Building. Operator, at its sole cost and expense shall secure necessary permits and licenses for the operation of carts. Operator shall maintain all service carts (food, beverage and merchandise), the cart storage building and all equipment, furnishings and equipment therein, in good repair and in a clean and sanitary condition at all times and at its sole cost and expense.
- M. Furniture. Operator shall be responsible, at its sole cost and expense, for the maintenance and repair of all furniture, fixtures and showcases in good condition and repair to the standards established by the City for its operations in all buildings and spaces occupied by Operator.
- N. Trams. Operator shall be responsible, at its sole cost and expense, for complete maintenance and upkeep of the trams to the highest possible standards, including, but not limited to, on-site offices, and storage and/or repair facilities. Operator to provide maintenance records for review upon request by GLAZA, the Zoo or the City
- O. Strollers and Wheelchairs. Operator shall be responsible, at its sole cost and expense, for complete maintenance and upkeep of the strollers and wheelchairs to the highest possible guest service standards. Operator to provide maintenance records for review upon request by GLAZA, the Zoo or the City.
- P. Vending Machines. Operator shall be responsible, at its sole cost and expense, for complete maintenance and repair of all vending machines throughout the Zoo under this Agreement.

SECTION 16. USE OF GLAZA'S OR ZOO'S INTELLECTUAL PROPERTY

- A. Generally. The names "Los Angeles Zoo," "Los Angeles Zoo and Botanical Gardens," and the "Greater Los Angeles Zoo Association" are registered trademark/service marks ("Marks") of the City and GLAZA respectively.
- B. No Use of Operator Information. Operator may not display its corporate trademarks or services marks in connection with the Services or on Zoo-related marketing. Operator may not use the Marks or make reference to GLAZA or the

Zoo on Operator's website or in its publicity information without first receiving the written approval of GLAZA and the Zoo.

- C. No Conveyance of Intellectual Property. Operator agrees that (i) nothing in this Agreement is intended to convey to Operator any ownership or other rights in the Marks, or any other trademarks, service marks, copyrights or other intellectual property rights of GLAZA and of GLAZA's affiliated businesses or the City (collectively, the "GLAZA and City Trademarks"); (ii) ownership of all such GLAZA Trademarks shall remain the property of GLAZA, its affiliates, or the City, as the case may be; and (iii) Operator will not use any GLAZA Trademarks under any circumstances without the prior written consent of GLAZA, which consent GLAZA or the Zoo may withhold in their sole and absolute discretion.
- D. Grant of License. GLAZA and Operator agree to work together using trademarks and logos from the Zoo on cups, souvenirs, and other merchandise sold at the Concessions. It is expressly understood and agreed that any such use of Zoo or GLAZA trademarks or logos on any such merchandise shall be subject to the prior written approval of GLAZA and the City and constitutes a limited, non-exclusive, non-assignable and non-transferrable license.

SECTION 17. INDEMNIFICATION

A Indemnification by Operator. Operator, on behalf of itself and its employees, agents, subcontractors, vendors, individuals and entities invited or hired by Operator to be on Zoo premises ("Operator Entities"), shall indemnify, defend and hold harmless GLAZA, the City and the Zoo, and each of their respective trustees, boards, officers, agents, affiliates, vendors, assigns, employees and successors in interest (each an "Indemnified Party," collectively the "Indemnified Parties") from and against any and all claims, damages or liabilities of any nature whatsoever, losses, demands, costs, expenses, including attorneys' fees (both in house and outside counsel), suits, lawsuits and causes of action, cost of litigation (including all actual litigation costs incurred by Indemnified Parties, including but not limited to, costs of experts and consultants), taxes, and judgments arising from or related to the death or bodily injury to any person or persons, including Operator's employees and agents, damage or destruction of any property of the Indemnified Parties or of third parties, or other loss, damage, or expense resulting from Operator's or any Operator Entity's alleged or actual act, error or omission, regardless of whether such act or omission was active or passive, arising out of the arrangements between Operator and GLAZA, the City or the Zoo that are contemplated by this Agreement, or such matters as may arise out of this Agreement as may be changed from time to time by the parties hereto, provided however, that Operator shall not be obligated to indemnify, defend, or hold harmless any Indemnified Party with respect to damages which are due to the sole negligence or willful misconduct of Indemnified Party. Indemnitor shall also indemnify the Indemnified Parties from and against any loss or damage incurred by Operator or an Operator Entity with respect to real or personal property, including but not limited to exhibits, animals, grounds, landscaping, buildings and/or related items caused in whole or in part by the

negligence (whether active or passive), actions, inactions or misconduct of Operator and/or any of the Operator Entities and will further defend, indemnify, and hold harmless GLAZA, City and the Zoo from and against any and all claims, injuries, damages, losses, or suits including attorneys' fees, arising out of or related to Operator's performance or non-performance pursuant to this Agreement, except for injuries and damages caused by the sole negligence or willful misconduct of GLAZA or the Zoo. The rights and remedies of the Indemnified Parties provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. This provision will survive the expiration or termination of this Agreement.

- B. Indemnification by GLAZA, the City and the Zoo. Neither GLAZA, the City nor the Zoo shall be obligated to, and will not, indemnify, defend or hold harmless Operator with respect to any claim, liability, loss, demand, damage, cost, expense, including attorneys' fees, suits, and causes of action, taxes or judgments.

SECTION 18. PROHIBITED ACTS

During the Term of this Agreement, Operator shall not:

- A. Use the Premises to conduct any other business operations of Operator not related to the Zoo;
- B. Do or allow to be done anything which may interfere with the effectiveness or accessibility of utility, heating, ventilation or air conditioning systems or portions thereof on the Premises or elsewhere on Zoo grounds, nor do or permit to be done anything which may interfere with free access and passage in the Premises or the public areas adjacent thereto, or hinder police, fire or other emergency personnel in the discharge of their duties;
- C. Interfere with the public's enjoyment and use of the Zoo or use the Premises for any purpose which is not essential to the Concession's operations;
- D. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the Premises other than specified herein;
- E. Overload any floor or roof in the Premises;
- F. Place any additional lock of any kind upon any window or interior or exterior door in the Premises, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the Premises, nor refuse, upon the expiration or sooner termination of the Agreement, to surrender to GLAZA or the Zoo any and all keys to the interior or exterior doors on the Premises, whether said keys were furnished to or otherwise procured by Operator, and in the event of the loss of any keys furnished by GLAZA, Operator shall pay GLAZA, on demand, the cost for

replacement thereof;

- G. Do or permit to be done any act or thing upon the Premises which will invalidate, suspend or increase (except in connection with increased or changed usage) the rate of any insurance policy required under the Agreement or carried by GLAZA or the City covering the Premises or the buildings in which the same are located or which, in the opinion of GLAZA or the Zoo, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the Agreement, provided, however, that nothing contained herein shall preclude Operator from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;
- H. Use, create, store or allow any hazardous materials as defined in Title 26, Division 19.1, Section 19-2510 of the California Code of Regulations, or those which meet the criteria of the above Code, as well as any other substance which poses a hazard to health and environment, provided, however, that nothing contained herein shall preclude Operator from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary except that all hazardous materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws;
- I. Permit undue loitering on or about the Premises;
- J. Use the Premises in any manner that will constitute waste;
- K. Use or allow the Premises to be used for any improper, immoral, or unlawful purposes;
- L. Permit gambling on the Premises or install or operate or permit to be installed or operated thereon, any device which is illegal, or use the Premises or permit it to be used for any illegal business or purpose;
- M. Permit smoking in the Premises or on Zoo grounds, with the exception of the Zoo parking lot.

SECTION 19. PERFORMANCE AND PAYMENT BONDS

- A. Performance Bond. Prior to the Commencement Date of this Agreement, a faithful performance bond in the amount of One Million U.S. Dollars (\$1,000,000) shall be executed by Operator and by a responsible corporate surety company authorized to transact business in the State of California and holding a certificate of authority as an acceptable surety on federal bonds issued by the Department of the Treasury ("Faithful Performance Bond"). The form of bond for the faithful

performance of this Agreement shall be such that GLAZA may proceed against Operator and its sureties immediately upon default in the performance of this Agreement. Deposit of cash in lieu of a bond may be made with GLAZA under such procedures as may be approved by GLAZA, in its sole and exclusive discretion. Cash may be deposited in a responsible bank in the City, and the interest on a time certificate of deposit or passbook account may accrue to and be paid to Operator; however, the right to make withdrawal of principal shall be assigned to GLAZA and the Zoo for the term of this Agreement and any extension thereof. Said bond shall be returned to Operator after fulfillment of all Services or upon the termination of this Agreement, less any amount that may be withheld therefrom by GLAZA and/or the City by this Agreement.

- B. Use of Bond to Mitigate Damages. The Faithful Performance Bond sum shall serve as security for faithful performance of all covenants, promises, and conditions assumed by Operator hereunder, and may be applied in satisfaction or mitigation of damages arising from a breach hereof, including, but not limited to, failure to secure required insurance, and/or to complete the Services as specified. Allocation of the amounts on deposit in satisfaction or mitigation of damages shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement. In the event any or all of said amount is applied in satisfaction or mitigation of damages, Operator shall immediately deposit such sums as are necessary to restore the Faithful Performance Bond to the full amount of One Hundred Percent (100%) of the amount of the bond originally required.

- C. Payment Bond and Form. Prior to execution of this Agreement, Operator shall file with GLAZA a Payment Bond (Material and Labor Bond) for an amount equal to One Million U.S. Dollars (\$1,000,000) covering the ongoing cost of the construction of the renovations to food service and merchandise shops and related work to satisfy the claims of material suppliers and of mechanics and laborers employed by it on the work. Said bond shall be executed by Operator and by a responsible corporate surety company authorized to transact business in the State of California and holding a certificate of authority as an acceptable surety on federal bonds issued by the Department of Treasury. Such bond may also be obtained from an insurance company with a Certificate of Authority from the California Insurance Commissioner authorizing the company to write surety insurance within the State of California. GLAZA must approve the bond submitted by Operator in compliance with this requirement. Operator shall pay all bond premiums, costs, and incidentals. Operator shall maintain, with annual renewals, the bond in full force and effect until the work is accepted by Operator and approved by GLAZA and the Zoo, and until all claims for materials and labor are paid, and shall otherwise comply with the California Civil Code. Changes in the work, or extensions of time made pursuant to the Agreement, shall in no way release Operator or surety from its obligations. Notice of such changes or extensions shall be waived by the surety.

SECTION 20. TAXES, PERMITS AND LICENSES

- A. Licenses and Permits. Operator shall obtain and maintain in good standing, at its own cost, all legally required licenses and permits, including alcoholic beverage licenses required to be obtained by Operator to provide the Alcoholic Beverage Services. GLAZA shall cooperate with Operator in obtaining such licenses and permits.

- B. Suspension or Revocation of Operator's Licenses. In the event Operator's authority to operate under its alcoholic beverage license is suspended or revoked as a result of Operator's actions (and not as a result of any actions of GLAZA, the Zoo or the City or any other reason which is not in Operator's control), Operator shall be considered in default of this Agreement as provided in Section 26 C., and shall be subject to the provisions thereof. In event of the suspension or revocation of such license as a result of the actions of GLAZA or any other reason which is not in Operator's control, GLAZA shall have the right to suspend Operator's rights hereunder only with respect to the provision of Alcoholic Beverage Services, which otherwise would be allowed under the suspended or revoked license, so that Operator shall continue to provide the Services in all other respects. Operator may, within thirty (30) calendar days after suspension or revocation of the alcoholic beverage license, and at the cost and expense of Operator, retain a third party who is acceptable to GLAZA and who possesses the right to operate in any area requiring Alcoholic Beverage Service until Operator's rights shall have been reinstated.

- C. Payment for Permits and Licenses, Collection of Taxes. Operator shall pay all federal, state, and local licenses and permit fees and collect and pay for all sales, use and excise taxes relating to the provision of the Services.

- D. Taxes. All taxes (federal, state, county, city and local), including possessory interest tax (if applicable), shall be the responsibility of Operator. Moreover, any applicable assessments for taxable possessory interests assessed against GLAZA during the Term shall be the responsibility of the Operator and not deductible or off- set against any other amounts. Regardless of possessory interest applicability, this Agreement is not intended to and shall not be construed to vest in Operator any title, estate, possessory interest, or property right in any properties or equipment of GLAZA or the City or in any part thereof, including without limitation the Premises and existing equipment, and GLAZA does not by this instrument relinquish, convey, or qualify in any degree its respective possession, title, control, or management of any of said properties or equipment.

SECTION 21. LAWS AND REGULATIONS

- A. Compliance with Laws. Operator shall comply with all federal, state, City and local equal opportunity, wage and hour, and tax laws covering its business and employees. Operator shall not discriminate in the terms and conditions of employment, promotion, transfer or termination because of race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition.

- B. OSHA Compliance. Operator agrees that it and its subcontractors will give access to the authorized representatives of the state and federal government for the purpose of inspecting and/or carrying out their duties under the Occupational Safety and Health Act ("OSHA") of 1970, as amended. Operator shall notify GLAZA within ten (10) calendar days of any such inspection or action by federal or California OSHA inspectors and the results of the inspection. Operator shall be responsible for any OSHA violations or any regulation issued thereunder, and shall immediately remedy any conditions giving rise to such a violation, and shall defend and hold GLAZA and Zoo harmless from any fine, penalty or liability in connection therewith.
- C. EPA Compliance. Operator certifies that any facility operated by Operator in whole or in part or used in the performance of this Agreement is not listed on the Environmental Protection Agency ("EPA") List of Violating Facilities. Operator shall immediately notify GLAZA, prior to Commencement Date of this Agreement, of the receipt of any communication from the EPA, indicating that any facility that Operator proposes to use for the performance of this Agreement is under consideration to be listed on the EPA List of Violating Facilities. Operator shall include a certification substantially the same as this certification in every subcontract associated with this Agreement.

SECTION 22. RELATIONSHIP OF THE PARTIES

Operator is not in any respect acting, nor shall it act, nor shall any person connected with Operator represent him or herself, as an agent, partner, or employee of GLAZA, City or the Zoo. Operator shall be solely responsible for full compliance with all requirements under all laws and regulations now or in the future applicable to Operator, its business affairs and its performance of its duties under or pursuant to this Agreement. Operator shall not have the right or authority to assume or create any obligations or debts, or to make any representations or warranties on behalf of GLAZA, whether express or implied, or to bind GLAZA in any respect whatsoever.

All persons employed by Operator or GLAZA are to be and shall remain, employees of Operator or GLAZA, and under no circumstances shall Operator or GLAZA or any person employed by either of them be deemed to be an employee of the other party.

SECTION 23. SECURITY

Operator agrees to comply with any and all security requirements of the Zoo as they relate to Operator's procedures, practices and employees. All of the employees of Operator, whether or not they are permanent or full-time, shall be subject to Zoo security rules and regulations when on the Zoo's property. Operator understands and agrees that personal property, particularly its consumable goods, is not the responsibility of GLAZA or the Zoo or the City. Neither GLAZA nor the Zoo nor the City shall be responsible for the loss of personal effects of any employees, agents and/or subcontractors of Operator.

SECTION 24. FACILITY CLOSING AND/OR INTERRUPTION OF SERVICES

- A. Partial Closings. Existing and/or temporary food service, merchandise shop facilities or roads that may affect tram, vending, or cart operations may be closed or have service temporarily interrupted to accommodate any and all construction, restoration or repair activities, or for any other reason deemed appropriate by GLAZA or the Zoo. GLAZA shall give Operator reasonable advance notice, if possible, to arrange for any such closing or interruption. Neither GLAZA nor the Zoo shall be responsible or liable for any loss of revenue, including but not limited to losses due to such a closing. In the event individual Concession locations within the Zoo are closed or restricted, GLAZA may, but is not required to, provide alternative locations at which Operator, at its own expense, will set up temporary Concession facilities. Minimum commission and percentage commission amounts will not be revised and will remain due and owing in such an event.
- B. Complete Zoo Closings. In the event of a closing of the entire Zoo for a period that exceeds sixty (60) calendar days, Operator may request that GLAZA suspend collections of Commissions as long as the previous sixty (60) calendar days' Commissions were paid. Such relief may be afforded by GLAZA to allow Operator to relocate impacted facilities.
- C. Vision Plan. The Zoo is currently involved in a master planning process, which may result in significant improvements and expansion of certain concessions, infrastructure and animal-related facilities. The completion and results of this process cannot be represented, determined or documented at this time. Operator agrees and understands that it did not rely on any representations or information regarding the master planning process from any source. In the event that facilities, personnel, activities, construction, attendance and hours of availability are impacted (such as by construction or demolition), there will be no compensation or modification of any amounts due and owing to GLAZA nor shall this be cause for the Agreement to be modified or amended in any way.

SECTION 25. SUSPENSION OF SERVICES FOR LABOR DISPUTES

Operator may not suspend Operator's Services at any time. If there is a possibility of a labor dispute, GLAZA has the right, without incurring any liability to Operator, to take whatever action it may deem necessary or desirable in order to have concession services remain open and operate the Concessions. If any suspension of Services continues for longer than thirty (30) calendar days, GLAZA may, by written notice to Operator, terminate this Agreement. GLAZA shall not be responsible or liable for any loss of revenue including, but not limited to, losses due to such closing. If the suspension continues for longer than thirty (30) calendar days through no fault of the Operator and the Agreement is terminated by GLAZA pursuant to this clause, GLAZA or the successor operator agrees to pay Operator an amount equal to seventy percent (70%) of the unamortized portion of the Capital Investment for that five year period. If the Operator is at fault, no payment would be made to the Operator for the unamortized portion of the Capital Investment. If the fault cannot be determined or agreed, arbitration procedures as in Section 30 below will apply.

SECTION 26. TERMINATION

- A. Removal of Employees, Property. At the end of the Term, Operator agrees to remove all of its employees and property from the Zoo as of the last day of the Term, in a smooth, orderly and cooperative manner unless some other date and time is agreed upon in writing between the parties to this Agreement. Operator shall leave the areas occupied in a clean state and in good repair. All equipment in the condition as originally accepted by Operator and all equipment and fixtures, shall be in good working order. Operator's property left at the Zoo after such time shall be considered abandoned and shall be subject to disposal by GLAZA.
- B. Bringing Current of Financial Accounts. Within sixty (60) calendar days after the end of the Term, the parties agree to bring all financial obligations and reporting requirements current as of the date and time set out in Section 26 A herein.
- C. Termination by GLAZA and the Zoo for Cause. GLAZA and the Zoo may immediately terminate this Agreement without any obligation to repay any unamortized portions of Capital Investment upon the occurrence of any one or more of the following:
- i. Any default by Operator of any material term or condition of this Agreement and the continuance of any such default for a period of fifteen (15) calendar days after written notice by GLAZA of the same. A default under this Agreement shall include but is not limited to:
 - a) The failure of Operator to make any payment to GLAZA as required in the Agreement for a period of thirty (30) calendar days after such payment is due and owing;
 - b) The voluntary abandonment of any facility by Operator without GLAZA's prior written consent;
 - c) The failure of Operator to secure all necessary decrees, acts, orders, consents, licenses, certificates, and/or permits and insurance necessary to manage and operate the Services;
 - d) The failure of Operator to meet quality assurance criteria, such as maintaining food and beverage concession stands and carts, maintaining cart storage, buildings and warehouses in a clean and sanitary condition, serving and storing wholesome food and beverages at proper hot and cold serving temperatures in appropriate protected storage, preparation and serving environments to the satisfaction of the Los Angeles County Health Department's standards based on their periodic inspections and inspection reports; or
 - e) The breach of any representation, warranty or covenant made by Operator in this Agreement.
11. Judicial proceedings in any state and/or any U.S. Federal Court as follows:

- a) The filing by Operator of a voluntary petition in bankruptcy or insolvency, or a petition for reorganization;
- b) The consent to an involuntary petition in bankruptcy or the failure to vacate within thirty (30) calendar days from the date of entry thereof any order approving an involuntary petition by Operator;
- c) The appointment of a receiver for all or any substantial portion of the property of Operator; or
- d) The entering of an order, judgment or decree by any court of competent jurisdiction. on the application of a creditor, which adjudicates Operator as bankrupt or insolvent or approves a petition seeking reorganization, or appoints a receiver, trustee, or liquidator of all or a substantial part of such Operators assets and such order, judgment or decree continues unstated and in effect for any period of thirty (30) consecutive calendar days.

D. Termination by GLAZA and the Zoo without Cause. Operator recognizes the Zoo possesses a special and unique character and that Operator operates the Services at the Zoo to further the excellence of the experience for Zoo Patrons. If at any time GLAZA or the Zoo deems that continued operations under the Agreement with Operator will harm, bring into disrepute or adversely affect the integrity of GLAZA or the Zoo, or are not in keeping with the dignity and mission of the Zoo, or if at any time GLAZA or the Zoo deems that it would be in its or the Zoo's best interest not to continue the Agreement with Operator, GLAZA and the Zoo may terminate this Agreement for convenience. In addition to the forgoing, GLAZA and the Zoo may also terminate this Agreement for no reason. In such an event as set forth above, GLAZA shall provide to Operator one hundred twenty (120) calendar days' written notice, specifying the date of such termination. If the Agreement is terminated by GLAZA and the Zoo pursuant to this clause, GLAZA, or the successor operator, shall to pay Operator an amount equal to the unamortized portion of the Operator's Capital Investment for that five-year period and Operator's food service and retail merchandise inventory on-hand as of the date of such termination. Operator shall provide GLAZA with receipts verifying the prices paid for inventory on-hand and the quantity shall be subject to audit by GLAZA.

E. Amendments to Operator's Corporate Structure. In the event Operator's Articles of Incorporation are modified without GLAZA's and the Zoo's prior written approval, GLAZA and the Zoo may exercise any and all rights and remedies available under applicable provisions of law, including, but not limited to, breach of contract. In the event that Operator changes ownership in any material way, without GLAZA's prior written approval, GLAZA has the rights to terminate this Agreement with thirty (30) calendar days' notice to Operator and without remittance of any the unamortized Capital Investment to Operator.

F. Purchase of License. Upon the termination of this Agreement, GLAZA or Operator's successor shall purchase, and Operator agrees to sell and transfer,

Operator's alcoholic beverage license(s) covering the Zoo, to the extent and under the terms and conditions permitted by applicable law. The price GLAZA or the successor operator pays shall be the "market value" as of the date of such transfer. The "market value" shall be established by Operator's obtaining a minimum of three (3) written statements from brokers that deal in the purchase and sale of alcoholic beverage licenses in the County of Los Angeles. The price paid by GLAZA or successor operator shall be based on the average of these written valuations. Operator is aware that the value of this license at the time of such sale and transfer is subject to "market" trends and may be higher or lower than Operator paid at the beginning of the Term. Further, Operator agrees to pay all out-of-pocket costs and escrow fees applicable to such sale.

SECTION 27. NO ASSIGNMENT; SUBCONTRACTING

- A. No Assignment. Operator shall not assign, transfer or convey this Agreement, or its rights hereunder, without the prior written consent of GLAZA and the Zoo, which may be withheld for any or no reason in GLAZA's sole and exclusive discretion.

- B. Subcontracting of Services. Except as may be provided in this Agreement and agreed to in writing by GLAZA and the Zoo, Operator shall not subcontract to a third party any of its rights or duties. No subcontract entered into by Operator shall relieve Operator of any of its liabilities or obligations. Notwithstanding the foregoing, Operator shall be permitted to subcontract the provision of nationally or regionally recognized specialty food products, such as specialty coffee carts and to subcontract the vending services, provided however, that the terms of such subcontracting shall be subject to GLAZA's written approval. Any subcontractors shall be subject to the same insurance, permits, indemnification obligations and other requirements applicable to Operator under this Agreement and under the same terms and conditions, including without limitation the provision of applicable certificates of insurance naming GLAZA, the City and the Zoo additional insureds thereunder.

SECTION 28. NOTICES

- A. Notices to GLAZA. All notices required to be given by Operator to GLAZA pursuant to this Agreement shall be in writing and personally delivered, sent by federal express, telefax, or overnight courier, or sent by registered or certified mail, return receipt requested to:

Greater Los Angeles Zoo Association
5333 Zoo Drive
Los Angeles, CA 90027
Attn: Dawn Petersen-Amend, General Counsel

With required copy to:

Greater Los Angeles Zoo Association
5333 Zoo Drive
Los Angeles, CA 90027
Attn: Gretchen Humbert, Chief Financial Officer

Or to such other person or place as GLAZA may designate in writing.

- B. Notices to Operator. All notices required to be given by GLAZA to Operator pursuant to this Agreement shall be in writing and personally delivered, sent by federal express, telefax, or overnight courier, or sent by registered or certified mail, return receipt requested to:

SSA Group, LLC
4624 Central Park Blvd., Suite 100
Denver, CO 80238
Attn: Sean K. McNicholas, President & CEO

With required copies to:

SSA Group, LLC
.4624 Central Park Blvd., Suite 100
Denver, CO 80238
Attn: Contract Compliance Department

Or to such other person or place as Operator may designate in writing.

SECTION 29. GOVERNING LAW

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California.

SECTION 30. ARBITRATION

Except as otherwise provided in this Agreement, in the event of a dispute between GLAZA and Operator with respect to any issue arising out of or relating to this Agreement or the breach thereof, such dispute shall, upon request by GLAZA, be determined by arbitration. Such arbitration shall be conducted before three (3) arbitrators (unless GLAZA and Operator agree to one (1) arbitrator) chosen as follows: GLAZA shall select one (1) representative and Operator shall select one (1) representative. These two (2) arbitrators shall choose one other person of their choice to act as an additional arbitrator. The three (3) arbitrators shall then arbitrate and their decision shall be final and binding upon all parties concerned. Such decision shall be rendered within thirty (30) calendar days of the close of the hearing record. The arbitration proceedings conducted hereunder shall be conducted in Los Angeles, California, and each party shall bear its own costs, except that the

prevailing party shall be entitled to attorneys' fees pursuant to Section 31(G) of this Agreement. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, except that no award of punitive damages by the arbitrator(s) may be enforced in any court. This clause shall not apply to disputes between Operator and the City.

SECTION 31. MISCELLANEOUS

- A. Waiver. The making or failure to make any payments, take any action, or waive any rights shall not be deemed an amendment of this Agreement, nor consent to such action or to any future action or failure to act, unless the party required to so consent or act expressly agrees in writing.
- B. Entire Agreement. This Agreement and attached Exhibits which are incorporated herein by reference constitute the entire Agreement of the parties and supersedes all prior or contemporaneous agreement, whether oral or written, between the parties, including, without limitation, the RFP and Operator's response to the RFP other than any portion contained herein.
- C. Amendment. This Agreement may not be amended or modified except in a written document signed by all of the parties hereto.
- D. Severability. If any paragraph, subparagraph, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion of this Agreement, provided that the substantial economic benefits of this Agreement and the intent of the parties is not frustrated thereby.
- E. Confidentiality. Operator and GLAZA agree that this Agreement contains confidential and proprietary information. The Agreement shall not be disseminated nor its material terms disclosed to third parties without the consent of both parties hereto except as required by law.
- F. Captions and Headings. The captions and headings in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, nor shall they in any way affect the interpretation of this Agreement.
- G. Attorneys' Fees. If GLAZA or Operator commences or engages in any action by or against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and to recover from the losing party reasonable attorneys' fees and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto, and enforcing any judgments rendered in connection therewith.
- H. Further Acts. Each party agrees to perform any further acts and to execute,

acknowledge, and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

- I. Good Faith. Both parties shall cooperate in the implementation of the provisions of this Agreement in a spirit of good faith and fair dealing so as not to defeat the rights of the parties as set forth herein. Both parties further agree that any consent or approval required hereunder shall be given or withheld on a reasonable and timely basis unless otherwise stated to the contrary in this Agreement.
- J. Time. Time is of the essence in the performance of Operator's duties and obligations hereunder.
- K. Rights of Third Parties. This Agreement does not give any right to any third party unless explicitly stated herein.
- L. Force Majeure. Neither party shall be bound to meet any obligation if prevented from doing so as a consequence of force majeure, including but not limited to measures taken or imposed by any government or public authority or in case of any other event beyond the control of the parties, including but not limited to natural disasters (such as storm, hurricane, fire, flood, earthquake), war, civil unrest, terrorist activities, states of emergency, government actions or sanctions, embargos, nationalizations, strikes and breakdowns of public utilities (such as of electricity or telecommunication services). GLAZA shall use all reasonable efforts to notify Operator of the circumstances causing the delay and to resume performance as soon as possible, both without undue delay.
- M. Limited Liability of GLAZA and City. Under all circumstances, Operator agrees that there is an absolute cap on GLAZA's or the City's potential liability under this Agreement (including reimbursement for costs or attorneys' fees) at a maximum amount equal to the amount of Commission paid to GLAZA from Operator under the Agreement for the twelve (12) month period prior to the event giving rise to the claim.
- N. Authority. Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.
- O. City Assumption of GLAZA's Rights and Responsibilities. Upon the expiration or termination of the 1997 Operating Agreement between the City and GLAZA, the City – through the Zoo Department – may assume GLAZA's rights, responsibilities and obligations under the Agreement, and all references to GLAZA, unless otherwise stated, shall be considered the City.

SECTION 32. INCORPORATION OF DOCUMENTS

This AGREEMENT and incorporated documents represent the entire integrated Agreement of the Parties and supersedes all prior written or oral representations, discussions, and agreements. The following Exhibits are attached to, incorporated in, and made part of this Agreement by reference:

EXHIBIT A	OPERATOR'S PROPOSAL
EXHIBIT B	CONCESSIONS PREMISES
EXHIBIT C	INVENTORY OF EQUIPMENT, SMALLWARES, AND FIXTURES
EXHIBIT D	CITY OF LOS ANGELES GOOD FOOD PURCHASING GUIDELINES FOR FOOD SERVICE INSTITUTIONS
EXHIBIT E	CONCESSIONS ITEMS TO BE OFFERED FOR SALE AT THE ZOO
EXHIBIT F	OFFICE COFFEE SERVICE EQUIPMENT, BEVERAGES AND SUPPLIES
EXHIBIT G	SAMPLE CUSTOMER SURVEY CARD
EXHIBIT H	CAPITAL INVESTMENT BUDGET AND SCHEDULE
EXHIBIT I	QUALITY CONTROL SCORECARD
EXHIBIT J	CITY STANDARD PROVISIONS (10 /17; v.3)
EXHIBIT K	CITY OF LOS ANGELES CONTRACTOR RESPONSIBILITY ORDINANCE
EXHIBIT L	CITY OF LOS ANGELES FIRST SOURCE HIRING ORDINANCE

IN WITNESS WHEREOF, the undersigned have executed this First Amended and Restated Agreement to be executed by their respective authorized representatives as of the ____ day of _____, 2021.

GREATER LOS ANGELES ZOO ASSOCIATION

SSA GROUP, LLC

BY: _____

BY: _____

Name: Tom Jacobson

Name: Sean K. McNicholas

Its: President

Its: President & CEO

Date: _____

Date: _____