

DUNNVILLE MARKET MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“this MOU”) made this _____ day of _____, 2018.

BETWEEN:

THE CORPORATION OF HALDIMAND COUNTY
(hereinafter referred to as “Haldimand”)
First Party

- and -

Dunnville Farmers Market Association
(hereinafter referred to as the “Association”)
Second Party

WHEREAS Haldimand is the owner of the lands and premises known as the Waterfront Pavilion (Dunnville Farmers Market) and more particularly described in Schedule “A” attached hereto (the “Facility”);

AND WHEREAS Haldimand and the Association are desirous of entering into a memorandum of understanding (the “MOU”) pursuant to which the Association will operate the Facility on Market Days during market hours as approved through Haldimand County;

AND WHEREAS the operation of the Facility shall be governed by the terms, conditions and covenants specified in this MOU;

NOW THEREFORE, the parties hereto agree as follows:

Truth of Recitals

1. The parties hereto hereby confirm the truth of the recitals contained above.

Use of Facility by Association

2. The Association will have care and control of the facility on Market Days during Market Hours only.
3. Generally, “Market Days” shall mean Tuesdays and Saturdays from April 1st to the end of December. “Market Hours” shall be from 6:00 a.m. to 1:00 p.m. This schedule can be changed upon mutual agreement between the Association and Haldimand.
4. In consideration of the covenants hereinafter reserved and contained on the part of the Association to be paid, observed and performed, Haldimand hereby permits use of the lands and structure shown on Schedule A herein known as the “Facility” to the Association to operate a farmers market on Market Days during Market Hours, for a term of five (5) years (hereinafter called the “Term”, which term shall include all renewal terms

of this MOU, which Term shall commence on July 1, 2018) under the terms and conditions of this MOU and any applicable by-laws.

Utilities, Maintenance and Operating Costs and Repair Costs

5. Commencing in the second year of this agreement, the Association will assume responsibility for and will reimburse the County for electricity, water and wastewater expenses used on during the prescribed market hours. The County will invoice the Association for utilities pro-rated based on usage on a monthly basis.
6. The Association shall be responsible to pay all property taxes levied in respect of the operations carried on by the Association in and upon or by reason of this use of the Facility. Such property taxes may be apportioned, at the discretion of Haldimand County, if it is deemed that the property assessment is based on other uses of the facility in addition to the market.
7. The Association, will be responsible for ensuring vendors have access to electricity on Market Days as well the opening, closing and cleaning of the market washrooms on Market Days. Further, it will be the responsibility of the Association to ensure all garbage, including vendor garbage, is gathered and removed from the Facility at the conclusion of each Market Day. The Association must ensure vendor do not use County receptacles.
8. Haldimand will pay for approved major repairs which includes any repairs required to ensure the structural integrity, health and safety legislative upgrades as well as roof and eaves trough repairs.
9. Haldimand will provide snow removal and winter control for the facility on Market Days during Market Hours.
10. Outside of Market Days, washroom maintenance, garbage pick-up and property maintenance related to the Facility will be at the discretion of Haldimand. Costs of such maintenance will be the responsibility of Haldimand.

Assignment and Subletting

11. The Association shall not assign this MOU or any part hereof or any of the rights or benefits conferred hereunder to any other person or party without the prior written consent of Haldimand, which consent may be unreasonably withheld.

Operation of Facility and Provision of Facility by Association

12. The Association hereby agrees that it shall, from the commencement date of this MOU and throughout the Term, operate the Facility primarily for the purposes of the public use in accordance with all applicable legislation and municipal by-laws.
13. Commencing in January 2019 of this MOU, the Association will be responsible for the establishment and collection of all market vendor fees including fees paid on annual or daily basis and will implement a program to rent market spaces to vendors.
14. The Association will be required to collect proof of insurance from every Vendor.
15. The Association will be responsible for ensuring that operations and vendors adhere to Provincial legislation and any applicable County by-laws.

16. The Association will be required to adhere to all other applicable Haldimand County policies or procedures.
17. The Association will be required to ensure a representative of the Association be onsite during Market Days to oversee all market operations, collect fees and provide site supervision as well as be responsible for addressing any vendor or customer concerns.
18. Upon discovery of damages to any part of the Facility, the Association must notify Haldimand County within 24 hours.
19. Haldimand County will not book the Facility during Market Hours on a Market Day unless mutually agreed to in writing between the Association and Haldimand. Haldimand will have the right to rent the Facility on Market Days outside of Market Hours. In the event of a Facility rental on a Market Day, the Association is responsible to clean and vacate the Facility by 1:00 p.m. Haldimand will be responsible for communicating Market Day facility rentals and will endeavor to provide 24 hours notice, if possible.
20. Barrier free parking spots must not be occupied by vendors for the purposes of merchandising, marketing or selling their goods.

Insurance and Indemnity Provisions

21. Throughout the Term, the Association shall obtain and maintain a Commercial General Liability Policy with coverage for bodily injury and property damage, products and completed operations, and premise and operations liability on an occurrence basis with a limit of not less than two million dollars (\$2,000,000). Such policy shall name Haldimand County as additional insured, contain a cross liability and severability of interest clause and provide for 30 days' notice of cancellation or material change. The Association shall provide Haldimand with a Certificate of Insurance as evidence of such insurance prior to execution of this MOU and upon the anniversary date of the applicable policy described herein.
22. Throughout the Term, Haldimand shall obtain and maintain property insurance in relation to the Facility.
23. The Association shall indemnify, defend and hold harmless Haldimand against all manner of claims, damages, loss, costs and charges whatsoever, suffered by Haldimand, either directly or indirectly, in respect of any matter or thing arising from its activities and the operation of the Facility by the Association, its employees, representatives or agents in connection therewith.

Damage or Destruction

24. Whenever during the Term the Facility or any part thereof shall be destroyed or damaged by fire, lightning or tempest, or any of the perils insured against under the provisions of Haldimand insurance policies, it shall be in Haldimand's sole discretion to repair or replace the Facility or any part thereof. Should Haldimand choose not to repair or replace the Facility or any part thereof, the operation of the Facility pursuant to this MOU shall cease.

Events of Breach & Default

25. Each of the following shall be an event of default by the Association:

- (a) the Association fails to pay required utilities or any other payments required to be made by it hereunder, either to Haldimand or to any other party, at the time such payments become due;
- (b) the Association fails to observe or perform any of the terms, covenants or conditions contained in this MOU to be observed or performed by the Association;
- (c) the Association becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise;
- (d) a receiver or a receiver and manager is appointed for all or a portion of the Association's property;
- (e) any steps are taken or any action or proceedings are instituted by the Association or by any other party including without limitation, any court or governmental body of competent jurisdiction for the dissolution, winding-up or liquidation of the Association or its assets;
- (f) the Association loses its status or its charter is revoked;
- (g) the Association provides notification to Haldimand that it desires to cease operation of the Facility for the purpose of a Farmers' Market;
- (h) the Association assigns, transfers, encumbers, sublets or permits the occupation or use or the parting with or sharing possession of all or any part of the Facility by anyone except in a manner permitted by this MOU;
- (i) the Association alters, amends or otherwise changes, through application for supplementary letters patent or in any other manner, its incorporating documents, its objects or the special provisions applicable to the Association, without prior written approval of Haldimand to any such alteration, amendment or change (except the election of different or other directors for the Association);
- (j) the Association is in default under or in breach of any term of a loan MOU or other financial commitments between the Association as borrower and Haldimand as lender;
- (k) the Association fails to obtain and/or maintain the insurance coverage(s) as required pursuant to this MOU.

then Haldimand has, in addition to any other rights or remedies it has pursuant to this MOU or by-law, to the extent permitted by-law, the immediate right of re-entry in the name of the whole, upon and in the Facility or any part thereof and may expel all persons and remove all property from the Facility and such property may be removed and sold or disposed of by Haldimand as it deems advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of the Association, all without Haldimand being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. Upon such re-entry, Haldimand shall be entitled to have again, repossess and enjoy, as of its former estate, the Facility.

26. Haldimand may at any time after such re-entry or simultaneous with such re-entry elect to terminate this MOU for such previous breach. In such event Haldimand may recover from the Association all costs, expenses and damages it incurs by reason of such breach including the amount of all unpaid utilities, operating and maintenance costs, the cost of recovering the Facility and solicitor's fees (on a solicitor and his client basis), all of which amounts shall be immediately due and payable by the Association to Haldimand.

27. If legal action is brought by Haldimand for recovery of possession of the Facility or for the recovery of any other amount due under this MOU or because of the breach of any other terms, covenants or conditions herein contained on the part of the Association to be kept or performed and a breach is established, the Association shall pay to Haldimand all expenses incurred therefore, including legal fees (on a solicitor and his client basis).

Improvements and Alterations by Association

28. If the Association shall, during the Term, desire to effect any improvements or alterations in or to any part of the Facility, it may do so at its own expense at any time and from time to time, provided that the Association has obtained the written consent of Haldimand prior to the commencement of such alterations or improvements including signage, which consent will not be unreasonably withheld. In certain instances Council approval may be required which will extend the approval process.
29. All improvements and alterations in and to the Facility shall remain upon the Facility at the end of the Term without compensation to the Association.

General Provisions

30. The division of this MOU into articles, sections, paragraphs, subparagraphs and clauses and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this MOU.
31. The Schedule A which is attached to this MOU is incorporated into this MOU by reference and is deemed to be part hereof.
32. In this MOU, any reference to any statute or any section thereof shall or by-law, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.
33. In this MOU, unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.
34. Each party hereby covenants and agrees that at any time, and from time to time, it will, upon the request of the other, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances, documents and assurances as may be required for the better carrying out and performance of the terms of this MOU.
35. This MOU and the schedule referred to herein constitute the entire MOU between the parties and supersede all prior MOUs, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.
36. Each provision of this MOU is intended to be severable. If any provision hereof is illegal or invalid, such illegality or invalidity shall not affect the validity of the remainder hereof.
37. Any party which is entitled to the benefits of this MOU may, and has the right to, waive any condition hereof at any time on or prior to the time when such term or condition is required to be fulfilled under this MOU; provided, however, that such waiver shall be evidenced by written instrument duly executed on behalf of such party. The waiver by a party of any condition hereof shall not operate as a waiver of that party's rights under this MOU in respect of any other condition (whether of the same or any other nature).

38. No modification, supplement, termination, waiver or amendment to this MOU may be made unless agreed to by the parties hereto in writing.
39. This MOU shall be binding upon and endure to the benefit of the parties and their respective heirs, administrators, executors, successors and permitted assigns.
40. This MOU shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated, in all respects, as an Ontario contract.
41. Time shall be of the essence of this MOU.
42. Provided the Association is not in default under the terms of this MOU, the Association and Haldimand may, by MOU in writing, renew this MOU for five (5) further terms of five (5) years each on the same terms and conditions as are contained in this MOU except with respect to the final renewal, which shall be without any further right of renewal.
43. Any notice, request or demand herein shall be provided in writing and shall be sufficiently given if delivered personally, by prepaid registered mail, or electronic communication to the addresses provided for below during normal business hours, or sent by facsimile transmission to the numbers shown below:

if made to Haldimand:

The Corporation of Haldimand County
45 Munsee Street North
Cayuga, ON N0A 1E0
Attention: Haldimand County, Economic Development and Tourism
Email: opportunity@haldimandcounty.on.ca

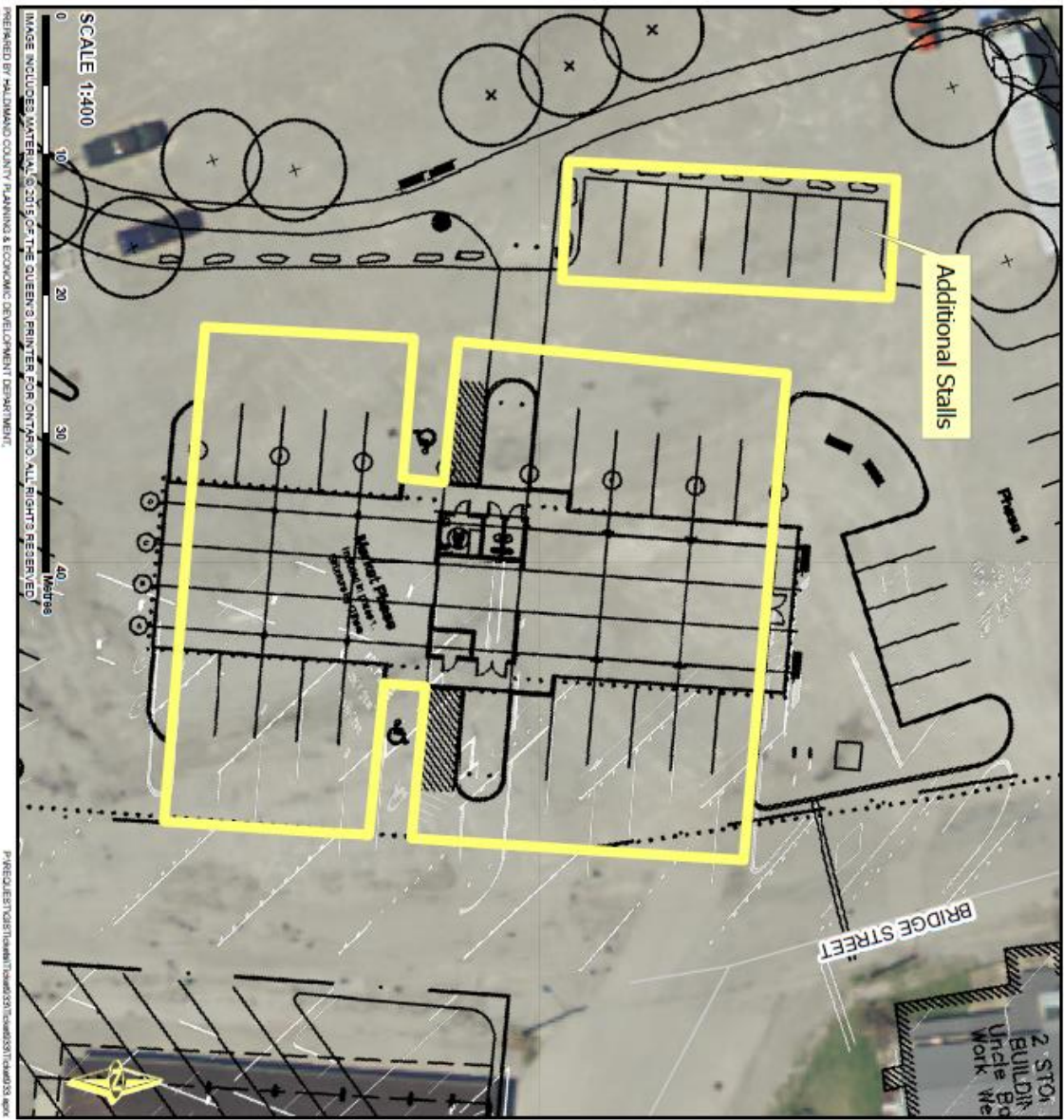
if made to the Association:

Dunnville Farmers Market Association
c/o James Richardson
131 River Road
Dunnville, ON N1A 2W3
Email: info@richardsonsfarm.com

44. Either party shall have the right at any time to terminate this MOU upon giving at least 60 days written notice to the other party.
45. In the event the Association has breached or defaulted in any of its obligations in this MOU and fails to remedy such breach or default or fails to commence to remedy such breach or default within fifteen (15) days of notice in writing from Haldimand, Haldimand may terminate this MOU upon giving fifteen (15) days notice.
46. Upon termination of this MOU, the Association shall cease using, or permitting to be used, any portion of the Facility for the purposes authorized and shall not make any claim against Haldimand with respect to such termination. The Association shall, at its own expense, replace and restore the Facility to a safe and proper condition to the satisfaction of Haldimand.
47. This MOU shall not be registered on title to the Facility.
48. In the event of a dispute over any parts of this MOU the issue will be brought forward and

SCHEDULE "A" DESCRIPTION OF PROPERTY

Location Map Dunnville Farmers Market



Location:
214, 218, 220 MAIN ST EAST
URBAN AREA OF
DUNNVILLE

HALLOWMAN COUNTY, ITS EMPLOYEES, OFFICERS AND AGENTS ARE NOT RESPONSIBLE FOR ANY ERRORS, OMISSIONS OR INACCURACIES WHEN THE INFORMATION IS USED FOR OPERATING MAP OR DESIGN PURPOSES. ALL INFORMATION TO BE VERIFIED.

