

YFAC CONCESSION AGREEMENT

This Agreement is a contract, made and entered into this 8 day of December, 2023, by and between the City of Norman, a municipal corporation, hereinafter called the "City," and the Concessionaire Partner, Eskimo Sno Inc., dba Beanstalk Coffee and Sno, a for profit corporation, hereinafter called "Beanstalk."

WITNESSETH:

WHEREAS, the City is the owner of property in Cleveland County, Oklahoma, known as The Young Family Athletic Center (YFAC), for the purpose of enriching the quality of life and health through competition and recreational leisure in a safe, fun, and family environment, and

WHEREAS, the City issued a Request for Proposal (RFP No. 2324-10) to solicit an operator to provide food and beverage services at the café located inside the YFAC, and

WHEREAS, Beanstalk responded to the City's RFP with a proposal that satisfied the qualifications of the RFP, and

WHEREAS, the City has chosen Beanstalk to be the Concessionaire Partner at the YFAC and now desires to enter into this Concession Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. CONCESSION OPERATIONS:

- A) The City grants to Beanstalk the right, privilege and obligation to occupy, equip, and maintain a café located in the YFAC, with a total square footage of 1,150 sq.ft., as depicted on the floor plan attached as Exhibit A (the "Concession Space"). Notwithstanding, the City shall retain all pouring rights at the YFAC and will be the sole entity to collect all contract revenues from the exercise of such rights. Beanstalk shall be entitled to collect any rebate amounts from the City's pouring rights. "Pouring rights" shall be defined as the right to make available, sell, dispense and serve food and beverage products during events held at the YFAC, which may or may not be to the exclusion of other food and beverage vendors at the YFAC. The City shall be responsible for furnishing the public lounge area, but Beanstalk shall be responsible for furnishing and equipping the Concession Space with needed equipment and materials for its operations in the Concession Space, with all improvements to the Concession Space to be approved by the City. Beanstalk accepts the Concession Space in "as is" condition and containing whatever appurtenances that may be contained therein or thereon. The City makes no warranty of any kind of fitness for intended use of said facility or appurtenances.
- B) Beanstalk's standard hours of operation shall reflect and comply with the operating hours of the YFAC and any special events held at the YFAC. Beanstalk must also

operate the Concession Space during the hours the Norman Regional Health System (NRHS) Clinic is in operation (8am to 5pm daily). The City shall post Beanstalk's standard hours of operation in a public location. Beanstalk must submit changes to its hours of operation to the Director of Parks and Recreation, such changes only to come into effect with approval of the Director. Beanstalk may operate the Concession Space outside its standard hours of operation for any special events or Catering Events that have been approved by the City.

C) Beanstalk's Responsibilities for Operation:

- i. Beanstalk shall have full and complete control over the operation of the Concession Space, subject only to the obligations of this Agreement and applicable law.
- ii. The menu for the Concession Space and Catering Events shall be the responsibility of Beanstalk, but the City reserves the right to request menu items. Beanstalk agrees that there shall be no sale or advertising of any tobacco products at the Concession Space or any Catering Events. The prices charged by Beanstalk for the Concession Space and Catering Events shall at all times be reasonable and subject to approval of the City.
- iii. Beanstalk may bring in food trucks for special events or Catering Events only with the approval of the City.
- iv. Beanstalk may serve alcohol for special events or Catering Events only with the approval of the City.
- v. Beanstalk shall be responsible for securing the premises of the Concession Space during operating hours.
- vi. Beanstalk shall be responsible for maintaining the Concession Space, including the public lounge area, in a clean and sanitary manner at all times during operation, including but not limited to keeping all trash bagged properly and away from public view in designated holding areas, sanitizing tables and chairs, and sweeping and cleaning food and beverage spills in the public lounge area.
- vii. Beanstalk shall be responsible for maintenance and repairs to equipment, fixtures and/or personal items it has provided and is responsible for in the Concession Space.
- viii. Beanstalk shall be responsible for sending an authorized representative to monthly YFAC operators' meetings held by the City.

D) The City's Responsibilities for Operation:

- i. The City, through YFAC staff, shall maintain security at the YFAC and shall assist Beanstalk with any security issues that may arise as requested by Beanstalk.
- ii. The City, through YFAC staff, shall be responsible for removing trash from designated holding areas to the dumpsters as needed throughout operating hours. The City, through YFAC staff, shall also be responsible for exterior cleaning and maintenance.
- iii. The City shall be responsible for building maintenance and will provide needed repairs to electrical, HVAC, plumbing, or structure.
- iv. The City shall assist Beanstalk in their promotion of its operation of the

Concession Space in the City's print, online, and social media marking and communications.

- v. The City shall provide building access cards to Beanstalk for its employees' entry into the YFAC, with Beanstalk to be responsible for any costs associated with lost and/or replacement access cards.

- E) Beanstalk agrees that its operation of the Concession Space shall at all times comply with: 1) the YFAC Facilities Policy Manual, and any revisions that may be made by the City from time to time, attached hereto as Exhibit B and incorporated herein; 2) all applicable federal, state, and local laws and regulations governing food service establishments and any associated licenses and permits necessary for the operation of a food service establishment; 3) the highest practicable standards of sanitation, complying with all laws of the State of Oklahoma, with all rules and regulations of the State Board of Public Health; and 4) regulations promulgated by ABLE for any events where alcohol is served.

- 2. **CATERING:** Beanstalk has the right to provide catering services for events held at the YFAC ("Catering Events") and shall have the right of first refusal for such Catering Events, but shall not be the sole catering provider at the YFAC. Notice to Beanstalk of Catering Events shall be provided as described below. Beanstalk shall have ten (10) days to accept or refuse Catering Events following such notice. In the event of rejection or a failure to accept within the ten (10) days, the party requesting catering is free to utilize another catering service for its event. Beanstalk agrees that the City is exempt from this right of first refusal as well as using Beanstalk as a catering provider for City events.
 - A) For Catering Events provided to third-parties, the City shall provide a monthly calendar of events to be held at the YFAC, providing prompt notice of any subsequent change of events for the month, if applicable, for Beanstalk to coordinate Catering Events with third-parties. Beanstalk shall have the sole responsibility for communicating and organizing any Catering Events with third-parties.

- 3. **TERM:** The term of this Agreement shall commence on January 1st, 2024 and continue until December 31st, 2024. This Agreement shall renew automatically on an annual basis, beginning on January 1 of each year, unless terminated pursuant to the provisions set forth herein, for a maximum contract term of five (5) years.

- 4. **REVENUE SHARING DURING TERM:** Beanstalk agrees that in exchange for the operation of the Concession Space, it will remit to the City \$35 per square foot as a lease payment, with the first annual lease total to be \$40,250. The lease payments for the first term of this Agreement shall begin on March 1, 2024, all subsequent renewal terms shall begin on January 1 of each renewal year. Beanstalk understands and agrees that such lease payment is subject to change upon each annual contract renewal to reflect the amount determined to be the then current rate for leasing commercial space in the University North Park area of Norman, Oklahoma. Beanstalk also agrees to remit to the City 2% of its gross receipts from the operation of the Concession Space and any Catering Event or other special event held at the YFAC. The 2% gross receipts payments for the first term of this Agreement shall begin on the first day of operations of the Concession space, all subsequent renewal terms shall begin on January 1 of

each renewal year. Both payments are to be remitted to the City on a monthly basis and are to be supported by documentation showing all gross receipts received by Beanstalk from its operations at the YFAC for the corresponding month, with Beanstalk's Square report to suffice as a proper method of documentation.

5. **UTILITIES:** The City shall furnish all heat and cooling for the Concession Space and all water, electricity and gas necessary in the operation of the Concession Space. Public Wi-Fi will be available at the YFAC.
6. **SIGNAGE AND MARKETING:** The City shall provide appropriate indoor facility space for identifying and marketing signage provided by Beanstalk, such as signage space on the windows of the YFAC and/or digital signage, with such signage being subject to the approval of the City. The City also agrees to provide outdoor signage space at the intersection of 24th Avenue NW and W Rock Creek Road, at Beanstalk's own expense.
7. **REMOVAL OF EQUIPMENT:** Beanstalk shall retain title to and shall remove at its sole cost, upon expiration or termination of this Agreement, all of Beanstalk's equipment, defined as follows: any equipment, apparatus, machinery, signs, furnishings, trade fixtures and personal property provided and installed by Beanstalk and used in the operation of their business but shall not include any fixtures installed by City prior to Beanstalk's use of the Concession Space.
8. **RECORDKEEPING AND REPORTING:** Beanstalk shall supply an annual report to the Director of the City of Norman's Parks and Recreation Department and the Norman City Council within forty-five (45) days of the end of each annual contract term. The annual report shall include a summary of all activity, along with revenue and expenditure summaries for Beanstalk's operation of the Concession Space for the preceding year. In addition to the annual report, Beanstalk shall also supply all corroborating records of gross receipts monthly as described in Section 4 of this Agreement. All detailed records associated with the operation of the Concession Space shall be made available for review within ten (10) days by Beanstalk upon request from the City. Beanstalk agrees to maintain all financial records associated with the operation of the Concession Space for a period of seven (7) years. These financial records shall be maintained in such detail as to account for gross receipts and expenditures for all significant operation activity. The financial recording system shall be reviewed and approved by the City's Department of Finance for the purpose of maintaining a minimum accounting standard acceptable to both parties.
9. **INSURANCE:** Beanstalk shall, at its own expense, keep in force insurance of the following types, naming the City as co-insured, and in not less than the following amounts, issued by a company or companies licensed to do business in Oklahoma and is of sound and adequate financial responsibility, against all liabilities for accidents arising out of or in connection with Beanstalk's operation of the Concession Space, except when caused by the City's negligence or that of its agents or employees, and shall furnish to the City certificates evidencing such insurance subject to the limitations set forth above in respect to the City's sole negligence and Beanstalk shall furnish a certificate to the effect that such insurance shall not be changed or

cancelled without ten (10) days prior notice to the City, said notice shall be written and shall be given by Beanstalk, to wit:

- A) Worker's Compensation Insurance and Employer's Liability Insurance as prescribed by State Statute, for all of Beanstalk's employees and subcontractors, working at the YFAC, with the subcontractors to also provide the same.
- B) Provide both Commercial General Liability Insurance and Automobile Liability Insurance for personal injury and property damage in limits prescribed by the Oklahoma Governmental Tort Claims Act (51 O.S. § 151 et seq.) and subsequent revisions thereto, as follows:
 - i. \$25,000 for loss of property arising out of a single act or occurrence.
 - ii. \$125,000 per person for any other loss arising out of a single act or occurrence.
 - iii. \$1,000,000 for any number of claims arising out of a single act or occurrence.

10. INDEMNIFICATION: Beanstalk agrees to indemnify and hold harmless the City, its officers, agents and employees from and against all liability for injuries or death to persons, legal expense or damage to property caused by Beanstalk's, its agents or employees operation of the Concession Space; provided, however, that Beanstalk shall not be liable for injury, damage or loss occasioned by the sole negligence of the City, its agents or employees. Beanstalk shall indemnify and hold harmless the City, its officers, agents and employees from and against all claims, damages, suits, expenses, liability or proceedings of any kind whatsoever, including, without limitation, Worker's Compensation claims of or by anyone whomever, in any way resulting from, or arising out of, Beanstalk's acts, omissions or operations under or in connection with this Agreement or Beanstalk's operation of the Concession Space. Further, the City shall not be liable or responsible to Beanstalk for any loss or damage to any property or person occasioned by a third party or any Force Majeure event. It is understood that this indemnity and hold harmless provision is not limited by the insurance required under this Agreement.

11. TERMINATION:

- A) *For Cause:* This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with its material duties or obligations under this Agreement. The defaulting party shall have ninety (90) days after written notice is given, specifying the event of default under the Agreement, to cure the default. If the default is not cured to the complete satisfaction of the non-defaulting party, such party may terminate the Agreement.
- B) *For Convenience:* The City may terminate this agreement for any reason upon sixty (60) days written notice to Beanstalk.
- C) *Appeal:* Beanstalk shall be afforded a hearing before the Board of Park Commissioners if requested within ten (10) business days following notice of termination. The results of such hearing shall not be binding on the City as constituting a limitation upon its power to cancel this contract.

- 12. FORCE MAJEURE:** Neither party shall be responsible nor liable for any delays or failures in performance from any cause beyond its reasonable control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of a third party, riots, fires, earthquakes, floods, power blackouts, strikes, or weather events.
- 13. RIGHT TO ENTER:** The City and its authorized agents or employees shall have the right to enter the Concession Space at any reasonable time and as often as necessary in the City's judgment to inspect and examine the Concession Space, to make and perform needed improvements and/or repairs, and to comply with applicable laws, ordinances, rules, orders or other governmental regulations. The City reserves the right to close down the Concession Space without notice in the event an emergency repair is deemed necessary by the City.
- 14. SURRENDER OF POSSESSION:** Beanstalk agrees to surrender possession of the Concession Space to the City at the expiration or termination of this Agreement, or upon the expiration of any renewal, in as good repair and condition as when Beanstalk obtained the Concession Space excepting only ordinary wear and tear and decay, or damage caused by any Force Majeure event. Upon expiration or termination of this Agreement, Beanstalk shall remove all of its furniture, fixtures and other personal effects from the Concession Space. In the event Beanstalk does not remove all of its furniture, fixtures, and other personal effects from the Concession Space upon expiration or termination of this Agreement, the City may take possession of such items and utilize or dispose of them in the City's sole discretion without any liability to Beanstalk.
- 15. NOTICE:** Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is delivered personally, or within three (3) business days after it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, to:

City:

Jason Olsen
Director of Parks and Recreation
225 N. Webster Ave.
Norman, OK 73070

Beanstalk:

Jennii Buendia
Owner/President
3408 36th Ave NW Ste 124, Norman, OK 73072

16. MISCELLANEOUS:

- A) *Counterparts:* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute the same instrument.
- B) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid, or illegal, then the enforceability, validity, and legality of the remaining

provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

- C) *Governing Law; Venue*: This Agreement shall be governed and construed in accordance with the laws of the United States of America and the State of Oklahoma. The venue for any action under this Agreement shall be in the District Court of Cleveland County, Oklahoma, or the United States District Court for the Western District of Oklahoma. The parties agree to submit to the subject matter and personal jurisdiction of said court.
- D) *Binding Effect*: All the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.
- E) *Authority*: Each party hereto has the legal right, power and authority to enter into this Agreement. Each party's execution, delivery and performance of this Agreement has been duly authorized, and no other action is requisite to the valid and binding execution, delivery and performance of this Agreement, except as expressly set forth herein
- F) *Relationship of Parties*: This Agreement does not create any partnership or joint venture between the parties hereto, or render any party liable for any of the debts or obligations of the other party. Neither party shall be deemed to be an agent or representative of the other.
- G) *Entire Agreement; Amendments*: This Agreement constitutes the entire agreement among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties hereto.
- H) *Assignment*: This Agreement shall not be assigned by either party without prior written consent of the other party, said consent not to be unreasonably withheld.
- I) *Non-waiver*: No failure on the part of either party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by either party of any right hereunder preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to either party at law or in equity.
- J) *Nondiscrimination*: Beanstalk agrees further that it will not discriminate against any persons on the basis of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex.

[Signatures on following page]

In Witness Whereof, the parties hereunto set their hands and seal the date first above written. The parties agree that they may conduct the transaction by electronic means and hereby state that electronic signature is valid and shall have the same force and effect as an original signature.

BEANSTALK

BY: Jennifer Buendia

Owner

ACKNOWLEDGEMENT

STATE OF OKLAHOMA)
)

ss:

COUNTY OF OKLAHOMA)

Before me, a Notary Public in and for the State of Oklahoma, on this 8th day of December, 2023, personally appeared Jennii Buendia, to me known to be the identical person who subscribed their names to the foregoing instrument as their free act and voluntary deed for the uses and purposes therein set forth.

Karla Sitton
NOTARY PUBLIC

My Commission No. 23000364 Expires January 9, 2027 [SEAL]

**CITY OF NORMAN**

APPROVED this _____ day of _____, 2023, by the Norman City Council.

Larry Heikkila, MAYOR

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this 8th day of December, 2023.

[Signature]
CITY ATTORNEY

EXHIBIT A

