

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

0220-05243-0000

Date: July 27, 2016

To: Arts, Parks, and River Committee

From: Miguel A. Santana, City Administrative Officer Sharon M. Tso, Chief Legislative Analyst Subject: **REQUEST FOR PROPOSALS FRAMEWORK AND TIME FRAMES FOR CONCESSIONS AT THE LOS ANGELES ZOO****SUMMARY**

On March 22, 2016, the City Council adopted the Arts, Parks and River Committee Report (C.F. 14-0600-S223) which instructed the Offices of the City Administrative Officer and the Chief Legislative Analyst to report on the framework and time frames required to release a Request for Proposals (RFP) for concessions at the Los Angeles Zoo and Botanical Gardens (LA Zoo). The City Council also approved a temporary extension of the existing Concession Agreement between the Zoo Department (Department) and the Greater Los Angeles Zoo Association (GLAZA) through August 31, 2016 to allow sufficient time for the City to evaluate possible options for improving the operation of concessions at the LA Zoo.

The Zoo Concession Agreement, originally executed in 1981 between the Department of Recreation and Parks and GLAZA, granted GLAZA the exclusive right to maintain and operate all concession operations at the Zoo. In 1997, the City Council established by ordinance the Zoo Department as a Council-controlled City Department and approved a 25-year Operating Agreement between the City and GLAZA. The Operating Agreement amended the 1981 Concession Agreement to allow Zoo concessions operated by GLAZA to be subcontracted by GLAZA pursuant to a RFP process meeting all City requirements. Subordinate to the Concession Agreement is GLAZA's contract with the concessionaire to provide all food, catering, and merchandising sales as well as other patron supported services such as stroller rentals. Since 1997, GLAZA has contracted with Volume Services America, a joint venture of CenterPlate and Service System Associates (Concessionaire), for the operation of concession services at the Zoo.

It is estimated that an RFP process will take approximately 12 to 18 months. This timeframe incorporates RFP development, proposal submission and review, vendor selection, appeals, and final contract negotiations. As a result of this extended timeframe it is in the City's best interest to expedite the development and release of the RFP. Additionally, the existing Concession Agreement should be extended past the current August 31, 2016 expiration date to a date that coincides with the completion of the RFP process. If more time is necessary,

Council authority to extend should only be allowed in short and manageable increments to encourage the Department and GLAZA to complete the process in an expedited time frame.

According to the Department, GLAZA is currently preparing to move forward with the development of an RFP and has engaged a hospitality consultant to provide guidance and expertise in concessions management to allow for the solicitation of the best and most competitive proposals. The duties of the consultant include examining industry best practices and incorporating findings into a scope of work for a Request for Qualifications that may be issued to further refine the list of potential vendors. The consultant would also help develop the RFP, including identifying requirements for the selection of a vendor, and assist GLAZA with the preparation and administration of the RFP process.

The Zoo Director has indicated that the Department's current arrangement with GLAZA, in which GLAZA manages concession services through a subcontractor, is a preferred option due to limited Department resources available to issue an RFP and to oversee the contract with the Concessionaire.

City staff with experience in the development and management of concessions agreements should review the draft RFP and participate in the evaluation and selection process. This will ensure that the process complies with City contracting procedures, in accordance with Section IV.A of the Operating Agreement between the City and GLAZA, with the goal of acquiring the best revenue opportunity and concession service for the LA Zoo. Additionally, it would be prudent to have both GLAZA and the Department report to the Arts, Parks and River Committee prior to the release of the RFP and on a regular basis during the RFP process. These reports would provide the City with the opportunity to review the process and provide direction to both GLAZA and the Department.

Furthermore, the Zoo Concessions RFP should incorporate the Good Food Purchasing Guidelines, which were adopted by the City Council in 2012 (C.F. 11-1678) and issued in Mayoral Executive Directive No. 24. The City Council has instructed that any RFP and subsequent contract comply with the Good Food Purchasing Guidelines. The guidelines require City Departments with food purchases of greater than \$10,000 annually through their budgets and/or contracts or concessions to adopt the Good Food Purchasing Pledge and to follow the Good Food Purchasing Guidelines for Food Service Institutions. The guidelines layout priorities for offering nutritious menu options and purchasing food that is healthy, locally produced, and sustainably grown by farms that treat their workers with respect and use humane animal treatment practices.

The development of the RFP and eventual selection of a concessions vendor requires a transparent process. The collaborative approach recommended here will allow the City Council to make informed policy decisions regarding the concession operations and the revenue sharing agreement between GLAZA and the Department. The latter will require a longer-term review because an analysis of a variety of governing documents defining the operational relationships between the Department and GLAZA is necessary.

RECOMMENDATIONS

That the Council:

1. Instruct the Zoo Department and the Greater Los Angeles Zoo Association (GLAZA) to provide greater City participation in the concessions RFP process by requiring: (a) the new RFP to follow City contracting procedures pursuant to Section IV.A of the Operating Agreement between the City and GLAZA and as identified in Article III of the City Charter and Division 10 of the Administrative Code (Attachment 1) (b) a City representative with experience in the management of concessions within a department including but not limited to El Pueblo de Los Angeles Historical Monument, the Department of Recreation and Parks, or Los Angeles World Airports to assist with the development of strategies, standards and evaluation criteria in the RFP and to participate in the selection process as a member of the evaluation committee and (c) the provisions of the City's Good Food Purchasing Policy to be incorporated into the RFP;
2. Extend the Concession Agreement between the Zoo Department and GLAZA by six months to February 28, 2017 with a six-month renewal option to allow time for the issuance of the new Concessions RFP and the selection of a proposed vendor, subject to Council approval;
3. Instruct the Zoo Department and GLAZA to report to the Arts, Parks and River Committee every 90 days with a status report on the development of the proposed RFP and the findings of the consultant;
4. Instruct the Zoo Department and GLAZA to transmit a draft RFP for concessions to the Arts, Parks and River Committee for approval by Council;
5. Instruct the Zoo Department to ensure that the new concessions contract includes a greater revenue share for the Zoo that ensures a larger distribution of commissions to the Zoo; and
6. Instruct the Zoo Department and GLAZA to transmit the draft concessions contract to the City Council for review and approval prior to execution.

FISCAL IMPACT STATEMENT

There is no General Fund impact from the recommended actions as no funding is involved. Approval of the recommendations will not result in changes to the Zoo Department's 2016-17 Adopted Budget.

MAS:YC:MTS:JDS:08160122

Attachments

BACKGROUND

GLAZA is a non-profit corporation established in 1963 for the purpose of assisting the City with the establishment, development, beautification, and improvement of the Zoo. In 1997, the City executed a 25-year Operating Agreement with GLAZA. The Zoo opened on November 28, 1966 under the management of the Department of Recreation and Parks until the Zoo Department was established by ordinance (Ordinance 171636) as a City department on July 1, 1997 (C.F. 94-0989-S1). The Department was authorized by the City Council to independently operate, manage, maintain, and control all of the LA Zoo property.

The three governing documents for concession services at the LA Zoo are the Operating Agreement between the City and GLAZA (Attachment 2), the Concessions Memorandum of Understanding (MOU) between the Department and GLAZA (Attachment 3), and the Concessionaire Subcontract between GLAZA and the Concessionaire (Attachment 4).

Operating Agreement

The Operating Agreement between the City and GLAZA was executed in 1992, and later amended in 1997 when the Zoo became a standalone City Department. The Operating Agreement is set to expire on September 30, 2022.

The Operating Agreement identifies the responsibilities of the City and GLAZA. GLAZA's primary responsibility is to seek and provide financial support to the Zoo and to fund the Zoo's capital improvements through fundraising and membership opportunities. In addition, the Operating Agreement authorizes the Zoo Director to negotiate and execute all MOUs on behalf of the City, for a maximum of three years, not to exceed the term of the 25 year Operating Agreement for fundraising, membership, and other activities. As a result, five MOUs between the Zoo and GLAZA were executed.

Concession Agreement

The Concession Agreement between the City and GLAZA became effective on February 12, 1981 and was originally set to expire on February 11, 2006. The Operating Agreement extended the term of the Concession Agreement by ten years, with an expiration date of February 11, 2016. On February 1, 2016, the Council approved an extension of the Concession Agreement to August 31, 2016.

The Concession Agreement defines the contractual relationship between the City and GLAZA, granting GLAZA the exclusive right to maintain and operate all concession operations at the Zoo. The agreement outlines operating responsibilities of the concessionaire and requires GLAZA to maintain separate accounting records of all concession-related receipts and disbursements, which the City may periodically audit for accuracy.

Concessions MOU

The intent of the Concessions MOU is to further define the annual concessions revenue sharing estimates between the Zoo and GLAZA. The most recent MOU for the term July 1,

2011 to June 30, 2012 has expired. A new MOU has not been approved and the Zoo and GLAZA have agreed to operate informally under the terms of the prior MOU until a successor MOU is executed in accordance with the Business and Marketing Plan (C.F. 14-0600-S223).

Concessionaire Subcontract

As of October 1, 1997, GLAZA manages the LA Zoo Concessions through a subcontract with Volume Services America, a joint venture of CenterPlate and Service System Associates (Concessionaire) for the operation of all concessions, including food services, retail, catering, vending machines, stroller and wheelchair rentals, and trams, etc. The total gross receipts consist of all revenues received by the Concessionaire from the sale of services to visitors, with the exception of any sales from in-house catering services. The Department will retain 10 percent of the total gross receipts at minimum. Under the terms of the Concessions MOU, GLAZA retains three percent of the total gross receipts along with marketing and product exclusivity revenue. Subsequent Amendments (Attachment 4) to the Concessionaire Subcontract provide an additional commission structure to GLAZA at the following rates:

Concessionaire Subcontract Commission Structure			
Concession Type	Commission	Concession Type	Commission
Concession Food Sales		Merchandise Sales	
Up to \$1,000,000	12.25%	Up to \$1,000,000	15.50%
\$1,000,000 to \$1,500,000	14.50%	\$1,000,001 to \$1,500,000	17.50%
\$1,500,001 to \$2,500,000	20.00%	\$1,500,001 to \$2,500,000	18.50%
\$2,500,000.01 and above	23.60%	\$2,500,000.01 and above	22.00%
Catering Sales		Other	
Up to \$500,000	17.00%	Caricatures	10.00%
\$500,001 to \$1,000,000	20.00%	Kiddie Train	10.00%
\$1,000,000 and above	22.50%	Outside Catering Fees	50.00%
		Service Charge	16.50%
Commission Enhancement (per attendee)		Stroller Rentals	10.00%
Up to 1,500,000	n/a	Sub Contract Food Sales	23.60%
1,500,001 to 1,750,000	\$1.00/attendee	Tram Sales	5.00%
1,750,001 to 2,000,000	\$1.05/attendee	Wheel Chair Rentals	30.00%
2,000,001 and greater	\$1.10/attendee		

Any surplus revenue in excess of this arrangement and the commissionable percentage rates is deposited into the Zoo Surplus Development Fund (ZSDF), which is an account maintained by GLAZA. Decisions concerning the use of these funds are made by the Zoo Director typically for one-times expenses related to operations and maintenance needs that have not been funded by the City.

The following table provided by GLAZA reflects actual annual commissions received by GLAZA and the distribution of commissions for a recent four year period. In 2014-15, GLAZA received \$2,135,454 in total annual commissions, of which \$1,036,565 was deposited in the Zoo Enterprise Trust Fund (ZETF).

Actual Annual Commissions				
	2011-12	2012-13	2013-14¹	2014-15¹
Gross Commissionable Revenue (GCR)	\$10,323,842	\$ 9,305,024	\$ 9,444,047	\$10,365,655
Zoo Enterprise Trust Fund (ZETF) - 10% of GCR ²	\$ (1,032,384)	\$ (930,502)	\$ (944,405)	\$ (1,036,565)
Distribution of Annual Commissions				
GLAZA - 3% of GCR	\$ 309,716	\$ 279,151	\$ 283,321	\$ 310,970
Zoo Surplus Development Fund (ZSDF)				
Remainder of Annual Commissions	\$ 719,406	\$ 633,578	\$ 641,185	\$ 787,919
Annual Commission Enhancement ³	\$ 38,503	\$ 110,554	\$ 36,677 ⁴	\$ 160,490
Total ZSDF	\$ 757,909	\$ 744,132	\$ 677,862	\$ 948,409
¹ In 2013-14 and 2014-15, revenue and commissions do not include site rentals and catering because they are included in the Marketing, Public Relations, Site Rentals, and Catering MOU. ² Reflects GLAZA's record of revenue distribution. Actual transfers to ZETF occur one month in arrears and are recorded by the Department based on date of deposit. ³ Commission structure contained in Second Amendment to the Concessions Agreement provides additional revenue by Concessionaire for deposit into the ZSDF. ⁴ \$36,677 was earned in 2013-14 but paid in 2014-15.				

GLAZA and the Concessionaire have finalized and executed Amendment 5, which will extend the term of the current agreement to August 31, 2016 and include the following provisions: the Concessionaire will pay all future possessory interest tax assessed for operations at the Zoo and pay an annual pro-rated sponsorship to GLAZA of \$200,000 as long as it is performing services at the Zoo. These monies will be used to support the annual Zoo Lights event and provide additional support for marketing efforts.

Capital Investment

As part of the 1997 Concessionaire Subcontract, an initial capital investment of \$1,577,466 was contributed by the vendor to renovate and remodel equipment, furniture, or fixtures necessary to operate concessions at the Zoo. In subsequent amendments, the vendor has continued to provide funds to GLAZA for capital investments as detailed in the following table. To provide Zoo visitors with the best experience, it is recommended that the new agreement also include an initial capital investment, along with an additional minimum recurring maintenance capital expenditure amount.

Capital Investment by Concessionaire	
1997 - Concessionaire Subcontract	\$ 1,577,466
2001 - Amendment 1	\$ 2,000,000
2007 - Amendment 2	\$ 1,000,000
2009 - Amendment 3	\$ 1,000,000
2011 - Amendment 4	\$ 2,000,000
2016 - Amendment 5	\$ 500,000

City Contracting Procedures

City contracting procedures as identified in the Los Angeles Charter, Administrative Code (LAAC) and Executive Directives include but are not limited to the following:

- Use of the Los Angeles Business Virtual Network (BAVN) to advertise the Request for Proposals (RFP) and to reach out to and evaluate potential concessionaires (Executive Directive No. 14, Villaraigosa Series)
- Compliance with the City's Competitive Bidding Procedure, which includes but is not limited to the following: The RFP shall include a statement of the criteria that will be used in evaluating proposals. Only the evaluation criteria stated in the RFP will be considered in the evaluation of proposals. Award shall be made to the proposer whose proposal is most advantageous to the City. The contract file shall state in writing the basis on which the award is made. (Charter Sec.371 and LAAC Sec.10.15)
- Adherence to Contracting-Related Ordinances and Directives:
 - Non-Discrimination/Equal Employment Opportunity Practices Provisions (LAAC Sec.10.8.2 and LAAC Sec.10.8.3)
 - Equal Benefits Ordinance (LAAC Sec.10.8.2.1)
 - Affirmative Action Program Provisions (LAAC Sec.10.8.4)
 - Service Contractor Worker Retention (LAAC Sec.10.36 et al)
 - Living Wage Ordinance (LAAC Sec.10.37 et al)
 - Local Business Preference Program (LAAC Sec.10.47 et al)
 - Minimum Wage Ordinance (LAMC Sec.187 et al)
 - Contractor Responsibility Program (LAAC Sec.10.40)
 - Contractor Bidder Certification CEC50 (LAMC Sec.48.09(h))
 - Contractor Bidder Certification CEC55 (LAMC Sec.49.7.35(b)(3),(4))
 - Slavery Disclosure Ordinance (LAAC Sec.10.41 et al)
 - First Source Hiring Ordinance (LAAC Sec.10.44 et al)
 - Business Inclusion Program (Executive Directive No.14, Villaraigosa Series)
 - Good Food Purchasing Guidelines (Executive Directive No.24, Villaraigosa Series)
- Contract must be made in writing (Charter Sec.370)
- Contract must be approved by City Attorney as to form (LAAC Sec.10.2)
- Contract must be approved by the Mayor (Executive Directive No. 3, Villaraigosa Series)
- If the term is over three years, the RFP and contract must be approved by the City Council (LAAC Sec.10.3 and Sec.10.5)

EXPIRING
on
9-30-2022

Item #58 Council 9/23/97
C.F. 94-0989-D1

C-95894

OPERATING AGREEMENT

BY AND BETWEEN

THE CITY OF LOS ANGELES, a MUNICIPAL CORPORATION

and

THE GREATER LOS ANGELES ZOO ASSOCIATION,
a CALIFORNIA NONPROFIT CORPORATION

This operating Agreement (hereinafter "Agreement"), dated July 1, 1997, is entered into by and between the City of Los Angeles, a municipal corporation, hereafter "CITY" and the Greater Los Angeles Zoo Association, a California nonprofit corporation, hereinafter referred to as "GLAZA".

WHEREAS, the City of Los Angeles owns and controls certain park lands, known as Griffith Park, in which is located the Los Angeles Zoo, and

WHEREAS, the Los Angeles Zoo, hereinafter referred to as the "ZOO", is under the management and control of the Los Angeles City Department of the Zoo, hereinafter referred to as the "DEPARTMENT", and

WHEREAS, "GLAZA" is a California nonprofit charitable corporation formed for the purpose of assisting the CITY in establishing, developing, beautifying and improving the ZOO, and

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WHEREAS, the CITY has determined that the specific form of assistance required from GLAZA is to obtain financial contributions and similar support from the private sector, including but not limited to, individuals, corporations, and charitable foundations, and to secure financial contributions and other support from surrounding local governments to be ~~used for the CITY'S operations and capital improvements at the ZOO, and~~

WHEREAS, it is deemed desirable, if not necessary, to change the contractual relationship that previously existed between the CITY and GLAZA and to specify and describe, in a new Operating Agreement, the nature of the responsibilities, roles, aims, and goals of the parties to this Agreement for the primary purpose of providing a high quality Zoo for the residents of the CITY.

NOW, THEREFORE, the parties do mutually agree:

I. PARTIES

The parties to this contract and their representatives are:

A. CITY OF LOS ANGELES

Manuel Mollinedo, Zoo Director

5333 Zoo Drive

Los Angeles, CA 90027

B. GREATER LOS ANGELES ZOO ASSOCIATION (GLAZA)

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Fran Spears, President
Greater Los Angeles Zoo Association
5333 Zoo Drive
Los Angeles, CA 90027

II. TERM

This Agreement shall supersede the Operating Agreement executed in 1992 between the CITY and GLAZA. The term of this Agreement shall begin on the date of execution and expire ~~twenty-five (25)~~ years from that date unless previously terminated or canceled in accordance with other provisions of this contract. However, in no event shall this Agreement take effect prior to the effective date of the Ordinance establishing the DEPARTMENT as a separate City Department.

III. MEMORANDA OF UNDERSTANDING

For the purposes of this Agreement, a Memorandum of Understanding (MOU) is a written agreement to be signed by the authorized representatives of parties which reasonably identifies the subject matter of the contract, indicates that the parties have agreed to perform or promised to perform the subject matter of the contract, identifies the consideration to be exchanged between the parties and states with reasonable certainty the essential terms of the performance required.

It is the intent of the parties to enter into separate Memoranda of Understanding, as defined above, covering: (1) annual goals and details of fund raising; (2) terms and conditions of

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membership in GLAZA and distribution of membership funds between the Zoo and GLAZA, and as appropriate, (3) activities, other than fund raising, to be performed by GLAZA. The Memoranda will have their own respective periods of performance, terms and conditions, but will operate as subagreements to this Agreement. Each Memorandum will be negotiated and executed by the Zoo Director (General Manager of the DEPARTMENT) on behalf of the CITY. No Memorandum entered into by the General Manager shall extend beyond the twenty-five (25) year term of this Agreement.

Each Memorandum will have a maximum term of three (3) years and will be subject to the approval of the City Attorney as to form and legality. Each Memorandum will conform with and carry out the objectives and strategies in the (1) Marketing Plan and (2) Business Plan as approved and adopted by the City Council. The Council-approved Marketing and Business Plans will contain marketing and financial projections for a maximum period of five (5) years and will include, but not be limited to, methods to attract additional visitors and funds to the ZOO and calculations of funds anticipated to be received from fund raising, admissions (paid attendance) at the Zoo, City General Fund, membership, grants, concession(s) and other commercial enterprises.

IV. AMENDMENTS TO CONCESSION AGREEMENT BETWEEN CITY AND GLAZA

A separate Agreement, titled "Concession Agreement Between the City of Los Angeles, and the Greater Los Angeles Zoo Association" defines the contractual relationship between CITY and GLAZA whereby CITY has granted to GLAZA the exclusive right and privilege to operate

and maintain all approved concessions on ZOO premises. The provisions of Ordinance No. 170784 ("Worker Retention Ordinance") and Ordinance No. 171547 ("Living Wage Ordinance") shall apply to all approved concessions on Zoo premises. GLAZA shall continue to maintain the concessions in accordance with the existing Concession Agreement which is hereby reaffirmed with the following amendments:

A. SUBCONTRACTING OF ZOO CONCESSIONS BY GLAZA

The ZOO concessions currently operated by GLAZA may be subcontracted by GLAZA pursuant to a Request for Proposal process meeting all City requirements. The terms of the subcontracts for the ZOO concessions may exceed three (3) years, but shall not exceed the term of the Concession Agreement, as amended.

B. TERM

The term of the Concession Agreement, which began on February 12, 1981 and which was to expire twenty-five (25) years thereafter, is extended by an additional ten (10) years so that the expiration date will be February 11, 2016.

C. TERMINATION OF CONCESSION AGREEMENT

At any time during the duration of the Concession Agreement, CITY may, at its option and for any reason, terminate the Concession Agreement upon the giving of 180 days prior written notice to GLAZA. In the event of such termination, the CITY may, at its sole option, elect to assume any or all of GLAZA's subcontracts for approved ZOO

concessions or may reject and cancel any or all of GLAZA's subcontracts. Each and every subcontract entered into by GLAZA for an approved ZOO concession shall provide notice to the subcontractor of the language contained in this paragraph.

V. DUTIES AND RESPONSIBILITIES OF THE GREATER LOS ANGELES ZOO ASSOCIATION (GLAZA)

- A. The primary responsibility of GLAZA will be to seek and provide financial support to the Zoo and to fund the Zoo's capital improvements. GLAZA shall be responsible, under the terms of this Agreement to raise an amount, negotiated yearly, of the Zoo's annual operating budget and funding needs for capital improvements .
- B. GLAZA will be the primary, but not exclusive, organization authorized to solicit individual, corporate and foundation funds and contributions on behalf of the CITY for the ZOO. Sources for fund-raising will include, but not be limited to, solicitations, gifts and bequests, charitable events and grants. The General Manager of the ZOO and the President of GLAZA shall coordinate with each other regarding the timing and format of fund raising proposed by another organization prior to approval by the General Manager of such activities.
- C. In all solicitation and membership requests, GLAZA will disclose that it is raising funds for the Los Angeles Zoo, and that a portion of the funds will be used for GLAZA's administrative costs.
- D. GLAZA may solicit membership in its organization which is recognized as the official

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support group for the ZOO. Terms and conditions of such membership solicited and sold by GLAZA, including fees and privileges, will be negotiated with and approved by the Zoo Director and will be included in a Memorandum of Understanding to be executed by the Zoo Director and GLAZA.

- E. As it deems necessary or as reasonably requested by the Zoo Director, GLAZA shall gather facts, records, reports and other materials reasonably related to GLAZA's duties and plans for fund-raising activities and progress of fund-raising activities. CITY may use these reports and materials to measure effectiveness, evaluate programs and methodologies and to engage in strategic planning. GLAZA may also evaluate its own performance and may propose changes in methodology in order to achieve fund-raising goals.
- F. As it deems necessary or as reasonably requested by the Zoo Director, GLAZA shall gather facts, records, reports and other materials reasonably related to GLAZA's operating costs, budget expenditures and financial forecasts and submit them to the CITY.

VI. ESTABLISHMENT OF FUND-RAISING GOALS AND TIMETABLES

- A. Annually, the Zoo Director shall present GLAZA with a plan for the design and construction of new exhibits, ancillary facilities and other capital projects and sources of funding if known to CITY. GLAZA shall supply CITY, within sixty (60) days of receipt of CITY's plan, with a written report detailing goals and timetables for fund-raising plans and activities to complement the CITY's plan to construct capital improvements. Each

year the Zoo Director, and the GLAZA President will establish fund raising goals and related timetables for the upcoming fiscal year. These goals and timetables will be incorporated into an annual Memorandum of Understanding.

- B. Following adoption of the Memorandum of Understanding, GLAZA shall prepare and submit to the Zoo Director quarterly reports updating the progress of its fund raising. In the event that GLAZA is not making reasonable progress toward meeting its goals, through no fault of CITY, the Zoo Director shall make a recommendation for an alternative or corrective course of action.

VII. USE AND DISTRIBUTION OF MEMBERSHIP FEES

- A. GLAZA may use a portion of fees charged for membership in the Los Angeles Zoo for its administrative costs. From each family, individual and other membership fee, GLAZA shall retain for such purposes ~~twenty-five percent (25%) of each fee~~.
- B. From each family, individual and other membership fee, GLAZA shall remit fifteen percent (15%) of each fee to CITY. This percentage will increase by one percent (1%) per year, over a ten (10) year period, commencing after the first year of this Agreement and continuing until GLAZA is paying the ~~CITY twenty-five percent (25%) of each~~ membership fee for the remaining term of the Agreement.
- C. ~~The remainder of the monies received from membership fees shall be deposited in to the CITY's Zoo Enterprise Trust Fund~~ within twelve months of receipt unless the Zoo Director and GLAZA enter into an MOU prior to that date requiring GLAZA to perform

services for the Zoo. If the MOU (s) do not allocate all the remaining monies received from membership fees within twelve months of receipt, all such unallocated fees shall be deposited in the CITY's Zoo Enterprise Trust Fund.

VIII. CITY'S RESPONSIBILITIES

The CITY will provide GLAZA with administrative space at the ZOO.

IX. OTHER ACTIVITIES WHICH MAY BE PERFORMED BY GLAZA

- A. The CITY shall be responsible for all publications related to the ZOO, special events held at the ZOO, the construction, operation and maintenance of all facilities, and the use and rental of all ZOO facilities.
- B. CITY may contract with GLAZA to perform any or all of these services under a separate Memorandum of Understanding.

X. ACCOUNTING SYSTEM, FUNDS AND ACCOUNTS

- A. GLAZA and CITY will work together to establish a system with funds and accounts so that GLAZA's financial condition/status is clearly comprehensible to both organizations.
- B. GLAZA will establish a separate Fund, MEMBERSHIP FUND, in which to deposit all monies received from membership fees.
- C. GLAZA and CITY will establish process, procedures and time line whereby GLAZA will

transfer money from the GLAZA Membership Fund to the CITY on a periodic basis pursuant to the provisions of Section VII of this Agreement

- D. In the event of GLAZA's dissolution, all debts and obligations incurred by GLAZA in its operations shall be discharged, and, thereafter, all monies remaining in GLAZA fund(s) and accounts shall be paid over in full to CITY to be placed in the CITY's Zoo Enterprise Trust Fund and used exclusively for Zoo purposes approved by the CITY. The CITY shall use all restricted funds held by GLAZA at the time of dissolution, either for the purpose specified (or another purpose approved by the donor) or the funds shall be returned to the donor.

XI. AUDIT OF BOOKS AND RECORDS

GLAZA shall have its books and records audited annually by an independent accounting firm at GLAZA's expense. The CITY shall receive annually from GLAZA an audited GLAZA financial report which shall include, but not be limited to, an income statement and a balance sheet. This financial report shall be prepared by an independent certified public accountant. The CITY, using its own staff or an independent accounting firm and generally accepted accounting principles, shall have the right, at its expense, to audit all GLAZA's books and records annually. Likewise, GLAZA, using an independent accounting firm and generally accepted accounting principles, shall have the right, at its expense, to audit annually the CITY's books and records related to funds transmitted to

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the CITY by GLAZA. CITY will audit GLAZA's administrative costs and other costs used to maintain the GLAZA organization.

XII. ADVISORY COMMITTEES

The Zoo Director may form ad hoc advisory committees related to the implementation of this Agreement. Agendas and minutes for meetings of all such Committees shall be made available.

XIII. ADMINISTRATION OF THE ZOO

- A. The Zoo Director shall be exclusively responsible for the administration and management of the ZOO within the policy guidelines set forth by the Mayor and City Council.
- B. GLAZA shall hire the President who shall report to its Board of Trustees and shall act as the primary liaison between the CITY and GLAZA. GLAZA shall provide that the Zoo Director shall be an ex-officio non-voting member of the GLAZA Board.
- C. GLAZA personnel shall report to the President of GLAZA, who in turn, will report to the GLAZA Board. The President of GLAZA will be in frequent communication with the CITY so that the CITY and GLAZA can coordinate GLAZA fund-raising activities and ZOO activities in accordance with this Agreement and with any Memorandum of Understanding entered into between the parties pursuant to this Agreement.

XIV. DISPUTES

In the event any dispute arises regarding the interpretation or the performance of any of the terms of this Agreement which cannot be resolved by the DEPARTMENT and GLAZA, a determination of such dispute shall be made by the City Council of Los Angeles through its administrative processes, that is, an appeal to the City Council through its Committee system..

XV. TERMINATION; DEFAULT AND CANCELLATION OF AGREEMENT

- A. Termination of Agreement: Either the City Council of the City of Los Angeles and/or the GLAZA Board may terminate this Agreement at any time prior to the expiration of its term and without stating any cause therefore by giving written notice of such termination to the other party not less than 180 days prior to the effective date of such termination.
- B. Completion of Projects after Agreement Termination: It is agreed that upon termination of this Agreement, CITY shall complete any project already funded and approved by GLAZA and CITY.
- C. Default and Cancellation

- 1. Breach and Default by GLAZA

In the event GLAZA breaches any of the terms or conditions of this Agreement ,or in a substantial fashion , fails to conform to the rules and regulations or any of the directions or instructions that may be properly made by the CITY in the exercise of its powers or becomes unable through corporate incapacity to fulfill its obligations under this Agreement, the CITY shall have the following options without any

further notice or authorization from GLAZA, and its choice of any option shall in no way waive its rights to select any other option at any time.

- a. The CITY may give GLAZA written notice of such default. If GLAZA does not cure said default within 30 days after such notice was first received (forthwith for a default involving sanitary conditions) or make reasonable progress to cure said default, the CITY may terminate this Agreement and exclude GLAZA from the premises; and/or
- b. The CITY may recover at law any and all claims which may be due the CITY.

2. Breach by the CITY

- a. In the event the CITY defaults in the performance of any of the terms or conditions of this Agreement and if a written notice of such default is issued to the CITY by GLAZA by registered mail, and if the CITY does not cure said default within 30 days of receipt of said notice, GLAZA may immediately terminate this Agreement and/or recover at law any and all claims which may be due.
- b. However, if GLAZA fails to notify the CITY of its default within 60 days after learning of its occurrence, then GLAZA shall be deemed automatically to have waived any and all rights occurring hereunder as to such default.

XVI COMPLIANCE WITH ALL LAWS AND REGULATIONS:**A. Federal, State and Local Laws:**

GLAZA agrees that in achieving its goals as set forth in its Articles of Incorporation, its By-Laws and this Agreement, it will comply with all applicable Federal, State and local laws. GLAZA shall be required to obtain, at its sole expense any and all permits or licenses that may be required in connection with its operations including, but not limited to, tax permits, business licenses, health permits, etc.

B. Employees -- Affirmative Action:

GLAZA agrees and obligates itself not to discriminate during the performance of this Agreement against any qualified employees or applicants for employment because of the employees's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age or physical handicap. Certification by GLAZA of adherence to an affirmative action program is herein attached as Exhibit A and is incorporated into this Agreement. GLAZA has signed and submitted the Los Angeles City Affirmative Action Plan attached hereto as Exhibit B and incorporated into this Agreement.

XVII. UTILITIES

CITY shall pay all charges for electricity, fuel and water service necessary to carry on GLAZA's and the ZOO's operations. GLAZA shall pay for its own telephone service.

XVIII. SURRENDER OF PREMISES

July 1, 1997

Upon termination of this Agreement, GLAZA shall quit and surrender possession of Zoo premises to the CITY in as good and usable condition subject to normal wear and tear. Any improvements to ZOO property owned by GLAZA, which have been constructed or erected on the ZOO premises shall upon termination of this Agreement become the property of the CITY.

XIX. INCORPORATION BY REFERENCE OF OTHER TERMS AND CONDITIONS

CITY's Standard Provisions for City Personal Services Contracts are incorporated into this Agreement by reference. (See Appendix A)

APPROVED AS TO FORM

JAMES K. HAHN
CITY ATTORNEY

By: [Signature]
9-26-97

CITY OF LOS ANGELES, A MUNICIPAL
CORPORATION

By: [Signature]
ZOO DIRECTOR 9-29-97

GREATER LOS ANGELES ZOO
ASSOCIATION, A CALIFORNIA
NONPROFIT CHARITABLE CORPORATION

By: [Signature]
9-29-97

ATTEST:

CITY CLERK

Attest: J. Michael Carey, City Clerk

By: [Signature]
Deputy 10/1/97



MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE LOS ANGELES ZOO AND BOTANICAL GARDENS
AND
THE GREATER LOS ANGELES ZOO ASSOCIATION
CONCESSIONS

1. Governance

Operating Agreement

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

Concession Agreement

A separate agreement, titled "Concession Agreement Between the City of Los Angeles and Greater Los Angeles Zoo Association" (the "Concession Agreement") defines the contractual relationship between the City and GLAZA whereby the City has granted to GLAZA the exclusive right and privilege to operate and maintain all approved concessions on Zoo premises (executed February 1981). The Term of the Concession Agreement began February 12, 1981 and was to expire February 11, 2006. The Operating Agreement however extends the term of the Concession Agreement to February 11, 2016.

Concession Services Agreement

In accordance with Section IV.A of the Operating Agreement, the City further granted GLAZA the authority to subcontract for concession services pursuant to a Request for Proposals process meeting all City requirements. As a result, GLAZA executed an agreement (titled the Concession Services Agreement for Los Angeles Zoo by and between Greater Los Angeles Zoo Association and Service America Corporation – Service System Associates, A Joint Venture) (the "Services Agreement") with Service America Corporation/Service System Associates (the "Concessionaire"). The Services Agreement was executed October 1, 1997, and was to expire September 30, 2007, which term was extended by GLAZA, provided that in no case shall the term of the Services Agreement go beyond the date of February 11, 2016, which is when the Concession Agreement between the City and GLAZA expires. Any option to renew shall be at the sole discretion of GLAZA by giving Concessionaire a preliminary

notice of renewal not later than six months prior to the ending of the then current term. Concessionaire shall have the right to decline any option renewal by providing GLAZA with written notice within 30 days of receiving the option renewal.

(First) Amendment to Services Agreement

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

Second Amendment to Services Agreement

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

Third Amendment to Services Agreement

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

Fourth Amendment to Services Agreement: Under Negotiation

In March 2011, GLAZA informed Concessionaire of its desire to negotiate a Fourth Amendment to the Services Agreement which will extend the term of the agreement from September 30, 2011. GLAZA is now in negotiations for the terms and conditions of this Fourth Amendment.

Execution Authority

Each MOU shall conform with and carry out the objectives and strategies in the Los Angeles Zoo Business and Marketing Plan, as approved by the City Council, per the Operating Agreement.

On July 15, 2005, the City Council authorized the Zoo Director to enter into MOUs with GLAZA for Fundraising, Membership, Concessions, Financial Assistance, Docent/Volunteer Management and Special Events for a 12-month period, effective from the date of execution. The Council further directed that the Zoo complete the Business and Marketing Plan for the Mayor and Council to approve within the 12-month MOU period (C.F. 02-2884-S2). Since this time, the Zoo has considered the Zoo Department's Adopted Budget, approved by the Mayor and Council annually, as the Zoo's Business and Marketing Plan. This MOU conforms to the 2011-12 Adopted Budget for the Zoo.

2. Term of MOU

This MOU is effective for a one-year period during the parties' fiscal year which runs July 1, 2011 to June 30, 2012. The Program Description and budgets below reflect activity during the entire fiscal year. The Zoo and GLAZA may amend this MOU by written agreement during its term should they mutually agree to change the program outlines and budget.

3. Program Description

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

3.1 *Main Concessions* - As of October 1, 1997, GLAZA sub-contracted with Concessionaire granting them (i) the sole and exclusive right to operate the food and refreshment and gift shop concessions, (ii) the sole and exclusive right to sub-contract the operation of vending machines, tram operations and stroller and wheelchair rental concessions, and (iii) the right to be the "preferred" non-exclusive caterer at the Zoo. The Concessionaire took over the site rental responsibilities on April 19, 2000.

Estimated Budget: Concessions Revenue, Commissions, Transfers and Adjustments for the Fiscal Year July 1, 2011 to June 30, 2012.

<i>Category</i>	<i>Amount</i>
Total Gross Revenue	\$ 9,511,249.60
Less In-house Catering	- 95,302.60
Total Commissionable Revenue	\$ 9,415,947.00
Commissions	\$ 1,791,759.14
Less Transfer to City	- 941,594.70
Less GLAZA Admin Fee	- 282,478.41
Remainder to Zoo Surplus Development Fund	\$ 567,686.03

3.1.1 Estimated Commissions for 2011-12 of \$1,791,759.14 have been budgeted by GLAZA and Concessionaire and reviewed by the Zoo.

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

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

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

3.1.5 As mutually agreed upon, and as a continuation of past practice, 3% of the Gross Commissionable Revenue will be retained by GLAZA as an administrative fee and to cover administrative costs including, but not limited to, insurance, legal support, taxes,

consultants for on-going operations and long-term planning and staff time related to the management and oversight of the Concessionaire and the Services Agreement.

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

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

Estimated Budget: Special Vending Revenue and Transfers for the Fiscal Year July 1, 2011 to June 30, 2012.

<i>Category</i>	<i>Amount</i>
Special Vending Revenue	\$ 115,936
Special Vending Commissions	\$ 51,252
Less Transfer to City	- 11,594
Less GLAZA Admin Fee	- 3,478
Remainder to Zoo Surplus Development Fund	\$ 36,181

3.2.1 Estimated Special Vending Commissions for 2011-12 of \$51,252 have been budgeted by GLAZA and reviewed by the Zoo.

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

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

3.3 *Exclusive or Official Product and Service Agreements* - As part of the Zoo's operations, GLAZA and/or the Concessionaire may have opportunities for product or service exclusivity in exchange for rights, benefits and privileges (financial and in-kind). Negotiations of any and all agreements shall be conducted together with the Zoo Director, or his designee,

and GLAZA. Subsequent product or service exclusivity agreements shall represent a mutual agreement between the Zoo and GLAZA on the disposition of benefits received in exchange (financial and in-kind), shall be in writing and shall not extend beyond one year without approval of the CAO and City Attorney.

4. Other Matters

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

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

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

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

4.5 The Concessions Committee will work to develop tools and strategies, including market research and consulting, to implement the Concessions Conceptual Plan in concert with the Zoo's 2002 Master Plan Update and with the Zoo's Business and Marketing Plan.

4.6 Zoo, GLAZA and Concessionaire staff will develop guidelines for the appropriate use and rental of the Front Entry Plaza and the new Elephants of Asia public areas.

4.7 The Concessions Committee will discuss appropriate strategies and timelines in preparation for Fourth Amendment.

GLAZA recognizes that that the City has issued a draft Request for Proposals for an Alternative Management Structure for the Los Angeles Zoo, which may affect the City's agreements with GLAZA and GLAZA's subcontracts governed by those agreements.

The Operating Agreement states: *C. TERMINATION OF CONCESSION AGREEMENT At any time during the duration of the Concession Agreement, CITY may, at its option and for any reason, terminate the Concession Agreement upon the giving of 180 days prior written notice to GLAZA. In the event of such termination, the CITY may, at its sole option, elect to assume any or all of GLAZA's subcontracts for approved ZOO concessions or may reject and cancel any or all of GLAZA's subcontracts. Each and every subcontract entered into by GLAZA for an approved ZOO concession shall provide notice to the subcontractor of the language contained in this paragraph.*

Further, the Concession Services Agreement states: *Section 17. Agreement Termination, 5.D. GLAZA shall have the right to terminate this Agreement for any reason by giving Operator one hundred and twenty (120) days written notice specifying the date of such termination. If the Agreement is terminated by GLAZA pursuant to this clause, GLAZA or the successor operator agrees to pay Operator an amount equal to the unamortized portion of the capital investment minus the fees received by Operator from GLAZA relating to the sharing of outside catering fees within sixty (60) days from the date of termination.*

5. Miscellaneous Provisions

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

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

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

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

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

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

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

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

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

APPROVED AS TO FORM

CARMEN A. TRUTANICH
CITY ATTORNEY

By: 
DOV LESEL, Assistant City Attorney

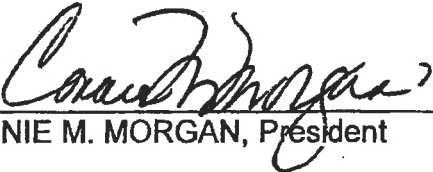
DATE: 9/12/12

CITY OF LOS ANGELES
LOS ANGELES ZOO AND BOTANICAL GARDENS

By: 
JOHN R. LEWIS, Zoo Director

DATE: 9/17/12

GREATER LOS ANGELES ZOO ASSOCIATION

By: 
CONNIE M. MORGAN, President

DATE: 9/17/2012

TERM OF THIS AGREEMENT: July 1, 2011 to June 30, 2012

**Summary of Terms and Amendments to
Agreement Between GLAZA and Concessionaire**

	Term	Summary
Original Contract	October 1, 1997 through September 30, 2007	Concessionaire to provide a capital investment of \$1.58 million and a refurbishment fund of \$200,000. Established commission structure.
Amendment No. 1	July 1, 2001	Concessionaire to provide an additional capital investment of \$2.0 million. Modified commission structure.
Amendment No. 2	October 1, 2007 through September 30, 2009	Concessionaire to provide a capital investment of \$1 million and an Annual Commission Enhancement based on attendance above 1.5 million visitors. Extended term to September 30, 2009.
Amendment No. 3	October 1, 2009 through September 30, 2011	Concessionaire to provide a capital investment of \$1 million. Extended term to September 30, 2011.
Amendment No. 4	October 1, 2011 through February 11, 2016	Concessionaire to provide a capital investment of \$2 million, which includes the payment of possessory interest tax on behalf of GLAZA. Concessionaire to contribute \$300,000 over the term of the amendment for marketing, promotional and sponsorship purposes. Extended term to February 11, 2016.
Amendment No. 5	February 11, 2016 through August 31, 2016	Concessionaire to provide a capital investment of \$500,000. Concessionaire to pay all future possessory interest tax assessed for Zoo operations. Concessionaire to pay an annual pro-rated sponsorship to GLAZA of \$200,000. Extended term to August 31, 2016.