

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("this MOU") made this _____ day of _____, 2019.

BETWEEN:

THE CORPORATION OF HALDIMAND COUNTY
(hereinafter referred to as "Haldimand")

- and -

(FIELD/PARK MANAGEMENT CORPORATION/GROUP)
(hereinafter referred to as the "Corporation/Group")

WHEREAS Haldimand is the owner of the lands, premises and amenities currently known as (Name of Park/Sports Facility) and more particularly described in Schedule "A" attached hereto as Property and Amenities to this MOU;

AND WHEREAS Haldimand has a Fields and Parks Management Program Policy (Policy No. 2019-XX), hereinafter referred to as the "Policy", governing the Fields and Parks Management Program;

AND WHEREAS the Corporation/Group is desirous of maintaining and operating said lands, premises and amenities (hereinafter referred to as the "Lands") for the purposes of offering cost-effective sports, recreation space and activities, for the purposes of the municipality of Haldimand County and for a public use;

AND WHEREAS the maintenance and operations of the Lands shall be governed by the terms, conditions and covenants specified in this MOU;

NOW THEREFORE, in consideration of the foregoing premises and mutual covenants contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

Truth of Recitals

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

Term

2. This MOU shall commence on the _____ day of _____, 2019 and run for a term of five (5) years, unless terminated earlier pursuant to the provisions of this MOU. Haldimand, at its sole discretion, may renew this MOU for two further terms of five (5) years each and Haldimand shall give the Corporation/Group written notice of the intention to renew. Such written notice shall be provided no less than one hundred and twenty (120) days prior to the expiration of the MOU.

In the event either party wishes to terminate this MOU prior to the termination date, one hundred and eighty (180) days written notice is required.

Taxes

3. Haldimand shall pay all real property and other taxes, rates, duties and assessments, imposed charges or levies, that are levied, rated, charged or assessed against the Lands or any part thereof from time to time by any lawful taxing authority, whether federal provincial, municipal, school or otherwise. (***This clause will be included as applicable.***)

Utilities, Maintenance and Operating Costs and Repair Costs

4. The Corporation/Group acknowledges that it has inspected the Lands in conjunction with Haldimand to its satisfaction and accepts the Lands as they exist as of the commencement date of this MOU, knowing fully the condition thereof and agrees and acknowledges that Haldimand has made no statements, representations, warranties, covenants, agreements or undertakings of any kind with respect thereto other than those specifically set out herein.
5. Except as otherwise expressly provided herein, the Corporation/Group shall pay all utilities, maintenance and operating costs and expenses of any nature or kind whatsoever relating to the Lands and the Corporation's/Group's use thereof during the Term, notwithstanding Article 3. Without limiting the generality of the foregoing, the Corporation/Group shall be solely responsible for and shall promptly pay all charges for water, gas, electricity, telephone, garbage and waste removal, and all other utilities used or consumed in or on the Lands. Except as a result of negligence or malfeasance on the part of Haldimand, Haldimand shall not be liable for, nor have any obligation with respect to, an interruption or cessation of, or a failure in the supply of any such utilities, services or systems, including without limitation the water and sewage systems, to the Lands whether or not supplied by Haldimand or others. The special provisions set out at the end of this MOU further detail the Corporation's/Group's obligations with respect to operating costs.
6. Haldimand shall perform and pay for matters related to legislation and public health and safety as applicable, including, but not limited to: annual fire extinguisher and emergency lighting inspections/repairs/replacement; semi-annual range hood fire suppression system inspections/cleaning/repair/replacement; cistern bi-annual maintenance/repairs/replacement; and, quarterly water testing, at the sole discretion of Haldimand. In compliance with the Parks By-law and related operating times for fields and parks, the Corporation/Group will complete: monthly fire extinguisher and emergency lighting inspections; weekly cistern system inspections as applicable and keep records of all required inspections as required by Haldimand.
7. The Corporation/Group, at its own expense, shall maintain and keep the Lands and every part thereof in good repair, order and safe condition and promptly make all needed repairs and replacements to the Lands using at all times new materials.
8. If the Corporation/Group refuses or neglects to repair and/or replace as required pursuant to this MOU and to the reasonable satisfaction of Haldimand within ten (10) days of receipt of written notice to the Corporation/Group, Haldimand may make such repairs without liability to the Corporation/Group for any loss or damage that may accrue to the Corporation's/Group's merchandise, fixtures, other property or business by reason thereof, and upon completion of such repairs, the Corporation/Group shall pay to Haldimand, upon presentation of bills therefore, Haldimand's cost for making such repairs.

9. The Corporation/Group and Haldimand will arrange for site visits to be conducted jointly at approximately six month intervals or as reasonably required by Haldimand, which shall be attended by representatives of the Corporation/Group and Haldimand, with a view to collaboratively identifying upcoming needs for repairs.
10. The Corporation/Group covenants that it shall be lawful for Haldimand and its agent(s) at all reasonable times during the Term to enter all areas of the Lands jointly with a Corporation/Group representative (if available) to inspect the condition thereof. (Haldimand will attempt to provide twenty-four hours (24) telephonic notice.) Where an inspection reveals that repairs are necessary, Haldimand shall give to the Corporation/Group notice in writing, and immediately thereafter the Corporation/Group will forthwith proceed to make all necessary repairs in a good and workmanlike manner, using at all times new materials, and to the satisfaction of Haldimand, so as to complete same within the reasonable time or times provided for in the notice delivered by Haldimand as aforesaid. The failure by Haldimand to give notice shall not relieve the Corporation/Group from any of its obligations to repair in accordance with the provisions hereof.
11. The Corporation/Group will, at the expiration or earlier termination of the Term or any renewals thereof, peaceably surrender and yield up to Haldimand the Lands with all improvements, erections and appurtenances, other than the Corporation's/Group's trade fixtures, which at any time or times during the Term shall be made, placed or erected therein or thereon, in good and substantial repair and condition, reasonable wear and tear and damage by fire, lightning and tempest only excepted, and the Corporation/Group shall surrender all keys for the Lands to Haldimand. The Corporation/Group shall, however, if requested by Haldimand, remove all improvements, erections, alterations, fixtures or other appurtenances made, placed or erected at any time or times during the Term in or on the Lands, at the sole cost and expense of the Corporation/Group, and shall repair all damage to the Lands caused by their installation and/or removal. The Corporation's/Group's obligation to observe and perform this covenant shall survive the expiration or sooner determination of the Term or any renewal thereof.

Assignment and Subletting

12. The Corporation/Group shall not assign this MOU or any part hereof or any of the rights or benefits conferred hereunder to any other person or party, notwithstanding the automatic assignment of subsequent boards or executives forming part of the Corporation/Group.
13. The Corporation/Group shall not sublet the Lands or any part thereof to any other person or party without the prior written consent of Haldimand, which consent may be unreasonably withheld.

Use of Lands and Amenities by the Corporation/Group

14. The Corporation/Group hereby agrees that it shall, from the commencement date of this MOU, and throughout the Term, use, provide, operate and maintain the Lands primarily for the purposes of local sports and recreation use, for the purposes of Haldimand and its citizens and for a public use.

15. The Corporation/Group will provide to Haldimand and keep current a list of Executive and Board Members as well as all volunteers who will be involved with the Park or Field on an annual basis.
16. The Corporation/Group hereby represents and warrants to Haldimand that it has the authority to and is solely responsible for determining whether a rental of the Lands may pose a potential risk to public safety or may not be in the best interests of the community or Haldimand. In such instances, the Corporation/Group has sole discretion with respect to granting such a rental notwithstanding Articles 16 and 20.
17. The Corporation/Group shall promptly comply with all requirements of all applicable statutes, laws, by-laws, rules, regulations, ordinances and orders from time to time in force during the Term hereof, whether municipal, parliamentary or otherwise, including all lawful requirements of the local board of health, police and fire departments and municipal authorities and with every applicable regulation, order and requirement of any liability or fire insurance company by which Haldimand and the Corporation/Group or either of them may be insured with at any time during the Term hereof.

Insurance Provisions

18. Throughout the Term, and provided that the Corporation/Group is not in breach or default under any of the terms and conditions of this MOU, Haldimand shall be responsible for the cost and maintenance of fire, peril, damage and liability insurance in relation to the Lands. It is the responsibility of the Corporation/Group to report any damage or personal injury incidents that occur on the Lands, to Haldimand immediately upon discovery.
19. Throughout the Term, the Corporation/Group shall be responsible to pay for and maintain a contents and equipment insurance policy for all contents and equipment owned by the Corporation/Group. Haldimand shall not be responsible for insurance for the Corporation/Group's equipment and/or contents and shall not be responsible for any damage or theft of any property or equipment owned by the Corporation/Group. It is the responsibility of the Corporation/Group to provide to Haldimand any keys to any locks installed on the Lands. The Corporation/Group covenants that it shall be lawful for Haldimand and its agent(s) at all reasonable times during the Term to enter all areas of the Lands jointly with a Corporation/Group representative (if available) to inspect the condition thereof.
20. The Corporation/Group hereby warrants and represents that it will, throughout the Term, keep in place and abide by a policy (Schedule "B") pursuant to which the Corporation/Group will only rent the Lands to any person, group or entity which intends to use or uses the Lands for a function involving the use, sale or service of alcoholic beverages of any kind, if such person, group or entity, prior to its rental of the Lands, provides to the Corporation/Group written confirmation that the event is in keeping with Alcohol and Gaming Commission of Ontario regulations and that a valid policy of liability insurance is in place in relation to the event with coverage, including liquor liability, in the minimum amount of two million dollars (\$2,000,000.00) per occurrence with Haldimand being listed as an Additional Insured. Furthermore, the Corporation/Group hereby warrants and represents that it will not rent the Lands to any person, group or entity which does not provide written confirmation respecting AGCO compliance and insurance in the manner outlined above. This requirement shall not apply to any person, group or entity, which intends to rent the Lands for a function not involving the use, sale or service of alcoholic beverages.

Damage or Destruction

21. Whenever during the Term the Lands 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, the County will solely determine the future of the facility (e.g. replace, not replace, modify and replace etc.

Events of Default and Termination of MOU

22. As applicable, in the event that:

- (a) the Corporation/Group fails to pay annual rent 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; or
- (b) the Corporation/Group fails to observe or perform any of the terms, covenants or conditions contained in this MOU to be observed or performed by the Corporation/Group; or
- (c) the Corporation/Group 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 comprise; or
- (d) a receiver or a receiver and manager is appointed for all or a portion of the Corporation's/Group's property; or
- (e) any steps are taken or any action or proceedings are instituted by the Corporation/Group 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 Corporation/Group or its assets; or
- (f) the Corporation/Group loses its corporate status or its corporate charter is revoked; or
- (g) the Corporation/Group abandons or attempts to abandon the Lands; or
- (h) the Corporation/Group assigns, transfers, encumbers, sublets or permits the occupation or use or the parting with or sharing possession of all or any part of the Lands by anyone except in a manner permitted by this MOU; or
- (i) the Corporation/Group 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 Corporation/Group, without prior written approval of Haldimand to any such alteration, amendment or change (except the election of different or other directors for the Corporation/Group); or
- (j) the Corporation/Group is in default under or in breach of any term of a loan agreement or other financial commitments between the Corporation/Group as borrower and Haldimand as lender;

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 Lands or any part thereof and may expel all persons and remove all property from the Lands 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 Corporation/Group, 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 Lands.

23. 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 Corporation 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 Lands and solicitor's fees (on a solicitor and his client basis), all of which amounts shall be immediately due and payable by the Corporation/Group to Haldimand.
24. If legal action is brought by Haldimand for recovery of possession of the Lands or for the recovery of any other amount due under this Agreement or because of the breach of any other terms, covenants or conditions herein contained on the part of the Corporation/Group to be kept or performed and a breach is established, the Corporation/Group shall pay to Haldimand all expenses incurred therefore, including legal fees (on a solicitor and his client basis).

Improvements and Alterations by Corporation

25. If the Corporation/Group shall, during the Term, desire to effect any improvements or alterations in or to any part of the Lands, it may do so at its own expense at any time and from time to time, provided that the Corporation/Group has obtained the written consent of Haldimand prior to the commencement of such alterations or improvements, which consent will not be unreasonably withheld. It is agreed that Haldimand will deal with any such request promptly.

Financial Support for the Corporation/Group and the Lands

26. The Corporation/Group hereby acknowledges that Haldimand provides an annual grant to support the operations and maintenance of the Lands, the purchase of equipment related to the operations of the Lands and related insurance. The Corporation/Group hereby agrees that it shall, prior to purchasing any new equipment, obtain Haldimand County's written consent to the use of such funds.
27. Capital enhancements to the Lands must be approved by Haldimand through the Community Partnership Program (CPP). The Corporation/Group agrees that it shall, prior to the commencement of any capital improvements to the Land using funds obtained from Haldimand or from any other grant or source, obtain Haldimand's written consent through the CPP program for such capital or other improvements.
28. Should any grant of funds become available to Haldimand, pursuant to any legislation or otherwise, in connection with the Lands or any maintenance, renovations or improvements of or to the Lands contemplated by the Corporation/Group, Haldimand may, but shall not be obliged to, pay any such grant funds received by it to the Corporation/Group at such time, in such a manner and subject to such terms as Haldimand may in its sole discretion determine.

Obligations of Corporation/Group re: Rental of Lands

29. The Corporation/Group shall be responsible for entering into signed Facility Rental Agreements (hereinafter referred to as the "Rental Agreements", Schedule "C") in relation to any rental of the Lands. Such Rental Agreements shall be standardized and issued by Haldimand and used by the Corporation/Group in every instance that the Corporation/Group rents the Lands, unless otherwise agreed upon in writing between Haldimand and the Corporation/Group.

30. The Corporation/Group shall collect and be responsible for the collection of all rental fees relating to any rental of the Lands by the Corporation/Group. Such rental fees will be determined by the Corporation/Group.
31. The Corporation/Group shall comply with any and all policies, regulations and by-laws applicable to the Lands which are established by Haldimand from time to time, which policies, regulations and by-laws shall be provided by Haldimand to the Corporation/Group in writing.

Financial Matters

32. The Corporation/Group shall keep detailed financial records of all revenue generated by the operation of the Lands and of all operating and capital expenses in connection therewith and of the costs of all renovations or improvements thereto. The Corporation/Group shall provide to Haldimand, on an annual basis, a detailed financial statement in the form of the Fields/Parks Management Financial Report Form, which form shall be provided by Haldimand to the Corporation/Group for such purpose.
33. The Corporation/Group shall keep all revenue from the operation of the Lands in one or more Canadian chartered bank or credit union accounts. All books and statements in connection with such accounts, and all other financial books and statements in connection with the operation of the Lands, shall be provided for inspection by the auditors, employees, servants and agents of Haldimand upon five (5) days written notice given by Haldimand to the Corporation/Group of Haldimand's intent to inspect such documents.
34. The Corporation/Group shall be responsible for keeping its corporate, tax and other filings up-to-date, at the Corporation's/Group's own expense.

Acknowledgement

35. The Corporation/Group hereby acknowledges and agrees that Haldimand does not provide coverage through the Workplace Safety and Insurance Board for personal injuries that may occur to the volunteers/members of the Corporation/Group. Similarly, the Corporation/Group further acknowledges and agrees that loss or damage to a volunteer's/member's personal property is not covered by Haldimand. The Corporation/Group will ensure the personal safety of its volunteers/members through provision of appropriate personal protective equipment where required and ensure the appropriate instruction and training is provided to and for its volunteers/members.

General Provisions

36. 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.
37. The Schedules which are attached to this MOU are incorporated into this MOU by reference and are deemed to be part hereof.
38. In this MOU, any reference to any statute or any section thereof shall, 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.

39. 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.
40. 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.
41. This MOU and the schedules referred to herein constitute the entire MOU between the parties and supersede all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.
42. 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.
43. Any party which is entitled to the benefits of this MOU may, and has the right to, waive any term or 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 term or condition hereof shall not operate as a waiver of that party's rights under this MOU in respect of any other term and condition (whether of the same or any other nature).
44. No modification, supplement, termination, waiver or amendment to this MOU may be made unless agreed to by the parties hereto in writing.
45. This MOU shall be binding upon and enure to the benefit of the parties and their respective heirs, administrators, executors, successors and permitted assigns.
46. 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.
47. Time shall be of the essence of this MOU.

Special Provisions

(This relates to additional provisions specific to a Fields/Parks Management Group.)

IN WITNESS WHEREOF the parties have hereunto set their hands and seals on the date first written above.

THE CORPORATION OF HALDIMAND COUNTY

Per:

Ken Hewitt, Mayor

Evelyn Eichenbaum, Clerk

I/We have authority to bind the corporation.

FIELD/PARK MANAGEMENT CORPORATION/GROUP

Per:

_____, President

_____, Secretary

I/We have authority to bind the corporation/group.

SCHEDULE "A"
DESCRIPTION OF PROPERTY AND AMENITIES

Legal Description:

(LOCATION MAP & OVERVIEW OF AMENITIES/PREMISES)

SCHEDULE "B"
FIELD MANAGEMENT POLICY AND PROCEDURES

SCHEDULE "C"
FACILITY RENTAL AGREEMENT