

**FOOD SERVICE CONCESSION AGREEMENT BETWEEN CITY OF SANTA ANA
AND BEAN SPROUTS LLC DBA BEAN SPROUTS FOR SANTA ANA ZOO**

THIS AGREEMENT is made and entered into on this 20th day of February, 2024 by and between Bean Sprouts, LLC, a Wisconsin limited liability company dba Bean Sprouts (“Bean Sprouts”), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (“City”).

RECITALS

- A. The City desires to retain a vendor having special skill and knowledge in the field of providing healthy, kid-friendly food and beverages for the Santa Ana (“Zoo”).
- B. City issued a Request for Proposals (“RFP”) No. 23-040 for food and beverage concessions on May 25, 2023, incorporated by reference herein.
- C. Bean Sprouts submitted a responsive proposal that was selected by the City. Bean Sprouts represents that it is able and willing to provide the services described in the scope of work that was included in RFP 23-040.
- D. In undertaking the performance of this Agreement, Bean Sprouts represents that it is knowledgeable in its field and that any services performed by Bean Sprouts under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. DEFINITIONS

- a. Café Net Sales shall mean all monies paid to Bean Sprouts (whether cash or credit) for retail sales made to customers on the Premises (defined below), including alcohol and catering sales; provided that Café Net Sales shall not include (1) sales taxes that are separately stated and that Bean Sprouts is required to collect from customers and pay to a taxing authority; (2) authorized discounts given to employees, volunteers, or members; and (3) monies paid to Bean Sprouts that are subsequently refunded to customers.
- b. Fiscal Year shall be July 1st to June 30th.

2. SCOPE OF SERVICES

Bean Sprouts shall perform during the term of this Agreement, the tasks and obligations including all labor, materials, tools, equipment, and incidental customary work required to fully and adequately complete the services described and set forth in “**Scope of Services**,” which was included in RFP No. 23-040 and is attached hereto and fully incorporated herein by reference as **Exhibit A**, and as more specifically set forth in Bean Sprout’s proposal, which is attached hereto

and fully incorporated herein by reference as **Exhibit B**.

3. CONSIDERATION

- a. In consideration for the concession rights granted by this Agreement, City and Bean Sprouts agree to a tiered revenue-share model:
 - (1) Six percent (6.0%) of Café Net Sales collected by Bean Sprouts for the initial \$300,000 in cumulative Café Net Sales for a given Fiscal Year.
 - (2) Eight percent (8.0%) of Café Net Sales collected by Bean Sprouts for revenues between \$300,001 and \$500,000 in cumulative Café Net Sales for a given Fiscal Year.
 - (3) Ten percent (10.0%) of Café Net Sales collected by Bean Sprouts for revenues above \$500,000 in cumulative Café Net Sales for a given Fiscal Year.
- b. Bean Sprouts shall invest up to \$50,000 which can include:
 - (1) New serving windows/screens.
 - (2) A mobile cart, to be utilized during high traffic times and special events.
 - (3) All expenses necessary to comply with security and safety measures in Santa Ana Municipal Code (“SAMC”) section 41-196(g), as it may be amended from time to time, such as security cameras, signage, stanchions, etc.
 - (4) All necessary expenses to comply with Alcohol Beverage Control (ABC) and SAMC requirements for serving alcohol at the Zoo.
- c. In the event that Bean Sprouts is delinquent in paying any payments due under this Agreement for more than thirty (30) days, City shall be entitled to collect interest on those delinquent funds in the maximum amount allowed by law at the time. City will also be entitled to attorney’s fees expended in collecting the delinquent amounts. City will also be entitled to any and all other remedies available pursuant to the law.

4. TERM

This Agreement shall commence on March 18, 2024 for a three (3) year term with the option for the City to grant up to two (2), two-year renewals, exercisable by a writing by the City Manager and the City Attorney, unless terminated earlier in accordance with Section 15, below.

5. ATTENDANCE GUARANTEE

The Zoo's average annual attendance is 240,000 set forth the City of Santa Ana's Request For Proposal No. 23-040. Within ten (10) days of the end of each month during the Term, the Zoo Manager shall provide to Bean Sprouts updated daily attendance statistics reflecting the attendance numbers for the previous month. If, at any time during the Term, the attendance at the Zoo falls to 90% or less of 240,000 on a rolling twelve-month basis, then the City and Bean Sprouts will negotiate in good faith to reduce the payments required to be made by Bean Sprouts set forth in Section 3 hereof. If, at any time during the Term, the visitor base at the Zoo falls to 75% or less of the figures shown in the Attendance Projections on a rolling twelve-month basis, then Bean Sprouts shall have the right to terminate this Agreement by providing ninety (90) days' written notice of City.

6. LIQUOR LICENSE

a. Application

- (1) As set forth in Section 3(b)(4) of this Agreement, Bean Sprouts shall obtain a type 47 ABC license ("Liquor License") for the Premises (defined below) at its sole cost.
- (2) City agrees to assist Bean Sprouts obtain a Liquor License. Such assistance includes, but is not limited to:
 - i. Drafting letters to ABC explaining zoo hours of operations, including daily hours and special event hours; because there is no conditional use permit, City shall set operating hours.
 - ii. Providing a written request as set forth in California Business & Professions Code section 23824, as it may be amended from time to time, in support of the issuance of a Liquor License for the Premises.

b. Operations

- (1) The City will work with Bean Sprouts to develop and implement an alcohol security plan.
- (2) The City will work with Bean Sprouts on signage across the Zoo to indicate where alcohol is prohibited.
- (3) The City shall set the operating hours for Bean Sprouts.
 - i. The Maximum Operating hours shall be 9:00 a.m. to 11:00 p.m.
 - ii. The City will approve weekly hours within the Maximum Operating hours.

- (4) Containers for alcoholic beverages shall be distinguished from containers for non-alcoholic beverages.
- (5) Containers for alcoholic beverages must conform to eco-friendly guidelines (including but not limited to, biodegradable or compostable cups and straws, recyclable aluminum cans/cups/straws; no single-use plastic packaging).
- (6) Any identifiers for patrons 21+ years old must meet eco-friendly guidelines (i.e., compostable wristbands).

c. Transfer

- (1) Liquor License shall be relinquished upon termination or expiration of Agreement.
- (2) Bean Sprouts must with City and successor in good faith to transfer ownership of Liquor License at no additional cost beyond what Bean Sprouts paid for the initial Liquor License.
- (3) Bean Sprouts will work in good faith with City to surrender the Liquor License in whole or in part for daily licenses for events that require an outside caterer, including the Zoofari fundraiser.

7. USE OF PREMISES AND RIGHTS OF BEAN SPROUTS

- a. Use of Premises: Bean Sprouts shall use the “Premises,” which includes the concession building at the Zoo as well as the mobile cart (once acquired) as further detailed in **Exhibit A**, for the preparation and sale to the public of food and beverages, both at the Premises and for Zoo-based catering, and for preparation and sale of such other food and beverage items that shall be approved from time to time by the City and for storage, office, and administrative functions in connection with Bean Sprouts’ operations under this Agreement. Bean Sprouts shall additionally have the right to sell branded retail items, including but not limited to, games and books, but City shall have the right to approve retail items. Bean Sprouts shall not use the premises for any purpose other than set forth herein.
- b. Rights Not Exclusive: The City may grant rights to other vendors to sell beverage and snack items and also retains those rights for the City in the Zoo gift shop or any additional Zoo shops that may be opened during the Term of this Agreement; provided, however, that during the Term, the City will not grant rights to other vendors to, sell branded food products and beverages which compete with Bean Sprouts’ offerings (i.e., sandwiches, salads, pizzas, soups, coffee, bottled water, smoothies, ice cream, baked goods, healthy drinks and healthy snacks). This provision does not apply to promotions where food or beverages may be given away, private parties where food is catered or brought in from an outside vendor,

or to food brought by guests for personal consumption.

- c. Premises Taken "As Is": Bean Sprouts takes the Premises without any improvement, repair or modification by the City; provided that City represents and warrants (1) that, to its knowledge, no Hazardous Substances (as defined below) have been used or stored in, on, or about the Premises and (ii) that the structural components and mechanical systems of the Premises are in good working order. "Hazardous Substances" shall mean petroleum products and those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic materials," "toxic substances," "solid waste" or "infectious waste" under all present or future federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Premises, and the rules and regulations of the Federal Environmental Protection Agency and any other federal, state or municipal agency or governmental board or entity have jurisdiction over the Premises.
- d. Ownership, Use of Furniture, Fixtures and Equipment: City is the owner of the furniture, fixtures and equipment located at the Premises which may be used by Bean Sprouts in whole or in part for the preparation and service of food and beverages at the Premises. At the commencement of this Agreement, City and Bean Sprouts will take an inventory of all Zoo furniture, fixtures and equipment. Furniture, fixtures and equipment will be returned to City upon termination or expiration of this Agreement in the same condition as received, ordinary wear and tear expected. To the extent that Bean Sprouts acquires additional built in furniture, fixtures and equipment for use at the Premises, all such additional build in furniture, fixtures and equipment will become property of the City.
- e. Improvements and Refurbishments to be made by Bean Sprouts: Within ninety (90) days after the execution of this Agreement, Bean Sprouts shall submit to City its proposed modifications to the Premises, City will have the sole right to approve or deny said proposed modifications to the Premises in whole or in part and/or to require such changes, if any, in such plans and specifications, as City shall deem necessary or desirable in its reasonable judgment including, without limitation, changes to comply with applicable building codes, health and safety regulations or other legal requirements or to make Premises more suitable for the services Bean Sprouts is obligated to provide pursuant to this Agreement. City will notify Bean Sprouts within fifteen (15) days after receipt of the proposed modifications whether any changes to the proposed modifications will be required by the City and, if so, what changes will be requested. All proposed modifications to the Premises will be made at Bean Sprouts' expense.
- f. Completion of Improvements to Premises: Following City's approval of Bean Sprouts' proposed modifications to the Premises, Bean Sprouts shall take such action as is necessary to commence the construction and implementation of Bean Sprouts Improvements to the Premises no later than one hundred and twenty (120) days of City's final approval of the proposed modification; provided, that Bean Sprouts shall not be required to expend in excess of \$50,000 in the aggregate on the

proposed modification and necessary expenses to comply with Alcohol Beverage Control (ABC) and SAMC requirements for serving alcohol at the Zoo. In the event the expenses necessary to comply with building codes, Alcohol Beverage Control (ABC) and SAMC requirements, the Santa Ana Municipal Code and Charter, and/or the Health Department exceed \$50,000 in the aggregate, the parties agree to meet and confer on a mutually agreeable solution to pay for the additional expenses. All improvements to the Premises will comply with applicable building codes, the Santa Ana Municipal Code and Charter, and any other legal requirements. Bean Sprouts will obtain all necessary permits and licenses at its expense for all improvements to the Premises.

- g. Title to Vest in the City: Title to all Bean Sprouts improvements constructed, installed or placed in the Premises by Bean Sprouts under this Agreement shall immediately vest in the City subject to Bean Sprouts' right to use those improvements during the term of this Agreement.
- h. Maintenance and Repairs of the Premises: Except for maintenance and repairs necessitated by the willful acts or negligence of Bean Sprouts, or its agents, employees, invitees, licensees or customers, City shall be responsible for the costs of maintaining the exterior of the Premises, roof, foundation and structural components of the Premises as well as the parking lot, exterior and landscaped areas. City shall also be responsible for the replacement of all mechanical systems (including without limitation, electric, HVAC and plumbing) when they reach the end of their useful life. City will have the sole discretion to determine whether the mechanical systems have reached the end of their useful life. The City will use reasonable standards in the industry to determine when mechanical systems have reached the end of their useful life. Bean Sprouts shall be responsible for maintaining the interior of the Premises throughout the term of this Agreement in good condition. City acknowledges that normal wear and tear will occur. Bean Sprouts will be responsible at its expense as follows:
 - (1) Repairs and maintenance for all equipment, furniture, and fixtures used within the Premises including but not limited to light fixtures, light bulbs, starters, equipment motors, and other similar items;
 - (2) Cleaning of the Premises;
 - (3) Equipment storage and maintenance;
 - (4) Storage and/or disposal of grease and flammable materials;
 - (5) Storage and disposal of garbage. City shall designate location(s) of garbage bins;
 - (6) Repair and maintenance (but not replacement) of all water, sewer and electrical lines maintained inside the Premises;

(7) Repair and maintenance of floor with the Premises.

- i. Alterations not Allowed Unless Authorized by City: Alteration other than the proposed modifications and improvements discussed herein are not allowed to the Premises unless approved in writing by the City before the alterations are made; provided that Bean Sprouts may make non-structural changes, that do not require a building permit, to the interior of the Premises only, and which do not, individually require more than \$3,000 in expenditures, by providing City at least thirty (30) days prior written notice thereof.
- j. Satellite Carts: Bean Sprouts may have satellite carts at the Carrousel Plaza between the carrousel line and the train rides and/or at the Conservation Education Theater. When carts are not in use, they must be stored in the non-public area of the Zoo. Additional carts may be allowed with the Zoo Manager's prior approval. Sales from any satellite carts shall be included in Bean Sprouts' Café Net Sales.

8. RIGHTS OF THE CITY

City has all rights and powers provided by law which have not been expressly granted to Bean Sprouts pursuant to this Agreement, including but not limited to:

- a. Right of Entry and Right to Inspect Premises: City shall have the right to enter the Premises and inspect Premises. Except in the case of an emergency, City will provide reasonable notice of not less than twenty-four (24) hours to Bean Sprouts of any inspection.
- b. Right to Restrict Access to Areas of the Zoo: The Premises is located at the Santa Ana Zoo. Bean Sprouts right of access does not include non-public areas of the Zoo. City reserves the right to restrict or deny access to areas of the Zoo which do not include the Premises including but not limited to non-public areas of the Zoo.
- c. Right to Suspend or Terminate the Agreement: City has the right to terminate the Agreement as specified in this Agreement. In addition, City has the right to suspend any and all aspects of this Agreement for good cause. Good cause includes but is not limited to failure to comply with the Orange County Health Care Agency requirements related to food service and safety, excessive pricing, failure to comply with any applicable laws including but not limited to discrimination laws, labor and employment laws, building codes, health and safety provisions, and any other applicable local, state, or federal laws or regulations. City will notify Bean Sprouts in writing of any intent to suspend services under this Agreement and Bean Sprouts will be afforded at least ten (10) days to cure any default which underlies such suspension except for any health or safety issue. City and Bean Sprouts will confer on any potential suspension pursuant to this section but City will be entitled to the final determination about whether to suspend any portion or all services pursuant to this Agreement and for how long, provided that Bean Sprouts has failed to cure

the default underlying the suspension as set forth above.

- d. Declarations of War, Local, State or National Emergency: City is not responsible for any disruption of Bean Sprouts' services under this Agreement when such disruption is due to a state of war, declaration of local, state or national emergency.
- e. Future Development: City reserves the right to make changes to the Zoo property in the future. To the extent possible, City will use due care to cause the least amount of disruption to Bean Sprouts' services and to the Premises as possible.

9. OPERATIONAL STANDARDS

- a. Bean Sprouts shall provide services pursuant to this Agreement in a first-class manner and shall maintain the Premises in a neat, clean, and orderly condition at all times.
- b. Bean Sprouts shall keep facilities free of all rodents and insects. Animals shall only be allowed as required by law.
- c. Bean Sprouts will provide marketing materials including graphics, menus and operational materials that are consistent with the overall Zoo aesthetic.
- d. Bean Sprouts will provide an array of kid-friendly and healthy food and drink options for Zoo patrons. Bean Sprouts and City will agree to meet and confer in the event that City determines additional food or beverage items should be added to the services provided by Bean Sprouts. Some food items may be restricted due to possible problems related to excessive litter or potential animal health issues.
- e. Bean Sprouts will endeavor to provide sustainable and environmentally conscious food options and serving-ware, consistent with the conservation-based mission of the Zoo.
- f. Bean Sprouts will limit the use of single-use plastics (plastic water bottles, straws, lids, plastic disposable utensils, single-serving condiment packages and similar plastic items).
- g. Bean Sprouts shall maintain the standard of quality and the quantity of similar food and beverage establishments offering a similar menu in Orange County, California. City shall have the right to approve any and all food and beverage items offered to Zoo patrons pursuant to this Agreement.
- h. Bean Sprouts shall maintain an "A" rating for sanitation pursuant to the regulations of the Orange County Health Care Agency and the State of California.
- i. Bean Sprouts shall provide prompt and efficient service. Bean Sprouts shall make certain that there are a sufficient amount of employees on staff at the Premises at

all times to ensure prompt and efficient service to Zoo patrons. Bean Sprouts shall make sure that its employees do not use foul or profane language, that they dress appropriately, and do not act in a manner at the Premises or on Zoo property which is disruptive, sexually explicit, harmful to the animals, or overly loud or boisterous. In particular, Bean Sprouts will impress upon their employees that service is provided in large part to minors and families.

- j. Bean Sprouts will not allow their employees to smoke, vape, consume alcohol, or consume illegal drugs on the Premises or within the Zoo property at any time.
- k. Bean Sprouts will conduct background checks on all employees pursuant to the law and will comply with Penal Code section 290.95(c).
- l. Bean Sprouts will appropriately train their employees on food safety, hand washing techniques, and any other matters relevant and necessary for individuals working in a business that prepares and serves food to the public.
- m. All food or beverage service employees shall be on the payroll of Bean Sprouts. All persons employed by Bean Sprouts and working at the Premises shall be in uniform, acceptable to the City, at all times. Said Bean Sprout employees will adhere to all Zoo rules and regulations while on Zoo property or the Premises.
- n. Bean Sprouts will continually maintain the front of the concession stand in a clean condition. This includes cleaning the tables and chairs, picking up all trash and emptying trash cans in the outside eating area near the concessions stand.
- o. Trash from inside the Premises may be enclosed in proper containers behind the Premises in the service area but must be removed to the Zoo's dumpster on a daily basis before closing. No plastic bags of trash or cardboard boxes are to be stacked in the service area. All trash cans in the Premises and adjacent outdoor eating areas must be emptied at the end of the day.
- p. Bean Sprouts will comply with all applicable labor and employment laws and regulations. Bean Sprouts will be responsible for withholding of all payroll taxes and reporting of wages and all workers' compensation injuries that may occur.
- q. Hours of Operation: Bean Sprouts shall keep facilities at the Premises open seven (7) days a week during hours approved by the City, except for New Year's Day, Thanksgiving Day, Christmas Day, and any other day upon which the Zoo is closed.
- r. Pricing: The prices charged by Bean Sprouts shall be similar to those charged by family destinations in Southern California for similar foods and/or beverages. In the event that City determines that prices charged by Bean Sprouts pursuant to this Agreement are not consistent with restaurants located within family destinations in Southern California, the City will meet and confer to make such adjustments that are necessary to keep prices competitive as compared to restaurants located within

family destinations in Southern California selling similar foods and beverages. Pricing shall be obvious and easy to read and determine by Zoo patrons.

- s. Cooperation with any Successor: Bean Sprouts agrees to cooperate with any successor to Bean Sprouts in the event of termination or expiration of this Agreement and to do so with the least amount of disruption as possible for the Zoo patrons and the City
- t. Avoidance of Liens: In the performance of work done pursuant to any proposed modifications or improvements to the Premises, Bean Sprouts shall keep the Premises free and clear of any mechanics or materials liens. Bean Sprouts shall indemnify and hold harmless City against any such liens or claims of lien's filed by Bean Sprouts' contractors or material suppliers.
- u. On-Site Manager: Bean Sprouts will hire a qualified food service manager for its operations at the Premises. Such person will have the experience necessary to manage operations and employees and will have full power and authority to accept service of all notices provided for herein and to oversee operation of the concession business herein authorized. Said manager will be on site during regular business hours and if unavailable, a responsible subordinate will be in charge and available.

10. ANNUAL AUDIT

- a. Within ninety (90) days of the end of the Fiscal Year, Bean Sprouts will provide to the City a statement of its total gross revenues of the past Fiscal Year or portion thereof as applicable. The financial report shall be prepared by an accounting firm approved by the City's Executive Director of the Finance and Management Agency. Said report will comply with Government Accountability Standards.
- b. If such audit reveals that there was an underpayment of monthly gross receipts due to City pursuant to this Agreement, Bean Sprouts will pay to the City the amount of the underpayment within sixty (60) days of the date of the final accounting report. If such audit reveals overpayment of monthly gross receipts paid to the City pursuant to this Agreement, Bean Sprouts will notify City in writing within sixty (60) days of the date of the final accounting report and any overpayment will be credited to Bean Sprouts for any obligation under this Agreement which is due or coming due. If the Agreement has expired or is terminated, then City will pay the amount of overpayment to Bean Sprouts within sixty (60) days of the date City is notified of the overpayment in writing.
- c. Bean Sprouts acknowledges that all financial reports prepared pursuant to this Agreement and submitted to the City will become a public record pursuant to California Government Code section 6250 *et seq.*

11. UTILITIES

The City will pay utilities, which includes water, gas and electricity.

12. INDEPENDENT CONTRACTOR

Bean Sprouts shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Bean Sprouts performs the services which are the subject matter of this Agreement; however, the services to be provided by Bean Sprouts shall be provided in a manner consistent with all applicable standards and regulations governing such services. Bean Sprouts shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

13. OWNERSHIP OF MATERIALS

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Bean Sprouts under this Agreement ("Documents & Data"). Bean Sprouts shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Bean Sprouts represents and warrants that Bean Sprouts has the legal right to license any and all Documents & Data. Bean Sprouts makes no such representation and warranty in regard to Documents & Data which were provided to Bean Sprouts by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

14. INSURANCE

Prior to undertaking performance of work under this Agreement, Bean Sprouts shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below for the duration of this Agreement:

a. Minimum Scope and Limit of Insurance

- (1) Commercial General Liability (CGL).** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply

separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

- i. **Liquor Liability:** If Bean Sprouts will be supplying alcoholic beverages, the general liability insurance shall include host liquor liability coverage. If Bean Sprouts is using a caterer or other vendor to supply alcohol that vendor must have liquor liability coverage. If Bean Sprouts intends to sell alcohol either Bean Sprouts or vendor providing the alcohol for sale must have a valid liquor sales license and liquor liability insurance covering the sale of alcohol. A minimum of **\$1,000,000** in liquor liability insurance is required.

- (2) **Automobile Liability.** ISO Form Number CA 00 01 covering any auto (Code 1), or if Bean Sprouts has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with a limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- (3) **Workers' Compensation.** As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- (4) **Broader Coverage.** If Bean Sprouts maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Bean Sprouts. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

b. Other Insurance Provisions

- (1) **Additional Insured Status.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Bean Sprouts including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Bean Sprouts' insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 2037 if a later edition is used).
- (2) **Primary Coverage.** For any claims related to this contract, Bean Sprouts' insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Bean Sprouts' insurance and shall not contribute with it.

- (3) **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- (4) **Waiver of Subrogation.** Bean Sprouts hereby grants to City a waiver of any right to subrogation that any insurer of Bean Sprouts may acquire against the City by virtue of the payment of any loss under such insurance. Bean Sprouts agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- (5) **Self-Insured Retentions.** Self-insured retentions must be declared to and approved by the City. The City may require Bean Sprouts to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- (6) **Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- (7) **Verification of Coverage.** Bean Sprouts shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive Bean Sprouts' obligation to provide them.
- The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- (8) **Subcontractors.** Bean Sprouts shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Bean Sprouts shall ensure that City is an additional insured on insurance required from subcontractors.
- (9) **Special Risks or Circumstances.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

15. INDEMNIFICATION

Bean Sprouts agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, contractors, special counsel, and representatives from liability: (1) for

personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of Bean Sprouts, its subcontractors, agents, employees, or other persons acting on its behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. Bean Sprouts further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Bean Sprouts' services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Bean Sprouts.

16. INTELLECTUAL PROPERTY INDEMNIFICATION

Bean Sprouts shall defend and indemnify the City, its officers, agents, representatives, and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by Bean Sprouts to the City pursuant to this Agreement.

17. RECORDS

- a. Bean Sprouts shall keep records and invoices in connection with the work to be performed under this Agreement. Bean Sprouts shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures, and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Bean Sprouts under this Agreement. All such records and invoices shall be clearly identifiable. Bean Sprouts shall allow a representative of the City to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement during regular business hours. Bean Sprouts shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to Bean Sprouts under this Agreement.
- b. Bean Sprouts shall install and record all sales and charges by means of cash registers or other comparable devices that display to the customer the amount of the transaction and automatically issue a receipt. The cash registers shall be equipped with devices that lock in sales totals and other transaction records, or with counters which are not re-settable and which record transaction numbers and sales details.

Totals registered shall be read and recorded by Bean Sprouts at the beginning and end of each business day. All voided transactions shall be supported by the original cash register tape with supervisory approval documented.

18. CONFIDENTIALITY

If Bean Sprouts receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Bean Sprouts agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of Bean Sprouts disclosed in a publicly available source; (c) is in rightful possession of Bean Sprouts without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by Bean Sprouts without reference to information disclosed by the City.

19. CONFLICT OF INTEREST CLAUSE

Bean Sprouts covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

20. NON-DISCRIMINATION

Bean Sprouts shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, or military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, teaching, training, utilization, promotion, termination or other employment related activities or any services provided under this Agreement. Bean Sprouts affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

21. INTELLECTUAL PROPERTY

- a. Bean Sprouts' Intellectual Property. Bean Sprouts is the owner of the rights to certain trademarks, service marks and logotypes, including the registered service marks, "Bean Sprouts" and "Imaginibbles," used in the operation of its restaurant businesses (which, together with any future marks developed by or for the use of Bean Sprouts based upon any variation of the names "Bean Sprouts" or "Imaginibbles," are collectively referred to herein as the "Bean Sprouts Marks"). City hereby acknowledges and agrees that Bean Sprouts is the sole and exclusive

owner of Bean Sprouts Marks and that City shall obtain no right, title or interest in or to any of Bean Sprouts Marks through this Agreement or through Bean Sprouts' use of Bean Sprouts Marks in carrying out its obligations hereunder. City further acknowledges and agrees that Bean Sprouts will conduct its operations hereunder using Bean Sprouts Marks in its sole discretion.

- b. City's Intellectual Property. City is the owner of the rights to certain trademarks, service marks and logotypes, used in the operation of its businesses (which, together with any future marks developed by or for the use of City are collectively referred to herein as the "City Marks"). Bean Sprouts hereby acknowledges and agrees that City is the sole and exclusive owner of the City Marks and that Bean Sprouts shall obtain no right, title or interest in or to any of the City Marks through this Agreement or through City's use of the City Marks in carrying out its obligations hereunder.

22. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Bean Sprouts, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Bean Sprouts. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Bean Sprouts or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

23. ASSIGNMENT AND SUBLETTING

- a. Inasmuch as this Agreement is intended to secure the specialized services of Bean Sprouts, Bean Sprouts may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other contractors retained by City.
- b. Bean Sprouts has no right to sublet the Premises.

24. TERMINATION

- a. By City: If Bean Sprouts breaches any of the provisions of this Agreement, City shall provide written notice thereof to Bean Sprouts, and shall thereafter afford Bean Sprouts thirty (30) days in which to cure any such breach. If Bean Sprouts fails to cure such breach during such cure period, this Agreement will terminate

upon expiration of the cure period. These termination rights are in addition to the termination right set forth in Section 5 hereof.

- b. By Bean Sprouts: If City breaches any of the provisions of this Agreement, Bean Sprouts shall provide written notice thereof to City, and shall there after afford City thirty (30) days in which to cure any such breach. If City fails to cure such breach during such cure period, this Agreement will terminate upon the expiration of the cure period.

25. WAIVER

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

26. JURISDICTION - VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

27. PROFESSIONAL LICENSES

Bean Sprouts shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Bean Sprouts shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

28. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:

Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988

Santa Ana, CA 92702-1988
Fax: 714- 647-6956

With courtesy copies to:

Executive Director, Parks, Recreation and
Community Services Agency
City of Santa Ana
20 Civic Center Plaza (M-23)
P.O. Box 1988
Santa Ana, California 92702
Fax: 714-647-4211

To Bean Sprouts:

Bean Sprouts, LLC dba Bean Sprouts
Attn: Kelly Parthen, Co-CEO
8 Bayside Drive
Madison, WI 53704

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

29. MISCELLANEOUS PROVISIONS

- a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
- b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.
- c. Notwithstanding anything to the contrary: (1) nothing in this Agreement shall be deemed or construed to constitute confidential information; and (2) this Agreement is a public record which the City may disclose in accordance with California law or otherwise.

**SIGNATURE PAGE FOR FOOD SERVICE CONCESSION AGREEMENT BETWEEN
CITY OF SANTA ANA AND BEAN SPROUTS LLC DBA BEAN SPROUTS FOR
SANTA ANA ZOO**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

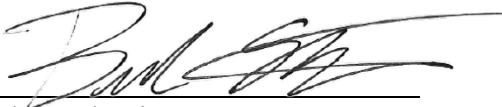
Jennifer L. Hall
City Clerk

Thomas R. Hatch
Interim City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

BEAN SPROUTS:

By: 

Brandon Salvatierra
Deputy City Attorney



Kelly Parthen
Co-CEO

RECOMMENDED FOR APPROVAL:

Hawk Scott
Executive Director
Parks, Services, and Community Services Agency

EXHIBIT A

SCOPE OF SERVICES



CITY OF SANTA ANA

EXHIBIT I

SCOPE OF SERVICES

A. CITYWIDE CONCESSIONARE'S OBLIGATIONS:

1. Contractor shall provide outstanding food and beverage service at multiple facilities operated by the City as set forth below:

- 1.1. All concession services shall be performed in the highest professional manner, and in accordance with current industry standards. Unless the means or methods of performing a task are specified elsewhere by the City, Contractor shall employ methods that are generally accepted and used by the industry, and in compliance with all applicable job bulletins, local, state, and federal laws and regulations.

- 1.1. Provide on-site manager who has and must maintain current food service handler's certification from the Orange County Health Department.

Meet sanitation and food preparation standards as established by the Orange County Health Department.

- 1.2. Secure and maintain an Alcohol Beverage Control (ABC) License for the sale of beer, wine, and spirits, and maintain requirements for same (if the specific City concessions location requires it).

- 1.3. Concessionaire is solely responsible for hiring and compensating employees, including all benefits, applicable payroll taxes and deductions. No Contractor employee shall be considered City employees.

- 1.4. Provide appropriate levels of staffing and supervision to meet visitor demands, which vary per event, season, and day.

- 1.5. Maintain a regular schedule of cleaning and sanitation of interior of food service facility and equipment, and proper recycling of deep fat fryer cooking oil at Contractor's cost.

- 1.6. Tenant improvements and move-in to be done at sole cost of the concessionaire, in conjunction with Orange County Health Department approval.

- 1.7. Provide all equipment as necessary for food service operation that are not already included as permanent fixtures of the facility.

- 1.8. Provide all supplies for food preparation, cleaning and sanitation, and trash containment to be utilized by the Concessionaire and their employees.

- 1.9. Provide marketing materials such as graphics, menus, and operational materials consistent with the overall aesthetic of the specific facility. All marketing materials must be reviewed and approved by City prior to usage and/or distribution.

2. FOOD AND BEVERAGE STANDARDS



CITY OF SANTA ANA

Proposer shall effect beverage preparation and service standards that meet or exceed the following minimum standards:

- 2.1. Food and beverage preparation and serving safety shall use industry's best practices and follow all federal, state and county regulatory guidelines for food preparation and serving at all times.
- 2.2. Food and beverage presentation and appearance shall be appealing to customers.
- 2.3. Food and beverage servers shall always maintain a clean and professional appearance. Proposer must provide uniforms and visible identification for its employees while working at City facilities.
- 2.4. All concession serving stands must always be kept immaculate. This includes the hours before, during, and after events and daily use.
- 2.5. Proposer must provide ongoing training in food service and safe food-handling to its employees on a regular basis and shall provide the City documentation immediately upon request.

3. MAINTENANCE AND FACILITIES

- 3.1. Maintenance on major equipment that is owned by the City will be maintained by the City. Any equipment brought onsite by the Contractor must have prior written approval from the City. Contractor shall, at its own expense, keep in good condition all equipment and small wares used in performance of its duties, including: maintenance and repair necessitated by ordinary wear and tear, and repairs to any damage sustained to Contractor's use areas of the facilities and its structures. Contractor shall replace equipment necessary to the proper function of the operation that cannot be repaired. The replacement or addition of equipment will first be discussed with the City to determine the responsibility of cost and feasibility of location.
- 3.2. Concessionaire shall repair and maintain light fixtures, equipment installed by concessionaire, and interior fixtures. Concessionaire is responsible for repairs due to concessionaire negligence. City shall repair and maintain the structural and exterior portions and building, including roofing and covering materials; foundations; exterior walls; plumbing; fire sprinkler systems; heating, ventilating, air conditioning systems; and electrical systems installed or furnished by City.
- 3.3. Contractor must agree to maintain designated concession areas. The cleaning of bar and storage areas and any other equipment is the sole responsibility of the Contractor. If City staff must clean the bar areas after the Contractor has been the sole user of concession-designated areas, Contractor shall be charged and pay to City cleaning fees at rate of \$50 per labor hour.
- 3.4. Proposer shall be solely responsible for the proper recycling of any recyclable materials utilized throughout the day.
- 3.5. The City will maintain water, natural gas, electrical and sewer lines except in cases where the Contractor's direct negligence causes major maintenance repair expense. Should the Contractor require additional utility capacity and/or outlets beyond those provided, the cost



CITY OF SANTA ANA

of such installation and hookups will be at the Contractor's expense after required City approval.

- 3.6. Contractor shall take all reasonable precautions, as directed by the City, or in the absence of such direction, in accordance with sound industrial practices, to safeguard and protect City property and adjacent property. Damages to properties caused by Contractor's negligence shall be repaired at no cost (both labor and material) to the City.

Contractor is responsible for advising and ensuring compliance by Contractor's employees with all applicable environmental and hazardous materials handling laws and regulations.

Contractor shall provide City a full report of damage to City property and/or equipment by Contractor's employees. All damage reports shall be submitted to the City within twenty-four (24) hours of occurrence.

Contractor shall provide, erect, and maintain all warning devices (i.e., barricades, cones, etc.) as required or necessary to ensure the safety of the public, City, and Contractor's employees.

- 3.7. The City does not assume liability for spills or other releases of hazardous wastes which are caused by the negligence of the contractor once hazardous waste materials are in the possession of the contractor or transported off site.
- 3.8. Contractor shall keep work areas clean and free from any debris, rubbish, hazardous waste and non-usable material resulting from the work under this Contract and shall be disposed of at the completion of each work day by the Contractor. Hazardous waste must be disposed of in accordance with the Resource Conservation and Recovery Act and all other applicable federal, state, and local laws and regulations.
- 3.9. Contractor must ensure all trash receptacles are emptied regularly during events and that rubbish does not pile up above or overflow outside of receptacle.

4. TRAINING AND STAFF

- 4.1. Proposer must have defined operational and safety procedures and provide ongoing training to staff in efficient and effective service to customers. Training must include at minimum: food and beverage service, and safe food and beverage handling.

Proposer shall maintain a current employee manual that addresses all customer service and food/beverage-handling training programs. Copies shall be readily available for review by City staff.

- 4.2. The City shall have the right to recommend the discharge or immediate removal and replacement of any Concession employee for any reason. The following actions are strictly prohibited for any Contractor employee assigned to this contract:

4.2.1. Theft and/or vandalism.

4.2.2. Sexual harassment.



CITY OF SANTA ANA

4.2.3. Use of abusive or profane language.

4.2.4. Substance and/or alcohol abuse.

4.2.5. Any other conduct deemed by the City to be contrary to the best interests of the City.

5. VISITOR SERVICES

Customer satisfaction and visitor service is of utmost importance. It is mandatory that our food and beverage concessions be performed in an efficient, courteous manner by staff members that have a clean appearance and are neatly dressed, presenting a positive image for the City.

6. CITY RESPONSIBILITIES

6.1 City will maintain the exterior of the structure and surrounding landscaping; except for any trash and debris around eating area tables and chairs.

6.2 City shall provide paid utilities including: water, trash, electricity, and gas.

6.3 City will communicate with the concessionaire regarding events organized by the City or Friends of Santa Ana Zoo.

6.4 City shall provide City Employee Contacts as liaison for communication and problem resolution.

6.5 City will aim to provide a minimum 90-day notice for any changes to food service operations based on potential changes made due to the implementation of the Zoo or Parks Master Plans.

7. CITY'S INTERNAL AUDITOR

7.1. The City's Internal Auditor may review the Proposer's operation periodically to assure compliance with the Agreement between Proposer and City.

B. SANTA ANA ZOO AT PRENTICE PARK

In addition to citywide concession services, Contractor shall operate the food concession facility at the Santa Ana Zoo and provide alcohol beverage pouring services. The concession building totals 2,488 sq. ft. of which 704 sq. Ft. (floor plan attached) is provided for food preparation and sales. Friends of Santa Ana Zoo (FOSAZ) operates the gift shop and has exclusive rights for the gift shop and souvenir items; however, the food service concessionaire may sell souvenir drink cups. The Zoo concession facility is a full service food operation that is capable of providing a variety of hot and cold meals, beverages, and snack food items. Contractor shall be responsible for providing the equipment necessary for their food service and vending operations.

The Zoo has a large private picnic area and 150-seat amphitheater that is suitable for private parties up to 500 people, which can be used for catering private and company picnics as well as after-hours events sponsored by the City or FOSAZ. Private parties, however, are under no obligation to use the Zoo's concessionaire. The City and/or FOSAZ reserve the right to hire another caterer for special events of



CITY OF SANTA ANA

after-hours activities at the Zoo. Concessionaire may be given the opportunity to bid on food service for those events and will be given a 10-day notice of such events.

Pursuant to California Department of Alcohol Beverage Control (ABC) and Santa Ana Municipal Code (SAMC) regulations, alcohol sales require that food also be offered for sale.

1. CONTRACTOR REQUIREMENTS FOR OPERATIONS AT THE SANTA ANA ZOO:

- 1.1. Contractor shall be granted the non-exclusive right to provide food and alcohol-pouring services during typical, published zoo operating hours. Contractor shall also be granted the right to provide alcohol beverage services during special events with approval of the Executive Director of Parks, Recreation, and Community Services Agency or their designee. Contractor has the exclusive right to provide alcohol to private rentals of the Zoo except for fundraising events managed by FOSAZ, which shall retain the right to provide alcohol beverage services to fundraising events through other providers. Because the Contractor is being given an exclusive right to alcohol sales, the City does expect Contractor to provide alcohol pouring services to approved rentals that make such a request.
- 1.2. Provide food service to Zoo visitors that meet the standards of quality and service as mutually agreed by Concessionaire and Zoo Manager. The menu should include food options for a wide variety of zoo guests. The Zoo Manager must approve all menu items. Some food items may be restricted due to concerns related to excessive litter or potential animal health issues.
- 1.3. Contractor must, at its sole expense, secure and comply with all requirements for licensure by the California Department of Alcohol and Beverage Control (ABC), and exercise prudent, reasonable and experienced judgment in the serving of alcoholic beverages. The ultimate responsibility for serving alcoholic beverages rests with the Contractor. Contractor must secure the onsite/facility liquor license no later than January 1, 2024 in order to begin business no later than January 1, 2024. Contractor must, at its sole expense, secure \$1M in liquor liability insurance. Failure to secure an ABC license is potential grounds for termination of the agreement.
- 1.4. The City of Santa Ana shall not require a Conditional Use Permit for alcohol sales at the Santa Ana Zoo, 1801 E. Chestnut Ave. Santa Ana, CA 92701.
- 1.5. Contractor must provide on-site manager who has and shall maintain current food service handler's certification from the Orange County Health Department.
- 1.6. Provide marketing tools such as graphics, menus, and operational materials consistent with the overall zoo aesthetic.
- 1.7. City will provide a minimum 90-day notice for any changes to food service operations at the Zoo provided through other agreements.

2. OPERATION OF CONCESSIONS

- 2.1. Contractor shall provide all small ware replacements, portable bars, and mobile concession carts. All equipment purchased by the Contractor must of modern design and in good condition, to accommodate excellent service for at least 400 people.



CITY OF SANTA ANA

- 2.2. Contractor must be capable of providing alcoholic beverage service in or near the zoo café where permanent food service is offered. Temporary stands may be operated for other areas with the Zoo Manager's approval. Contractor shall be responsible for providing set up, moving and dismantling of temporary stands.
- 2.3. Fees for Sale of Alcoholic Beverages:
Operator shall be allowed to establish fees for sale of alcoholic beverages. These fees shall be subject to the approval of the Zoo Manager.
- 2.4. Contractor must accept both cash and credit cards as payment options for point of sale transactions.
- 2.5. All portable displays required for outdoor events including signboards and signage are the responsibility of the Contractor. Contractor shall provide the labor for moving, set-up, and breakdown of temporary refreshment stands. Placement and appropriateness of displays and signage will be determined by the Zoo Manager. The Zoo Manager will approve staffing levels and hours of operation.
- 2.6. Contractor shall post a complete pricing list of all items offered for sale in a conspicuous place at each bar and/or concessions stand. The style and size of these signs shall be subject to the prior approval of the Zoo Manager.
- 2.7. All decorations and props must be flame retardant. Items cannot be attached to buildings (inside or outside) without prior approval by the Zoo Manager.
- 2.8. The Zoo Manager has final approval of logos printed on containers utilized by the Proposer.
- 2.9. Contractor must provide vehicle(s) for the transportation of beverages and equipment. The City shall approve vehicle and it must meet all requirements of the State of California, Department of Motor Vehicles and maintain adequate insurance.
- 2.10. Continually maintain front of concession stand clean which includes cleaning tables and chairs, picking up all trash and emptying trash cans. In addition, all trash cans must be emptied at the end of each business day. Trash from inside the facility may be enclosed in proper containers behind the facility in the service area but must be removed to the Zoo's dumpsters on a daily basis before closing. No plastic bags of trash or cardboard boxes are to be stacked in the service area. This is necessary for vermin control.
- 2.11. Contractor is responsible for pest control within the café building.

3. FOOD AND BEVERAGE STANDARDS

- 3.1. In the interest of furthering the zoo's mission as a force for conservation, Contractor must exercise great consideration in food and beverage containers and utensils. Any and all single-use products used in the operation of the concessions must be made of compostable or biodegradable plant-based materials. This includes but is not limited to: plates, bowls, food packaging, beverage containers, sauce containers, lids, straws, cutlery, and bags. Contractor must not use or supply single-use plastic items. This includes straws attached to single-serve beverages like milk or juice boxes. Additionally,



CITY OF SANTA ANA

if coffee is served, it is desired to serve shade-grown "bird safe" coffee.

- 3.2. Contractor is prohibited from selling water in single-use plastic bottles.
- 3.3. Contractor may serve product from glass bottles but may not provide glass bottles to the public due to safety concerns/standing prohibition of glass use at the Zoo.
- 3.4. Contractor must maintain all alcoholic products in a locked and secured area when not immediately attended by staff.

4. SPECIAL CONSIDERATIONS AT A ZOO FACILITY

- 4.1. Due to special requirements and considerations for Zoo animal safety, special restrictions may be necessary as far as items sold, food packaging, and location(s) of service.



CITY OF SANTA ANA

EXHIBIT III ZOO CONCESSION PLANS & ATTENDANCE FIGURES

Zoo concession building plans are available here:

<https://www.dropbox.com/s/nizh2rsbb9wah5h/Concession%20Plans.pdf?dl=0>

Zoo attendance figures are available here:

<https://www.dropbox.com/scl/fi/a0ps95f2plgm5x5stlmv7/Zoo-Attendance-3-2022-to-Current.xlsx?dl=0&rlkey=xmw7s18amxyc8j91hmsms6tm5>

<https://www.dropbox.com/scl/fi/ty9tnu20k0xp7jrs3ivdv/Zoo-Attendance-3-2021-to-3-2022.xlsx?dl=0&rlkey=mlr45lup0ww8orutq9h37zy25>



CITY OF SANTA ANA

EXHIBIT IV MAP OF SANTA ANA ZOO INCLUDING CAFÉ AREA & POSSIBLE POURING LOCATIONS





CITY OF SANTA ANA

EXHIBIT V EXAMPLES OF MOBILE VENDING UNITS





CITY OF SANTA ANA

EXHIBIT V EXAMPLES OF MOBILE VENDING UNITS



EXHIBIT B

PROPOSAL



Mr. Frank Arroyo
City of Santa Ana
Parks, Recreation and Community Services Agency
20 Civic Center Plaza, 2nd Floor, Room 273
Santa Ana, CA 92701

Re: Cover Letter of Interest — Food and Beverage Concessions No.: 23-040

Greetings Mr. Arroyo,

We are excited to submit our proposal to continue as your food service partner at Santa Ana Zoo. We believe that with your emphasis on conservation and wellness, our offerings align with the Zoo's mission, values, and future

With five years of working side-by-side with Santa Ana Zoo, Bean Sprouts truly understands your seasonality, your business model, the multiple audiences you serve, and the importance of your visitor experience. With a menu that includes sandwiches, salads, pizzas, and an organic espresso bar alongside our Imaginibbles kids' menu (which won Best Kids' Meal in the U.S), we will continue to provide a top-notch dining experience for the Santa Ana Zoo guests. As requested, Bean Sprouts is willing to expand our offerings to include (preferably locally-sourced) alcoholic beverages.

Even though COVID greatly affected both of our organizations and zoo visitorship has been under the projected 340,000 the past years, we've remained a solid and positive partner. Not only did we initially invest more than \$200,000 and brought the space up to code/ADA compliance, we've maintained an amazing relationship with the team, engaging in nearly every opportunity to collaborate.

Your visitors have been delighted with Bean Sprouts' offerings. Our consistent capture rate is significantly higher than the past concession vendor and 75% higher than the industry standard for zoo concessions. Our recently refreshed menu offers more diverse cultural options, even lower price points with our new "make it a meal" program, and items your visitors asked for, like soft serve and plant-based protein.

Part of Bean Sprouts' success at Santa Ana Zoo is due to our exceptional Bean Sprouts team, with our current manager at Santa Ana Zoo since our 2018 opening (and with our company for more than 8 years). In addition, our training headquarters and many of our key executives are located within a short driving distance of Santa Ana Zoo.

As you'll see, we are submitting a proposal for the Santa Ana Zoo. We've spoken with some vendors who are only submitting for the stadium. We are more than willing to partner with additional vendors to fill the outlets. We welcome the opportunity to present to your selection committee and have them taste-test our offerings. Should you have any questions in the *bean*-time, please do not hesitate to reach out!

Peas out,

A handwritten signature in black ink that reads "Kelly Parthen". The signature is fluid and cursive, with the first name "Kelly" and last name "Parthen" clearly legible.

Kelly "Pea Brain" Parthen
Co-founder & Co-CEO
kelly@beansprouts.com
714.883.2697



TABLE OF CONTENTS

OVERVIEW	1
AGREEMENT STATEMENT	1
FIRM AND TEAM EXPERIENCE	1
PROPOSED WORK PLAN AND SCOPE OF SERVICES	
Bean Sprouts' Approach	2
Special Concerns to Consider	2
Deliverable and Implementation Plan	3
Menu Offerings	3
Installation and Commissioning	3
Operational Plans	3
Site Improvements	4
Green Practices	4
Marketing	5

APPENDIX A: Current Menu and Ingredient Guidelines

Overview

Bean Sprouts is an award-winning healthy café that exclusively serves family destinations. Named as one of the “Top 100 Movers & Shakers” in the restaurant industry, Bean Sprouts focuses on locations like science centers, zoos, children’s museums, etc. where our missions are aligned and there is high demand for good-for-you food!

Unlike catering companies and local restaurants that try to branch out to food service, Bean Sprouts’ sole focus is serving family destinations. With five years of working side by side with Santa Ana Zoo, we truly understand your seasonality, your business model, the multiple audiences you serve, and the importance of your visitor experience. With a menu that includes sandwiches, salads, pizzas, and an organic espresso bar alongside our Imaginibbles kids’ menu (which won Best Kids’ Meal in the U.S), we will continue to provide a top-notch dining experience for the Santa Ana Zoo guests. As requested, Bean Sprouts is willing to expand our offerings to include (preferably locally-sourced) alcoholic beverages.

Additionally, Bean Sprouts offers comprehensive birthday party catering, camp, and field trip lunch programs. as well as small and large group catering. With the many offerings, we provide an excellent income stream for you.

Bean Sprouts sees ourselves as your partner—one who is dedicated to enriching your visitors’ experience and one who truly understands the food service business in family destinations.

Agreement Statement

Bean Sprouts concurs with the Sample Agreement (Exhibit II) in the RFP.

Firm and Team Experience

- i. Bean Sprouts has 150+ team members nationwide with approximately 6 employees on our Santa Ana Zoo team (3-5 working per day) in the busy season and 4 employees (2-3 working per day) in the slow season. Our Santa Ana Zoo manager has been with us for more than 8 years. Our training headquarters are located in Orange County just a few miles away from Santa Ana Zoo. Due to the proximity and partnership with the Discovery Cube Orange County location, we have the flexibility of being able to share employees as needed in the case of call-offs, reduced hours, etc.

- ii. Bean Sprouts' nearest address to Santa Ana Zoo is inside Santa Ana Zoo 😊. Our training headquarters are located at Discovery Cube Orange County, 2500 North Main Street, Santa Ana, CA 92705.
- iii. Project Manager: Kelly "Pea Brain" Parthen, co-founder and co-CEO
- iv. Key Bean Team members and job roles can be found [HERE](#).
- v. Bean Sprouts was founded in 2007. With 18 locations in eight states across the U.S. (most of them in Southern California), Bean Sprouts is in front of nearly 15 million visitors each year.

Proposed Work Plan and Scope of Services

i. Bean Sprouts' approach

Bean Sprouts offers yummy, good-for-you food with a variety of price points. Our service format is fast casual —visitors order and pay at the counter. We offer pagers, so visitors have more flexibility while waiting to pick up their freshly-made food. We will also provide a satellite cart as necessary to serve your visitors and capture a greater audience.

Bean Sprouts appreciates that you are mindful of the environmental impact food service can have on our world. In addition to our eco-friendly packaging, which we will cover later, our ingredients are high-quality. We strive to make sure there is a variety of price points to make our wholesome offerings as accessible as possible to all audiences.

Bean Sprouts works hard to accommodate most allergies and dietary needs and is a recipient of the industry's top allergy innovation award. This is a big boon for Santa Ana Zoo as statistics show that 1 in 10 adults and 1 in 13 children have a food allergy (source [FARE](#)).

ii: Special concerns to consider

Bean Sprouts is one of the only restaurant chains in the United States exclusively founded by women. Co-founders Shannon "Peacasso" Seip and Kelly "Pea Brain" Parthen are proud to have built a Bean Team that's nearly double the national average for women and minorities in leadership positions. That includes our management at Santa Ana Zoo.

Bean Sprouts' expertise in "making healthy food fun" has led to industry-leading food service organizations asking to partner and implement the Bean Sprouts and Imaginibbles brand into children's hospitals and pediatric centers (both as a stand-alone concept and as an offering for patient meals).

Read more: [Aramark Announces National Brand Agreement with Bean Sprouts to Offer More Healthy Food Options for Kids and Families](#)

iii: Deliverable and implementation plan

As Bean Sprouts already has operations at Santa Ana Zoo, there will be no downtime or closure for implementation. The proposed financial structure will begin January 2023.

iv. Menu Offerings

With a menu that includes sandwiches, salads, pizzas, and organic espresso bar alongside our Imaginibbles kids' menu (which won Best Kids' Meal in the U.S), Bean Sprouts creates a top-notch dining experience for the Santa Ana Zoo guests. The café menu offers a variety of choices for families with picky eaters, allergies and other dietary challenges. We recently rolled out a new menu in 2023 which includes plant-based proteins and more diverse cultural options. See **Appendix A** for our current menu offerings and ingredient guidelines.

Bean Sprouts will expand our offerings to include (preferably locally-sourced) alcoholic beverages.

v. Installation & Commisioning

As Bean Sprouts already has operations at Santa Ana Zoo, there will be no downtime or closure for installation. The proposed financial structure will begin January 2023.

vi. Operational Plans

Day-to-Day Management and Supervision

Bean Sprouts at the Santa Ana Zoo will be staffed by a full time café manager and other designated assistant managers. During operating hours, the café will have continuous oversight by a designated manager-on-duty that will ensure smooth operations. That team is already in place and knows the operations and the Santa Ana Zoo visitorship inside and out.

Our leadership will ensure that we have well-trained and adequate staffing levels at all times including additional training needed to comply with Our multi-location regional manager, who resides in Orange County, will regularly visit the café and conduct service, product quality, and food safety reviews to ensure that we always meet our high operating standards.

Mystery shoppers are conducted by a third-party to aid our Bean Teams to continuously elevate our operating performance. See **Appendix B** for our mystery shopper template. Bean Sprouts also uses [Steritech](#) to conduct food and workplace safety audits regularly.

Approach to Customer Service

Bean Sprouts underscores everything with our HIPP core values (Health, Innovation, Positivity, and Playfulness), including customer service!

Our Bean Leaders (managers) go through an intensive three-week training course, which emphasizes customer service by our top trainers. We also request that we go through any guest service training you provide to your management team, so that we can better understand your unique messaging and mission.

Your visitors will see Bean Sprouts as part of your staff. We like to be in the know so we can best assist visitors with any questions and needs, not just food service.

Most importantly, we request regular communication with your team, to make sure that if there are any bumps in the road, we are able to correct them immediately. And at least once a year, we like to meet with your executive team to talk through what's working well, and what we can improve upon.

vii. Site Improvements

In addition to the more than \$200,000 investment made in 2018, Bean Sprouts will invest up to \$50,000 to include:

- New windows/screens to be more guest-friendly (current ones are dark and hard to hear through)
- Mobile cart to be utilized during high traffic times and special events
- All expenses necessary to comply with security and safety measures in SAMC section 41-196(g) such as security cameras, signage, stanchions, etc.

viii: Green Practices

Bean Sprouts prides ourselves on being “Green Beans” and appreciate our mutual commitment to environmentally responsible and sustainable business practices.

Some highlights:

- Compostable/biodegradable packaging
- Compostable/biodegradable utensils
- Eco-friendly straws
- 100% recycled plastic water bottles

- Bean Sprouts recycles and composts where host partners are set up to do so
- Bean Sprouts does not use Food Packaging Chemicals (FPCs)

We complement our environmentally responsible and sustainable efforts with high-quality ingredient guidelines that emphasize organic, hormone- and antibiotic-free offerings. Organic production does not use environmentally harmful chemicals that may stay on produce and contaminate rain and groundwater. Organic farming also replenishes and maintains healthy, fertile topsoil with rich biological matter, which limits erosion and impact on waterways. We do not cook with grease so no need for grease disposal.

Bean Sprouts works with local businesses whenever possible. When it is necessary to work with larger national companies to support our cafés, we opt for suppliers who have sustainable, ethical, and low-impact practices.

We stay up-to-date on environmental best practices and products in our industry by attending and speaking at various conferences and shows including Natural Products Expo, Restaurant Leadership Conference, Fast Casual Executive Summit and Healthy Child, Healthy World events.

ix. Marketing

Bean Sprouts has vast experience developing marketing materials, including graphics, menus, and signage. We use top designers who have worked on many family-focused brands such as American Girl. We work closely with our host partners to make sure all Bean Sprouts' materials and signage align with their overall brand and vision.

We will continue to work closely with the Santa Ana Zoo management team to be aware of special events where Bean Sprouts can participate. For example, we have a vendor who can make themed cookies so we can have speciality cookies with the opening of the new exhibits (think cute otter cookies)!

Bean Sprouts was recently recognized as a "Top 100 Mover & Shaker" once again in the restaurant industry by **Fast Casual Magazine**. Its Do-Re-For-Me sandwich has been named as Best Kids' Meal in the U.S. by the National Restaurant Association (NRA) & the KidsLiveWell initiative. Additionally, the co-founders have been to the White House to share ideas of how to make wholesome kids' food more appealing in the food industry.

Bean Sprouts' national accolades make a nice splash in the local markets and at the family destinations Bean Sprouts serves. Our relationships with local media and leading parenting and travel bloggers can garner lots of positive attention for your locale.

Appendix A - Current Menu and Ingredient Guidelines

PIZZA



Cheese 8.95
Pepperoni 9.95
Baja Chicken 10.75
 Grilled Chicken, Pickled Onions, Olives, Red Peppers on a Creamy Salsa Base
Spinach Artichoke 9.75
 Mozzarella, Feta, Spinach, Artichokes, Sun-Dried Tomatoes on a Creamy Base

Add grilled chicken or plant-based chicken tenders 3.50 Sub gluten-free crust 3.50

SALADS



Off the Vine Chicken Salad 10.75
 Chicken Tossed with Red Grapes, Diced Celery, & Housemade Dressing on Greens
Mediterranean Platter 10.25
 Cucumber Salad, Classic Hummus, Feta, Olives, Naan Wedges

GF GLUTEN-FREE

Add grilled chicken or plant-based chicken tenders 3.50 Add avocado 1.75

HOT SANDWICHES



Chicken Pesto Chango 8.75
 Grilled Chicken, Mozzarella, Nut-Free Pesto, Sun-Dried & Fresh Tomatoes, Balsamic Drizzle
Chickadilla 7.95
 BBQ Chicken Quesadilla
The Farmer Parm 8.75
 Crispy Plant-Based Chicken Tenders, Mozzarella, Marinara Sauce

Tots & Dipper 3.25
 Baked tots with choice of dip:
 • Ranch
 • BBQ
 • Ketchup
 • Miso aioli

Add avocado 1.75 Sub plant-based chicken tenders 3.50 Sub GF bread 1.75

MAKE IT A MEAL!
 Add:
 Side salad or baked tots + lemonade or iced tea 4.95

THE FARMER PARM

COLD SANDWICHES



Nom Nom Chicken Wrap 8.75
 Grilled Chicken, Pickled Onions, Matchstick Carrots, Mixed Greens, Cucumbers, Miso Aioli
Off the Vine Chicken Salad Sandwich 8.75
 Chicken Tossed with Sliced Red Grapes, Diced Celery & Housemade Dressing
The Great Turkado 9.25
 Turkey, Avocado, Tomatoes, Mixed Greens, Smoked Paprika Honey Aioli

THE GREAT TURKADO

MAINS



Grilledzilla 5.25
 Goopy Grilled Cheese + Veggies
 Add turkey 2.50



Do-Re-For-Me 4.75
 Sunflower Butter + Organic Jam



Googly Fruit Cup 3.95



Crocamole 5.25
 Avocado Hummus + Dippers

TREATS



Whoopsie Daisy
 Crispy Plant-Based Chicken Tenders + Veggies + Ranch
 5-piece 8.75 3-piece 6.75



Spaceadilla 5.95
 Chicken Quesadilla + Veggies



Dino S'mores 3.50
 Cinnamon Sugar Tortilla Chips + Chocolate + Mini Marshmallows

BREAKFAST



SERVED ALL DAY!
Bananza Parfait 3.75
 Banana, Vanilla Greek Yogurt, Nut-Free Granola
Breakfast Sandwiches
 Egg, Cheese 4.75
 Egg, Cheese, Turkey, Spinach 5.95
Pancake Puffadoodles with Dippers 4.95/6.95
 • Jam • Chocolate • Sunbutter & Chocolate
Muffins 3.75

TREATS



Smoothie Float 4.50
 Choice of smoothie topped with soft serve
Soft Serve 3.75
 Add toppings .95 each
Frozen Fruit Pop 3.25
Ice Cream Sandwich 3.50
Marshmallow Treat 3.50
Brownie 3.75

DRINKS

HOT OR ICED

16 oz.
 We use organic fair trade beans!

Organic Coffee	3.50	Chai	5.50
Organic Tea	2.75	Mocha	6.25
Latte	5.50	Americano	3.95
Vanilla Latte	6.25	Cappuccino	4.95
Caramel Latte	6.25	Hot Cocoa	4.50

Sub soy or oat milk 1.75

SMOOTHIES

5.95
Flamango
 Mango + Pineapple
Pink Patootie
 Strawberry + Banana
FRESH LEMONADES
Classic Lemonade 3.75
Specialty Lemonade 4.25
 • Strawberry • Hibiscus
 • Watermelon

COLD DRINKS

Bottled Water	2.50
Sparkling Juice	2.50
Juice Box	2.75
Milk Box	2.75
Kombucha	5.95
Sparkling Water	2.75



OUR FOOD IS CLEAN!

- No artificial flavors
- No artificial colors
- Allergy-friendly
- No antibiotics
- No artificial preservatives

See our nutritional binder for more info!

Our PhilosoPEA:

Spark children's appetites for yummy, good-for-you food;
and delight grown-ups with a happier mealtime!