

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

OCTOBER 20, 2020

TITLE:

**APPROVE AN AGREEMENT WITH
SUNSERI'S TO PROVIDE ALCOHOL
BEVERAGE CONCESSION SERVICES AT
THE SANTA ANA ZOO
(GENERAL FUND)**

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1st Reading
- ☐ Ordinance on 2nd Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

/s/ Kristine Ridge

CITY MANAGER

RECOMMENDED ACTION

Authorize the City Manager to execute an agreement with Sunseri's to provide beer, wine, and spirits concession services at the Santa Ana Zoo, with the City to receive a 20 percent commission based on total sales before sales tax to be deposited into the General Fund, for a period from October 20, 2020 to December 31, 2025, with two, three-year renewal options, subject to non-substantive changes approved by the City Manager and City Attorney.

DISCUSSION

The Santa Ana Zoo at Prentice Park receives 250,000 visitors per year from throughout Orange County and the greater Southern California region. To enhance the visitor experience, the Zoo provides food and beverage concessions, including a variety of hot and cold meals, beverages, and snack food items. An agreement for alcohol beverage services will further enhance visitor satisfaction and stay time, promote local Santa Ana breweries, and provide a new revenue stream, offsetting Zoo operational costs. Alcohol-based beverage offerings are now commonplace in zoos, aquariums, and museums, with over 50 percent of Association of Zoos and Aquariums facilities offering alcohol-based beverages as part of their food concession program.

To service daily visitors at the Zoo, the vendor would setup a semi-permanent bar that is tropical-themed and of equal quality to existing zoo amenities. The new serving area would be located near the existing concession building. In addition to the concession facility, the Zoo has a large private picnic area and 150-seat amphitheater that is suitable for catering of private parties up to 500 people. These areas are often used for private and company picnics and after-hours events operated by the City and Friends of Santa Ana Zoo (FOSAZ). The increased beverage offerings will make private events more desirable to potential customers.

On May 19, 2020, the Parks, Recreation and Community Services Agency (PRCSA) issued a Request for Proposal (RFP) (Exhibit 1) for a qualified company with expertise and experience in providing outstanding beverage and concession services at the Santa Ana Zoo. Twenty vendors downloaded the RFP packet and four vendors submitted proposals.

On July 20, 2020, an evaluation committee consisting of two representatives from the Santa Ana Zoo, and one representative from the Friends of the Santa Ana Zoo reviewed and rated the proposals. The proposals were evaluated according to the criteria listed in the RFP, which includes vendor experience, references, schedule, compensation, operational plans, and capital investment. The results of the RFP evaluation were as follows:

Company	Score (300 Max)	Ranking
Above All Catering	261	1
Sunseri's	255	2
F&B Associates, Inc.	53	3
Startblast	35	4

After negotiating with Above All Catering, the City could not agree on the proposed terms and began negotiations with Sunseri's. Based upon the negotiations and checking references, Sunseri's is recommended for an agreement (Exhibit 1) to provide beer, wine, and spirits concession services at the Santa Ana Zoo. Sunseri's is a fully invested in beverage catering company and provides services at 2,000 events per year.

The salient terms of the agreement are as follows:

- Five-year contract term with renewal options.
- Pay City a commission of 20 percent based on total sales minus sales tax made at the mobile bars.
- Serve product from local Santa Ana breweries and offer it at rentals, in addition to typical domestic and imported selections.
- Provide a semi-permanent bar with tiki/jungle theme.
- Exclusive vendor for rental parties only.
- Non-exclusivity for FOSAZ fundraising events.
- Sell bottled sodas/water which are currently available in the gift shop.
- Obtain a Type 47 license for beer, wine, and spirits.

Approval of this agreement will benefit the City by serving as a new revenue stream, serve as attractive site rental offerings to companies and for celebrations (weddings, birthday parties, etc.), encourage adults to stay longer and enjoy a meal at the on-site café, and benefit local businesses by increasing exposure for Santa Ana breweries.

FISCAL IMPACT

Due to the current COVID-19 situation, it is very difficult to estimate the amount of revenue to be generated through the end of FY 2020-21, although a budgetary estimated will be provided as part of the FY 2021-22 budget process. Funds will be deposited in the following account:

Fiscal Year	Accounting Unit-Account #	Fund Description	Accounting Unit, Account Description	Amount
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Approve Agreement For Alcohol Beverage Concessions Services at Santa Ana Zoo

October 20, 2020

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FY 20-21 and future years	01113002- 53313	General Fund	PRCSA, Food Sale Concession	TBD
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Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management
Services Agency

Submitted By: Lisa Rudloff, Executive Director – Parks, Recreation, and Community
Services Agency

Exhibit: 1. Agreement

**BEVERAGE SERVICE CONCESSION AGREEMENT AND NON-EXCLUSIVE
LICENSE TO USE CONCESSION AREA**

THIS AGREEMENT is made and entered into on this 20th day of October, 2020 by and between Edward Walter Sunseri, Jr., a sole proprietor, doing business as, Sunseri's with its principal place of business located in El Monte, California, ("Concessionaire"), 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. City issued Request for Proposal ("RFP") No. 20-028 on May 19, 2020 for alcoholic beverage concession services at the Santa Ana Zoo ("Zoo").
- B. Concessionaire submitted a proposal in response to the RFP and City staff recommends that a Concession Agreement be executed with Concessionaire to provide alcoholic beverage concessions consisting of beer, wine and spirits at the Zoo.
- C. Concessionaire represents that Concessionaire is able and willing to provide such services to the City.
- D. In undertaking the performance of this Agreement, Concessionaire represents that it is knowledgeable in its field and that any services performed by Concessionaire under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional concessionaire 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. SCOPE OF SERVICES

- A. Concessionaire is granted the exclusive right and has the obligation to provide alcohol-pouring services during typical, published zoo operating hours pursuant to a schedule determined by City with input from Concessionaire.
- B. Concessionaire may also sell sodas and bottled water.
- C. The Concession Area shall be located in the Café Area as illustrated in Exhibit A with the exact location to be determined by City with input from Concessionaire. City will make the final determination.
- D. The design of the bar and any mobile or temporary bars shall be similar to the examples set forth in Exhibit B and subject to final approval by City.
- E. Concession services will begin pursuant to this Agreement on January 1, 2021 unless a later date is agreed upon in writing by the City's Executive Director of Parks,

Recreation and Community Services Agency (“Director”). Pursuant to this Agreement, Concessionaire has a non-exclusive license to use the Concession Area as agreed herein.

- 1) All concession services shall be performed in the highest professional manner, and in accordance with the current industry standards. Unless the means or methods of performing a task are specified elsewhere by the City, Concessionaire shall employ methods that are generally accepted and used by the industry.
 - 2) The Concessionaire must, at its sole expense, secure and comply with all requirements for licensure by the California Department of Alcohol and Beverage Control (“ABC”). Concessionaire must secure the appropriate license type for the services provided pursuant to this Agreement from the ABC for beer, wine and spirits no later than March 1, 2021 unless a later date is agreed upon in writing by the City’s Director.
 - 3) Concessionaire and its employees must exercise prudent, reasonable and experienced judgment in the serving of alcoholic beverages. The ultimate responsibility for serving alcoholic beverages rests with the Concessionaire.
 - 4) Concessionaire shall work with City’s contractor for the Zoo Café as necessary to ensure compliance with any ABC requirements and regulations for simultaneous service of food and alcoholic beverages.
- E. Concessionaire shall have the right to provide alcohol beverage services during special events with approval of the Director or the Director’s designee and subject to the fees set forth in Section 4E and the compensation provisions of Section 2 of this Agreement.
- F. Concessionaire has the exclusive right to provide alcohol beverage services for private rentals of the Zoo except for fundraising events managed by Friends of Santa Ana Zoo (“FOSAZ”), which shall retain the right to provide alcohol beverage services to fundraising events through other providers.
- 1) Concession services at private rentals shall be subject to the fees in Section 4E and the compensation provisions of Section 2 of this Agreement.
 - 2) Private rentals are booked through FOSAZ pursuant to an Agreement with the City.

2. COMPENSATION

- A. Concessionaire will pay to City twenty (20) percent of gross sales before sales tax for beverage pouring during regular business hours for each month by the 28th day of the next month.
- B. For a cash bar used for private events, Concessionaire will pay to the City, twenty (20) percent of any fees (setup, extra bartenders, etc.) and twenty (20) percent of all gross

sales before sales tax for each event for each month by the 28th day of the next month.

- C. Attached hereto as Exhibit C is a sample calculation of the twenty percent for both beverage pouring and private events.
- D. Payments not made by the due date, will be considered late and a 5% late fee will be assessed.
- E. All payments made pursuant to this Agreement, shall be made payable to “City of Santa Ana” and delivered to the following address:

Executive Director of Finance
City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, California 92701

3. TERM

This Agreement shall commence on the date first written above and shall end on December 31, 2026 with the option for the City to grant up to two, three-year renewals, exercisable by a writing signed by the City Manager and the City Attorney, unless terminated earlier in accordance with Section 19, below.

4. OPERATION OF CONCESSIONS

- A. Concessionaire shall provide all small ware replacements, portable bars, and mobile concession carts subject to approval by the City. All equipment purchased by the Concessionaire shall be new and of modern design and subject to approval by the City, to provide professional service consistent with industry standards for at least 400 people.
- B. Concessionaire must be capable of providing alcoholic beverage service near the Zoo Café as illustrated in Exhibit A in a to be designated Concession Area where permanent food service is offered.
- C. Temporary stands may be operated for other areas with the Zoo Manager’s approval. Potential temporary stand locations are illustrated in the attached Exhibit A. Concessionaire shall be responsible for providing set up, moving and dismantling of temporary stands when needed.
- D. Concessionaire shall comply with all applicable federal, state and local health orders in effect during the term of this Agreement. This includes any COVID-19 guidance including but not limited to guidance applicable to concession providers or service of alcoholic beverages.

- E. Fees for Sale of Alcoholic Beverages. Operator shall be allowed to establish fees and/or a price list for sale of alcoholic beverages subject to the ultimate final approval of the City Council by way of approval of the City's Miscellaneous Fee Schedule. These fees shall also be subject to the approval of the City's Director and listed in the City's Resolution of fees, which is published with the annual budget on or about July of every year. Any request to change the fee structure will require prior written approval of the City's Director, approval by the City Council and must be in compliance with any applicable law. Attached hereto and marked as Exhibit D is Concessionaire's current price list.
- F. Concessionaire must accept both cash and credit cards as payment methods.
- G. Concessionaire will have an onsite manager present while beverage concessions are open and will oversee beverage concessions staff.
- H. Concessionaire will have 1-2 bartenders at each concession location that is open.
- I. All portable displays needed for outdoor events including signboards and signage is the responsibility of the Concessionaire. Concessionaire shall provide the labor for moving, set-up and breakdown of temporary refreshment stands. The Zoo Manager will determine placement and appropriateness of temporary standards, signage and signboards.
- J. Staffing levels and hours of operation for concessionaire's services will require approval of the Zoo Manager.
- K. Concessionaire shall post in a conspicuous place at each bar and/or concessions stand a complete list of prices of all items offered for sale. The style and size of these signs shall be subject to the prior approval of the Zoo Manager.
- L. All decorations and props must be flame retardant. Items cannot be attached to buildings (inside or outside) without prior approval by the Zoo Manager.
- M. Concessionaire shall not use any City logo, the City seal, or place "The City of Santa Ana" or the "Santa Ana Zoo" on any beverage containers, napkins, or other item utilized to provide services pursuant to this Agreement. Concessionaire may place a generic logo (such as an animal) on their beverage containers subject to City approval.
- N. Concessionaire shall serve product from local Santa Ana breweries and offer it at rentals in addition to typical domestic and imported selections.
- O. Concessionaire will provide its own vehicle for the transportation of beverages and equipment. The City must approve vehicle and it must meet all requirements of the State of California, Department of Motor Vehicles and maintain adequate insurance.

- P. Upon termination or expiration of this Agreement, Concessionaire shall restore the Concession Area within thirty (30) days of the date of termination or expiration to its original condition at the time this Agreement was fully executed, normal wear and tear expected. The parties will memorialize in writing and with a picture(s) the condition of the Concession Area prior to Concessionaire's placement or construction of its concession stand. Any restoration work will require City review and approval.

5. BEVERAGE STANDARDS

- A. Concessionaire shall maintain beverage preparation and service standards that meet or exceed the following minimum standards:
- 1) 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.
 - 2) Beverage presentation and appearance shall be appealing to customers.
 - 3) Beverage servers shall always maintain a professional appearance.
 - 4) All serving stands shall be kept clean. This includes before, during, and after events or daily use.
 - 5) Concessionaire shall provide ongoing training in food service and safe food handling to its employees on a regular basis and shall provide the City documentation of said training immediately upon request.
- B. The Concessionaire must use eco-friendly serving ware single-use products in the operation of the concessions. Examples include compostable bamboo cups or compostable corn plastic cups. The Concessionaire must not use single-use plastic straws, stirrers, and picks.
- C. The Concessionaire 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.
- D. The Concessionaire must maintain all alcoholic products in a locked and secured area when not immediately attended by staff. Concessionaire and its employees shall maintain inventory of all alcoholic beverages on site. All inventory shall be counted at opening and accounted for at closing. To the extent that any alcohol is unaccounted for, Concessionaire will report that information to the Zoo Manager immediately.

6. MAINTENANCE AND FACILITIES

- A. Maintenance on major equipment owned by the City will be maintained by the City.

- B. Any equipment brought on site by the Concessionaire must be approved in writing before it is brought on site. The Concessionaire shall, at its own expense, keep in good condition all equipment and small wares used in performance of its duties, including: maintenance or repair necessitated by ordinary wear and tear, and repairs to any damage sustained to Concessionaire's use areas of the facilities and its structures. The Concessionaire 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.
- C. Concessionaire agrees to maintain designated Concession Areas. The cleaning of the bar and storage areas and any other equipment is the sole responsibility of the Concessionaire. Concessionaire shall keep the Concession stand and the four-foot perimeter surrounding the concession stand free of and clear of rubbish, debris and litter at all times. If the City staff must clean the bar areas after the Concessionaire has been the sole user of said areas, Concessionaire will be charged cleaning fees at rate of \$50 per labor hour.
- D. Concessionaire will provide trash bins and will be able to dispose of our trash in the Zoo's trash bins at the end of each day and after events.
- E. Concessionaire shall be responsible for the proper recycling of any recyclable materials utilized.

7. TRAINING AND STAFF

- A. Concessionaire must have defined operational procedures and provide ongoing training to staff in efficient and effective service to customers.
- B. Concessionaire will provide at a minimum the following training:
 - 1) Sensitivity/Diversity training
 - 2) Sexual harassment training
 - 3) OSHA training
 - 4) Food handling training
 - 5) RBS (Responsible Beverage Service) Training
- C. Concessionaire shall provide uniforms and visible identification for its employees while working at the Zoo subject to approval of the City's Director. An example of the uniform style is attached hereto and marked as Exhibit E. For private events, Concessionaire will have the option of wearing black button-up shirts and black pants.
- D. Concessionaire 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.

- E. Concessionaire and its employees shall immediately report to City any accident causing property damage or injury to persons in the Concession Area or otherwise related to the Concession use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and time of the accident, the names and addresses of any witnesses, and any other pertinent information.
- F. The City shall have the right to recommend the discharge of any Concession employee for, but not limited to, the following reasons:
 - 1) Theft and/or vandalism.
 - 2) Sexual harassment.
 - 3) Use of abusive or profane language.
 - 4) Substance and/or alcohol abuse.
 - 5) Any other conduct deemed by the City to be contrary to the best interests of the City.

8. CITY'S RIGHTS AND OBLIGATIONS

- A. The City of Santa Ana will not require a Conditional Use Permit ("CUP") for alcohol sales at the Santa Ana Zoo, 1801 E. Chestnut Ave. Santa Ana, CA 92701. The City will provide written confirmation of Concessionaire's right to sell alcoholic beverages at the zoo and that a CUP is not required for Concessionaire to submit to the ABC.
- B. The City will maintain the water, natural gas, electrical and sewer lines except in cases where the Concessionaire's direct negligence causes major maintenance repair expense. Should the Concessionaire require additional utility capacity and/or outlets beyond those provided the cost of such installation and hookups will be at the Concessionaire's expense after required City approval.
- C. City will provide a minimum 90-day notice for any changes to food service operations at the Zoo provided through other agreements.
- D. The City's Internal Auditor may review the Concessionaire operation periodically to assure compliance with the Agreement between Concessionaire and City.
- E. Due to special considerations resulting from operations at a Zoo facility, including but not limited to, considerations for Zoo animal safety, special restrictions may be necessary as far as items sold, food packaging, and the location(s) of service.
- F. The City will pay utilities, which includes water, gas and electricity.
- G. City may at all times enter and inspect the Concession Area and any temporary or mobile bars.

9. ANNUAL AUDIT

- A. Within ninety (90) days of the end of the fiscal year, Concessionaire will provide to the City a statement of its total gross revenues for 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, Concessionaire will pay to 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, Concessionaire will notify City in writing within sixty (60) days of the date of the final accounting report and any overpayment will be credited to Concessionaire for any obligation under this Agreement which is due or coming due. If the Agreement has expired or been terminated, then City will pay the amount of overpayment to Concessionaire within sixty (60) days of the date City is notified of the overpayment in writing.
- C. Concessionaire 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., subject to any applicable exemption.
- D. Concessionaire will maintain all financial records related to the services provided pursuant to this Agreement including but not limited to, gross receipts, sales tax figures, and business income tax information for the life of this Agreement plus five (5) years. Upon reasonable request, City will have the right to review said records. This right extends beyond termination or expiration of this Agreement.

10. INDEPENDENT CONTRACTOR

Concessionaire and any employees thereof 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 Concessionaire performs the services which are the subject matter of this Agreement; however, the services to be provided by Concessionaire shall be provided in a manner consistent with all applicable standards and regulations governing such services. Concessionaire 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.

11. INSURANCE

Prior to undertaking performance of work under this Agreement, Concessionaire shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described

below:

- A. Commercial General Liability Insurance. Concessionaire shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property without any exclusion for claims of sexual molestation, resulting from any act or occurrence arising out of Concessionaire's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence, with \$2,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.
- B. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- C. Worker's Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, Concessionaire, if Concessionaire has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Concessionaire agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000 per accident.
- D. Liquor Liability Insurance of \$1,000,000 per occurrence. Such insurance shall (a) name the City, its officers, employees, agents, and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.
- E. If Concessionaire is or employs a licensed professional such as an architect or engineer: Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$1,000,000 per claim with \$2,000,000 in the aggregate.
- F. The following requirements apply to the insurance to be provided by Concessionaire pursuant to this section:
 - 1) Concessionaire shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
 - 2) Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.
 - 3) Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

- 4) Where the amounts or coverage provided by the certificates of insurance provides coverage greater than those listed by this Agreement, the amounts provided by the certificates of insurance shall be incorporated by reference into the Agreement.
 - 5) Concessionaire shall supply City with a fully executed additional insured endorsement.
- G. If Concessionaire fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect Concessionaire's right to be paid for its time and materials expended prior to notification of termination. Concessionaire waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

12. INDEMNIFICATION

A. Concessionaire agrees to indemnify, defend and hold harmless the City, its officers, agents, employees and contractors (the "Indemnified Parties") from all Damages (as defined in paragraph (B)), including without limitation, Damages involving claims for personal injury, wrongful death and property damage, that arise or may be asserted by a third party against the City as a result of (i) the negligence or willful misconduct of Concessionaire, its agents, employees, contractors or others acting expressly on its behalf while providing services at the locations designated in this Agreement; or (ii) the violation of any federal or state law, rule or regulation applicable to the provision of the services by Concessionaire. The foregoing indemnity will not apply to the extent that Damages were caused by (x) an affirmative act of the Indemnified Parties that is negligent and was the proximate cause of an injury; or (y) the intentional misconduct of the Indemnified Parties.

B As used herein, "Damages" shall mean all actual and direct liabilities, demands, claims, actions or causes of action, regulatory, legislative or judicial proceedings, assessments, levies, losses, fines, penalties, damages, costs and expenses, in each case as awarded by a court or arbitrator, including without limitation, reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any such liability.

C. Promptly following receipt of any written claim or legal proceeding asserted by a person or entity who is not a party to this Agreement (a "Third-Party Claim"), the Indemnified Parties shall notify Concessionaire of such claim in writing. Concessionaire shall have a period of 30 days (or such lesser period as may be required to timely respond to a Third-Party Claim) following the receipt of such notice to assume the defense thereof and Concessionaire shall thereafter undertake and diligently pursue the defense of the Third-Party Claim. Concessionaire shall reimburse Indemnified Parties for any legal expense reasonably incurred by Indemnified Parties to timely respond to a Third-Party Claim prior to Concessionaire assuming the defense thereof.

Concessionaire shall not consent to entry of judgment or enter into any settlement agreement, without the consent of the Indemnified Parties, that does not include a complete and unconditional release of the Indemnified Parties or that imposes injunctive or other equitable relief against the Indemnified Parties. Concessionaire shall defend City using legal counsel that is reasonably acceptable to City. Indemnified Parties will not unreasonably withhold acceptance of legal counsel, including legal counsel selected by the insurance provider for Concessionaire. If Concessionaire fails to assume and diligently pursue the defense of such Third-Party Claim, the Indemnified Parties may defend against such Third-Party Claim in such manner as they may deem appropriate, including without limitation settlement thereof on such terms as the Indemnified Parties may deem appropriate, and to pursue such remedies as may be available to the Indemnified Parties against Concessionaire. Notwithstanding the foregoing, the Indemnified Parties shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of Concessionaire, that does not include a complete and unconditional release of Concessionaire.

13. RECORDS

Concessionaire shall keep records and invoices in connection with the work to be performed under this Agreement. Concessionaire 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 Concessionaire under this Agreement. All such records and invoices shall be clearly identifiable. Concessionaire 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. Concessionaire 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 Concessionaire under this Agreement.

14. CONFIDENTIALITY

If Concessionaire receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Concessionaire 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 the Concessionaire disclosed in a publicly available source; (c) is in rightful possession of the Concessionaire without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Concessionaire without reference to information disclosed by the City.

15. CONFLICT OF INTEREST CLAUSE

Concessionaire 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.

16. NON-DISCRIMINATION

Concessionaire 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. Concessionaire affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

17. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Concessionaire, 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 Concessionaire. 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 Concessionaire 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.

18. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of Concessionaire, Concessionaire 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.

19. TERMINATION

- A. This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Concessionaire shall still be subject to the compensation provisions of Section 2 of this Agreement compensation for all services performed by Concessionaire until the effective date of termination.
- B. This Agreement is subject to immediate termination in the event that, Concessionaire:

- 1) Fails to maintain the required ABC license(s) and approvals;
- 2) Concessionaire fails to make two or more required payments to the City;
- 3) Concessionaire voluntarily files or involuntarily has filed against it any petition for bankruptcy or insolvency act or law, and such proceeding is not dismissed within thirty (30) days thereafter; or
- 4) Concessionaire abandons the Concession Area or fails to provide services pursuant to this Agreement.

20. 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.

21. 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.

22. PROFESSIONAL LICENSES

Concessionaire 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, including the ABC and/or Orange County Health Care Agency. Concessionaire 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.

23. 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) 571-4211

And

City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702
Fax: (714) 647-6515

To Concessionaire:

Mr. Edward Walter Sunseri, Jr.
Sunseri's
P.O. Box 83
Glendora, California 91740
Fax: (626) 335-4783

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.

24. HAZARDOUS SUBSTANCES

- A. Concessionaire shall not allow the illegal installation, storage or utilization of a Hazardous Substance in, on or under the Concession Area or any area temporarily used for concession services. Hazardous Substance shall mean for the purpose of this Agreement and substance listed by the Environmental Protection Agency or the State of California as a Hazardous Substance. To the extent that Concessionaire's use of the Concession Area or any other area temporarily used for concession services results in the release of Hazardous Substance, Concessionaire will notify City immediately and shall be responsible for the cost of all remediation and removal to the City's satisfaction and in compliance with all applicable federal, state and local laws and regulations.
- B. Concessionaire specifically agrees to defend, hold harmless, and indemnify the City, its officials, employees, agents and volunteers related to release of Hazardous Substance whether intentional or not as a result of Concessionaire's provision of services pursuant to this Agreement, in the Concessionaire Area, or on any other Area owned by City and utilized by Concessionaire pursuant to this Agreement.

25. COMPLAINT WITH ALL LAWS

Concessionaire shall at all times in its use, occupancy and maintenance of the Concession Area comply with all applicable laws, rules and regulations and direction by competent governmental authorities. This includes but is not limited to, compliance with the Americans with Disabilities Act of 1990 ("ADA") and all other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities.

26. 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. Any obligation which accrues under this Agreement prior to the its expiration or termination, shall survive such expiration or termination unless the Agreement specifically states otherwise.
- D. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

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

ATTEST:

CITY OF SANTA ANA

Daisy Gomez
Clerk of the Council

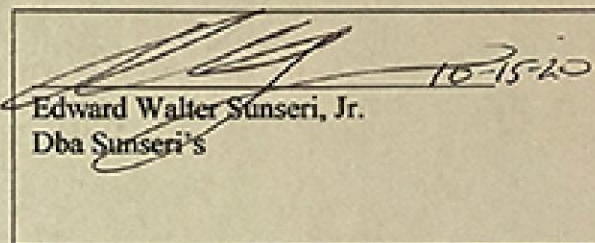
Kristine Ridge
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

CONCESSIONAIRE:

By: Laura A. Rossini
Laura A. Rossini
Acting Chief Assistant City Attorney


Edward Walter Sunseri, Jr.
Dba Sunseri's

RECOMMENDED FOR APPROVAL:

Lisa Rudloff
Executive Director
Parks, Recreation & Community Services Agency

Exhibit A



Exhibit B

The semi-permanent bar must be of equal quality or better than the manufactured products offered by White Sands Tiki Bars. The installation at the Zoo must have a solid back wall.



Additional mobile bars will be a standard mobile catering bar with a black skirt like, similar in appearance to this:

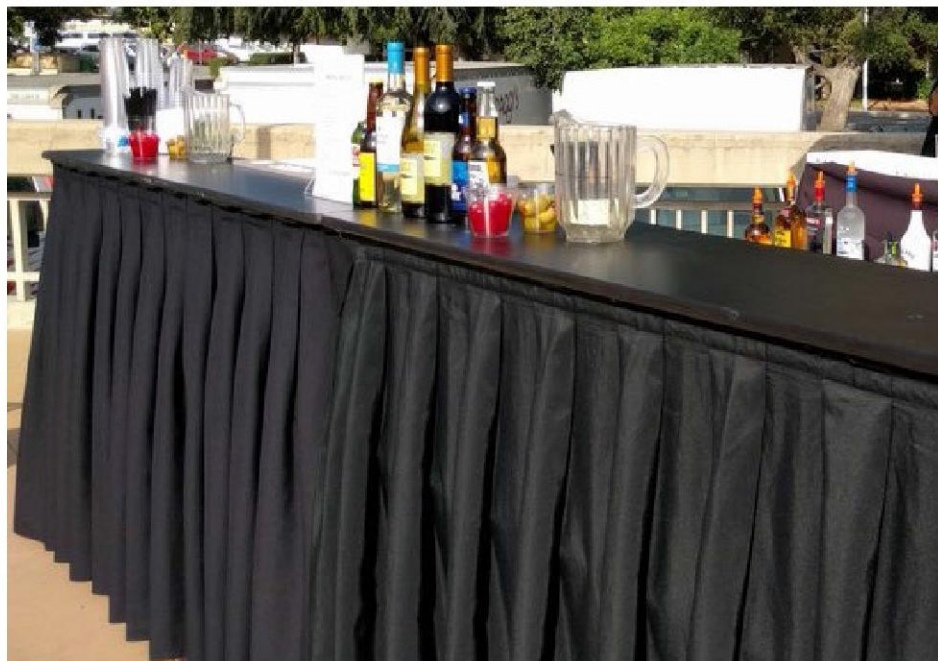


Exhibit C

Sample Calculations for City Revenue

Quantity	Unit Cost	Unit Total	Tax (9.25%)	Total	City's 20% Share
2 beverages	\$9.00	\$18.00	\$1.66	\$19.66	\$3.60

Description	Unit Cost Per Person	Total People	Add-Ons	Unit Total	Sunseri's Service Fee 20%	Tax (9.25%)	Total	City's 20% Share
Call Bar	\$16.00	\$45.00	\$225.00	\$945.00	\$189.00	\$87.41	\$1,221.41	\$189.00

Exhibit D

DRINK PRICES

SPECIALTY COCKTAILS: \$12.00

WINE: \$8.00

BEER: \$8.00

I.D. REQUIRED

SUNSERI'S**SANTA ANA ZOO****PAGE #1****MICHAEL SERENO****PO BOX 83****GLENDORA, CA 91740****mike@sunseris.com WEB SITE: www.sunseris.com****800 / 635-9732 – BUS****626 / 335-4783 - FAX*****HOSTED BAR PRICING***

BAR NO.	BAR TYPE	50 to 74 ADULTS	75 to 99 ADULTS	100 to 149 ADULTS	150 to 249 ADULTS	250+ ADULTS
#1	SOFT BAR	\$15.00 Per Person	\$14.00 Per Person	\$ 13.00 Per Person	\$ 12.00 Per Person	\$ 11.00 Per Person
#2	CALL BAR	\$18.00 Per Person	\$16.00 Per Person	\$15.00 Per Person	\$14 .00 Per Person	\$13.00 Per Person
#3	GOLD BAR	\$21.00 Per Person	\$19.00 Per Person	\$18.00 Per Person	\$17.00 Per Person	\$16.00 Per Person

ALL BARS INCLUDE: ONE (1) BAR FOUR (4) HOURS OF SERVING TIME**BARTENDERS: \$225.00 EACH****GUESTS UNDER 21 : \$2.50 EACH****CASH BAR AFTER HOURS AT \$30.00 PER HOUR****ADD CASH LIQUOR TO HOSTED SOFT BAR AT NO ADDITIONAL COST****OPTIONS: BOTTLED BEER UPGRADE : \$1.00 PER ADULT GUEST (UP TO 4 CHOICES)****ADD SIMPLE SIGNATURE DRINKS TO A SOFT BAR: \$1.50 PER ADULT GUEST****HOSTED SODAS, JUICES AND WATERS : \$1.95 PER PERSON****CHAMPAGNE & CIDER TOAST : \$1.50 PER GUEST (MUST BE ADDED TO ALL GUESTS)
(CHAMPAGNE GLASS NOT INCLUDED)****GRATUITY: IF TIP GLASS IS ALLOWED, THEN NO ADDITIONAL CHARGES****IF NO TIP GLASS ALLOWED, THAN GRATUITY ADDED TO INVOICE****20% SERVICE FEE
PLUS SALES TAX****25G-25**

HOSTED BAR SERVICES

#1 HOSTED SOFT BAR

Beer Service	Bottled Domestic (Choice of Two) Bottled Import/Craft/Microbrew (Choice of One) (Some Limitations Apply)
Wine Service	Salmon Creek Sonoma Chardonnay, Cabernet Sauvignon and Pinot Grigio
Soft Drink Service	Coke, Diet Coke, 7-Up and Perrier

#2 HOSTED CALL BAR

Liquor Service	Tito's & Smirnoff Vodka, Gordon's Gin, 7 Crown, Jack Daniels, Bacardi Rum, Malibu Rum, Spiced Rum, Jose Cuervo Gold Tequila, J&B Scotch, Brandy, Kahlua, Midori, Apple, Triple Sec, Amaretto, Peach Schnapps, Long Island Iced Tea
Beer Service	Bottled Domestic (Choice of Two) Bottled Import/Craft/Microbrew (Choice of One) (Some Limitations Apply)
Wine Service	Salmon Creek Sonoma Chardonnay, Cabernet Sauvignon and Pinot Grigio
Soft Drink Service	Coke, Diet Coke, 7-Up and Perrier

#3 HOSTED GOLD BAR

Liquor Service	Grey Goose & Tito's Vodka, Tanqueray Gin, Chivas Regal Scotch, Crown Royal, Jack Daniels, Bacardi Rum, Malibu Rum, Captain Morgan Rum, Patron Silver, Hennessey Cognac, Jameson Irish Whisky, Kahlua, Midori, Apple, Triple Sec, Amaretto, Peach Schnapps, Long Island Iced Tea
Beer Service	Bottled Domestic & Import/Craft/Microbrew (Choice of Four Total) (Some Limitations Apply)
Wine Service	BV Coastal Estates Collection Chardonnay BV Coastal Estates Collection Cabernet Sauvignon Coastal Vines Pinot Noir & Pinot Grigio
Soft Drink Service	Coke, Diet Coke, 7-Up, Red Bull and Perrier

ALL BAR SERVICES INCLUDE THE FOLLOWING: Four (4) Hours of Service; One 6' Portable Bar. Bar Skirting; Napkins; Stir Straws; Clear Hard Plastic Glassware in Two Sizes; Ice; all operational equipment for your Bar Service type, a full range of mixes and condiments, as well as Liquor Liability Insurance are also included.

WE WELCOME SPECIAL REQUESTS

ADDITIONAL BAR PRICING

PAGE #3

DRINK TICKETS THEN CASH BAR / UP TO 4 HOURS SERVICE

#1 SOFT BAR (Cash bar with beer, wine & soda)	\$6.50 PER TICKET
#2 CALL BAR (Cash bar with house/well liquor, beer, wine & soda)	\$8.00 PER TICKET
#3 GOLD BAR (Cash bar with premium liquor, beer, wine & soda)	\$10.00 PER TICKET
ADD HOSTED SODAS FOR THE NIGHT	\$2.00 PER PERSON

ALL BARTENDERS	\$225.00 EACH
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\$250.00 CASH BAR SET UP (INCLUDES ONE BAR)

ADDITIONAL HOURS ON CASH BAR - \$75 PER HOUR PER BARTENDER
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ANY AMOUNT OF TICKETS CAN BE PURCHASED

CHAMPAGNE TOAST

CHAMPAGNE AND CIDER TOAST (W WYCLIFF BRUT AND MARTINELLES) WITHOUT GLASS	\$1.50 PER PERSON
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CHAMPAGNE BY THE BOTTLE (TOAST UPGRADE)

HOUSE CHAMPAGNE	\$ 7.50 PER BOTTLE
COOKS BRUT	\$ 11.00 PER BOTTLE
FREXINET	\$ 11.00 PER BOTTLE
KORBEL	\$16.00 PER BOTTLE
DOMAINE CHANDON	\$22.00 PER BOTTLE
VEUVE CLICQUOT	\$80.00 PER BOTTLE

PLUS SALES TAX

****IF THE BRAND YOU ARE LOOKING FOR IS NOT ON THE LIST PLEASE
INQUIRE ABOUT PRICING****

WINE LIST: TABLE WINE**PAGE #4****BOTTLE PRICE****CHARDONNAY:**

BV COASTAL ESTATES	\$9.00
CARMENET VINTNER'S COLLECTION	\$12.00
CHATEAU ST. JEAN SONOMA	\$16.00
CHATEAU SOUVERAIN ALEXANDER VALLEY	\$18.00
CLOS DU BOIS	\$16.00
CUPCAKE VINEYARDS	\$14.00
ESTRELLA PROPRIETOR'S RESERVE NAPA	\$9.00
GEYSER PEAK	\$15.00
GNARLY HEAD	\$16.00
ROBERT MONDAVI PRIVATE SELECTION	\$13.00
STERLING VINEYARDS CENTRAL COAST	\$14.00
WOODBIDGE	\$11.00

CABERNET SAUVIGNON OR MERLOT

BV COASTAL ESTATES	\$9.00
CARMENET VINTNER'S COLLECTION	\$12.00
CHATEAU SOUVERAIN (MERLOT ONLY)	\$18.00
CLOS DU BOIS	\$16.00
CUPCAKE VINEYARDS	\$14.00
ESTRELLA PROPRIETOR'S RESERVE, NAPA	\$9.00
GEYSER PEAK	\$15.00
GNARLY HEAD	\$16.00
ROBERT MONDAVI PRIVATE SELECTION	\$13.00
STERLING VINEYARDS CENTRAL COAST	\$17.00
WOODBIDGE	\$11.00

PINOT GRIGIO

CUPCAKE VINEYARDS	\$14.00
TERRAMIA (DOCG) ITALY	\$11.00

SAUVIGNON BLANC

GEYSER HEAD	\$16.00
ROBERT MONDAVI PRIVATE SELECTION	\$13.00
STERLING VINEYARDS CENTRAL COAST	\$14.00

PINOT NOIR

COASTAL VINES	\$9.00
GNARLY HEAD	\$16.00
ROBERT MONDAVI PRIVATE SELECTION	\$13.00

WINE UPGRADE ON BAR PACKAGES

#1, #2 OR #3 BAR (PRODUCT LISTED ABOVE) \$ 3.00 PER PERSON

NO CHARGE TO UPGRADE PACKAGE #1 AND #2 TO ESTRELLA

\$0.50 CHARGE TO UPGRADE PACKAGE #1 AND #2 TO CARMENET VINTNERS

PLUS SALES TAX

Exhibit E

Uniforms shall be professional in appearance. The uniforms will be a blue denim shirt with the Sunseri's logo and black pants.

