

**AGREEMENT FOR MANAGEMENT AND OPERATION OF FOOD SERVICES  
(CONCESSION & VENDING) IN THE CAYUGA MEMORIAL ARENA**

THIS AGREEMENT MADE IN DUPLICATE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

BETWEEN:

The Corporation of Haldimand County

OF THE FIRST PART

[Hereinafter called “the County”]

and

Cayuga & District Minor Hockey Association

OF THE SECOND PART

[Hereinafter called “the Operator”]

WHEREAS the County owns the Cayuga Memorial Arena, and for the purposes of providing food services to the users of the Arena and meeting room facility requires an operator to offer such services;

AND WHEREAS the Operator submitted a written proposal to the County offering concession and vending services;

AND WHEREAS Haldimand County Council passed resolution XXX-XX on November XX, 2021 authorizing an Agreement between the County and the Operator respecting the provision of food services at the Cayuga Memorial Arena, located at 55 Thorburn Street South, Cayuga, Ontario, Canada, N0A 1E0;

NOW THEREFORE THE PARTIES, in consideration of the mutual covenants and agreements hereinafter set out, hereby agree as follows:

**DEFINITIONS:**

Whenever in this Agreement the following words or phrases are used, they shall have the following meanings.

- a. “Business Premises” shall mean that part of the Cayuga Memorial Arena to which this Agreement applies;
- b. “Facility” shall mean the Cayuga Memorial Arena in its entirety;
- c. “Food Services” shall mean all food and food-related products and non-alcoholic beverages and the operations required to provide the concession and vending within the Business Premises.

**1. Right to Sell Food at Business Premises**

The Operator does not have exclusive rights to sell food and non-alcoholic beverages within the Cayuga Memorial Arena. The County will ensure other providers will not be permitted to sell menu items that are in direct competition with the Operator.

No other provider will be given rights to provide these services from the concession during the term of the Agreement unless mutually agreed upon by the County and the Operator.

**2. Terms of Agreement**

The Agreement is effective for the Term, beginning January 1, 2022 and ending July 31, 2024 unless terminated under the provisions of Articles 13 and 14, as applicable.

The Agreement may be renewed for an additional two-year period effective August 1, 2024 to July 31, 2026 by agreement by both parties.

### 3. Scope of Service

The Operator hereby agrees, as part of this Agreement, to be bound by and abide by all of the terms and conditions contained herein.

The Operator will operate the food concession and vending services for the County's employees, visitors and tenants within the Business Premises during the Agreement term. Both parties agree that the food services hours will vary based on the activity level or events within the building. Regular hours of operation may be modified by mutual written agreement throughout the term of the Agreement.

### 4. Financial Terms

During the term of this Agreement the Operator shall pay the County annual rent in the amount of \$3,000 plus applicable taxes. Rent for the concession and vending services is to be paid in twelve (12) consecutive monthly instalments of \$250 plus applicable tax beginning on the 1<sup>st</sup> day of (month). The lease rate will be reviewed annually during the term of the Agreement as well as at the time of renewal and is subject to negotiation in order to ensure all generated revenue meets or exceeds the County's revenue budget expectations. The County will invoice the Operator on the first of each month and the Operator agrees to pay each invoice within thirty (30) days of date of invoice.

The County shall in no case be required to cover operational losses in whole or in part at any time during the Agreement regardless of any circumstances that may be presented in the operation of the facility.

### 5. Audit

The Operator shall maintain accurate records concerning all revenues received for business resulting from use of the Business Premises. At any time or from time to time, such records shall be made available for inspection and audit to representatives of the County. The County undertakes to treat this information in a confidential manner, except as necessary to enforce its rights or remedies hereunder and not to release this information except as required by law.

The Operator shall also keep such other records as are necessary to perform its duties efficiently and in accordance with the laws of Canada and the Province of Ontario and shall produce these records for inspection when requested by authorized County representatives.

### 6. Facilities Inventory

Prior to the Agreement effective date or first date of operations, the County and the Operator shall perform a joint facilities inventory, which will:

- establish satisfactory confirmation of all equipment as set-out in Schedule "A";
- determine the operating condition of all capital equipment at the Business Premises.

In no event shall either party remove, without the written permission of the authorized representative(s) of the other party, any capital or major equipment or facilities.

No changes, renovations or capital improvements shall be made by the Operator to equipment, base building or the food service operation without the written permission of the County.

It is the responsibility of the Operator to notify the County immediately if a piece of County-owned equipment becomes non-functioning or a safety hazard.

The equipment identified on Schedule "A" is the property of the County and must be returned in good condition upon termination or expiration of the Agreement. Under no circumstances shall any of the County-owned equipment be removed from the premises.

### 7. Operator's Responsibilities

1. Purchase, receive, store, prepare and serve all food goods and products used in the food services;
2. Purchase, receive and store all daily operating small wares required to adequately operate the concession and vending services;
3. Ensure all signage is in good taste, with the County having sole discretion in determining

suitability;

4. Clean all food service equipment including tables and chairs during hours of operation;
5. Provide and employ appropriate, satisfactory staffing to ensure the smooth, efficient operation of the food concession and provide all necessary training and on-site supervisory support;
6. Maintain and enforce strict discipline among its employees with regard to attitude, safety, behaviour, skill and fitness to perform assigned tasks;
7. Adhere to the Employment Standards Act and the Human Rights Code;
8. Pay staff and suppliers on a timely basis;
9. Establish, at the outset, an inventory listing of all small wares, pots and pans adequate for the food services and provide a copy of the listing to the County – “Schedule B”. The inventory shall remain the property of the Operator;
10. Maintain, at its own expense, general liability insurance covering bodily injury and property damage as well as full replacement insurance on its assets, in an amount not less than two million dollars, (\$2,000,000) per occurrence. The County must appear as an additional insured and the policy must contain a cross liability clause. The Operator must provide evidence of such coverage to the company at the signing of the Agreement;
11. Produce a Clearance Certificate from WSIB from time to time during the contract at the request of the County. The Operator hereby agrees to indemnify and save harmless the County from any and all claims which may be brought by or initiated by any employee of the Operator;
12. Abide by and enforce the requirements of the current Ontario Occupational Health and Safety Act including all relevant regulations made under this Act;
13. Comply with all legal requirements relating to health and sanitation;
14. Ensure that gum products are not sold at the concession or in the vending machines;
15. Ensure that peanut oil or peanut products are not used in the preparation of concession foods. This restriction is not applicable to pre-packaged, ready-to-eat products that do not require preparation such as cooking or heating prior to being sold to the consumer; and,
16. Comply with all federal, provincial and municipal laws affecting the safe and responsible management and operation of food and vending services.

## **8. Menu Items**

The Operator is to provide menu items for the concession and vending services at the prices shown as outlined in Schedule “C”. Amounts may be adjusted annually on the anniversary date, by the percentage change, year over year, during the preceding year as recorded in the Statistics Canada, Consumer Price Index, All Items index, not seasonally adjusted in Ontario identified in Catalogue number 62-001-X, Table 9-6.

Any menu or price variations must be provided in writing for County review prior to being implemented.

### *Restricted Food*

The County restricts the use of peanut oil or peanut products that are used in the preparation of concession foods. This restriction does not include pre-packaged, ready-to-eat products that do not require preparation.

The County also restricts the sale of gum, alcohol and cigarettes via the concession.

From time to time, the County may request specific food restrictions due to rental requirements. For example, the Arena floor during the off-ice season may request that no food be cooked using grease during the rental period to avoid the odour of grease saturating fabrics. The County will provide as much notice as possible to the Operator.

## **9. Provisions and Indemnities**

The Operator agrees to not permit any liens or encumbrances to be placed against the property of the County as a result of its failure to make all payments or perform all obligations as required and will take all necessary steps at the Operator’s expense to remove such liens.

The Operator agrees to be fully responsible for all actions or omissions of its agents, employees, servants and invitees, and hereby agrees to indemnify and save harmless the County from any and all loss, damage or liability howsoever caused or arising as a result of the Operator's provision of services pursuant to this Agreement, the Operator's occupation or presence in or on the Business Premises or the actions or omissions of the Operator's agents, employees, servants and invitees (whether negligent or not). The Operator and the Operator's agents, employees, servants and invitees shall comply with all applicable County regulations, by-laws and procedures, including, and without limiting the generality of the foregoing, those regulations, by-laws and procedures pertaining to safety and security.

The above provisions and indemnities shall survive the termination or cessation of this Agreement.

#### **10. The County's Responsibilities**

1. Supply all necessary space to operate the food services;
2. Supply all capital equipment as identified on Schedule "A" and deliver same in good working order on the Agreement start-up date;
3. Provide all necessary service and repair of County-owned capital equipment due to mechanical breakdown or ordinary wear and tear, not including any capital equipment owned by the Operator;
4. Supply all light, heat, cooling, power, fuel, hot and cold water, garbage removal and pest control services;
5. Supply maintenance services to the Business Premises and be responsible for a semi-annual professional cleaning of the exhaust system and grease traps in the concession area; and
6. Provide necessary capital improvements, purchasing new or replacement capital equipment for all equipment identified on Schedule "A" conditional upon Council approval. All such equipment to remain property of the County.

#### **11. Successor and Assigns**

This Agreement shall extend to and be binding upon the parties hereto, and their respective successors and assigns provided that neither party shall be entitled to assign its interest in this Agreement or any portion thereof without the prior written consent of the other party, which consent shall not be unreasonably withheld.

#### **12. Interpretation**

The terms and provisions of this Agreement shall be interpreted and construed in accordance with the provisions of the laws of the Province of Ontario.

#### **13. Non Performance**

Upon notification or becoming aware of a problem or non-performance issue, the County will forward a non-compliance order in writing to the Operator, who will be permitted forty-eight (48) hours to rectify the problem. The only exception to this is if a regulatory authority provides instructions, direction, or orders for compliance (example: Haldimand-Norfolk Health Unit); then the Operator must complete adherence to the regulatory authority requirements as instructed.

If the Operator does not rectify the problem as addressed within the non-compliance order within the timeframe permitted, the County may remedy the problem in any means possible. The County also reserves the right to terminate the Agreement providing ten (10) business days written notice without penalty and the Operator must have all of their equipment and goods removed from the premises within the timeline as outlined within the termination letter.

Complaints and issues of non-performance may be provided verbally for time sensitive issues. A follow-up non-compliance order will be provided in writing to the Operator within three (3) business days. In compliance with the Procurement Policy 2013-02, the County may opt to suspend the rights of any Bidder where performance has been documented as unsatisfactory. The County will review the document performance history of those bidding and reserves the right not to award based upon the documented non-performance for similar type work, without penalty.

If non-performance continues to be an issue and if the Operator receives a total of three (3) non-compliance orders, the County reserves the right to terminate the Agreement immediately, in writing to the Operator, without penalty.

#### **14. Termination of Agreement**

##### *a) Immediate Termination*

The County may immediately terminate the contract if the Haldimand-Norfolk Health Unit or other regulatory authority notifies the County that:

- The Operator's method of preparing, packaging, storing or shipping food is deemed unsatisfactory in any respect;
- The bacteria content of the food fails to meet legal standards;
- Other condition(s) exist(s) which, in the opinion of such regulator authorities, results in the food being deemed as unfit for human consumption; or,
- The Operator fails to comply with any instruction, direction or order issued by the Haldimand-Norfolk Health Unit or other regulatory authority.

##### *b) Termination Providing Ten (10) Days Notice*

The County reserves the right to cancel the Agreement with ten (10) business days written notice without penalty, for neglect as determined by the County, which shall include but not be limited to matters of insufficient insurance coverage, failure to enforce approved standards of sanitation, failure to comply with financial arrangements which the County has agreed upon, quality of service remaining unsatisfactory to the County such as failing to operate according to hours specific in this Agreement, non-performance issues and complaints from the public as deemed applicable by the County.

##### *c) Termination Providing Thirty (30) Days Notice*

The County reserves the right to cancel the contract upon thirty (30) days written notice, without penalty, for any circumstances not mentioned above.

The Operator may cancel the contract upon thirty (30) days written notice, without penalty and all outstanding payments owing to the County shall be payable to the County within sixty (60) days of termination.

If the County terminates the Agreement due to non-performance or non-compliance by the Operator, then the County may retain the financial guarantee as outlined within this document.

#### **15. Loss or Damage**

It is the Operator's responsibility to maintain appropriate controls, including insurance, over the storage and safekeeping of property belonging to the Operator (including but not limited to inventory and money) maintained on the premises. The County will not be liable for any loss or damage to the Operator's property stored on the premises, for any reason.

The County shall not be required to cover any operational losses in whole or in part at any time during the contract regardless of any circumstances that may be presented.

No after hours access to the facility will be permitted. The County will provide the Operator with facility access information and key(s) as applicable during the execution of the Agreement.

#### **16. Use of Facsimile or Electronic Signatures**

The parties agree that any execution of this Agreement or any addendum or renewal thereof, and any Notice pursuant to this Agreement, shall be in writing and sent by courier or by fax, telegram or telecopy addressed to the parties to whom it is to be given in accordance with Article 17. The parties agree to accept facsimile copies of signatures relative to this Agreement as if they were done in the presence of a witness, provided that all such originally signed documents shall:

- a. be delivered to the other party by courier within one business day; and,
- b. if transmitted by fax, electronic mail, telegram or telecopy, be deemed to have been given and delivered on the next business day following the day they were signed and sent, provided that they are delivered to the other party by courier within one business day.

**17. Notices**

All notices pursuant to this Agreement shall be addressed as listed below.

(legal name)	Cayuga & District Minor Hockey Assoc. 55 Thorburn St., South, PO Box 534 Cayuga, ON, N0A 1E0 Telephone: 905-774-3979 Fax: 905-772-2355 Email: <a href="mailto:Katherinehedley@cayugaminorhockey.ca">Katherinehedley@cayugaminorhockey.ca</a> Contact Name: Katherine Hedley Contact Title: Secretary
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(legal name)	The Corporation of Haldimand County 53 Thorburn Street South Cayuga, ON, N0A 1E0 Telephone: 905-318-5932 ext. 6341 Fax: 905-772-3542 Email: <a href="mailto:kschmitz@haldimandcounty.on.ca">kschmitz@haldimandcounty.on.ca</a> Contact Name: Katrina Schmitz Contact Title: Manager, Community Development & Partnerships
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**18. Force Majeure and Limitation of Liability**

Neither party shall be held liable for non-performance or damages if caused by events of Force Majeure. Without limiting the generality thereof, events of Force Majeure include events such as fire, flood, unusually severe weather and Acts of God, which events in every case are beyond the reasonable control of a party, provided the same shall not apply to delay or excuse any financial obligation.

In no event shall either party be liable for any indirect, special, compensatory or contingent damages or for the loss of opportunity, revenue or profit howsoever caused.



19. Acceptance

IN WITNESS WHEREOF, THIS AGREEMENT has been executed by the authorized representatives of the parties, who both hereby agree that the above correctly sets forth the terms of their Agreement and who each undertake to carry out the provisions thereof.

SIGNED

Dated at                                      this      day of                                      , 2021.

The Corporation of Haldimand County  
Per:

_____ Ken Hewitt Mayor	_____ Evelyn Eichenbaum Clerk
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“I have authority to bind the Corporation.”	“I have authority to bind the Corporation.”
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Dated at                                      this      day of                                      , 2021.

Per:

_____ Operator (Signature)	_____ Witness (Signature)
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“I have authority to bind the Cayuga &  
District Minor Hockey Assoc.”

_____ Operator (Please Print)	_____ Witness (Please Print)
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Schedule ‘A’

EQUIPMENT INVENTORY FOR THE CAYUGA MEMORIAL ARENA

QUANTITY	DESCRIPTION
1	Upright Freezer
2	Coolers, 1 with Glass Doors
1	Wire Shelf with 6 Shelves
1	Stainless Steel Table
2	Gas Deep Fryers
1	Dump Station with Overhead Heat Lamp
1	Gas Fired Griddle



Schedule ‘B’

OPERATOR – PROPOSED EQUIPMENT & SUB-CONTRACTOR LISTING

DRAFT

Schedule ‘C’

SAMPLE MENU ITEMS AND PRICING

DRAFT