

**AAGREEMENT FOR MANAGEMENT AND OPERATION OF FOOD SERVICES (VENDING)
IN THE HALDIMAND COUNTY CALEDONIA CENTRE (HCCC)**

THIS AGREEMENT MADE IN DUPLICATE THIS _____ DAY OF _____, 2021.

BETWEEN:

The Corporation of Haldimand County

OF THE FIRST PART

[Hereinafter called “the County”]

and

Tiger Vending and Coffee Service Inc.

OF THE SECOND PART

[Hereinafter called “the Operator”]

WHEREAS the County owns the Haldimand County Caledonia Centre, 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 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 Haldimand County Caledonia Centre, located at 100 Haddington Street, Caledonia, Ontario, Canada, N3W 2N4;

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 Haldimand County Caledonia Centre to which this Agreement applies;
- b. “Facility” shall mean the Haldimand County Caledonia Centre 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 vending services 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 Haldimand County Caledonia Centre Arena complex. 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 vending services 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 vending services for the County's employees, visitors and tenants within the Business Premises during the Agreement term.

4. Financial Terms

During the term of this Agreement the Operator shall pay the County annual rent in the amount of \$5,100 plus applicable taxes. Rent for the vending services is to be paid in twelve (12) consecutive monthly instalments of \$425 plus applicable taxes beginning on the 1st day of (month). The lease rate will be reviewed annually during the term of the Agreement as well 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. Operator's Responsibilities

1. Purchase, receive, store, all food goods and products used in the vending machines;
2. Ensure all signage is in good taste, with the County having sole discretion in determining suitability;
3. Maintain and enforce strict discipline among its employees with regard to attitude, safety, behaviour, skill and fitness to perform assigned tasks;
4. Adhere to the Employment Standards Act and the Human Rights Code;
5. Pay staff and suppliers on a timely basis;
6. 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;
7. 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;
8. Abide by and enforce the requirements of the current Ontario Occupational Health and Safety Act including all relevant regulations made under this Act;
9. Comply with all legal requirements relating to health and sanitation;
10. Ensure that gum products are not sold in the vending machines; and,
11. Comply with all federal, provincial and municipal laws affecting the safe and responsible management and operation of vending services.

7. Vending Items

The Operator is to provide vending items at the prices shown as outlined in Schedule “A”. 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 restriction of peanut oil and peanut products 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 areas or the vending machines.

8. 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.

9. The County’s Responsibilities

1. Supply all necessary space to place the vending machines;
2. Supply all light, heat, cooling, power, fuel, hot and cold water, garbage removal, pest control services; and
3. Supply maintenance services to the Business Premises.

10. 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.

11. 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.

12. 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.

13. 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;
- 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.

14. 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 successful proponent (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.

15. 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.

16. Notices

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

(legal name)

Tiger Vending & Coffee Service
3 Lyndhurst St.,
Hamilton, ON, L8L 7G6
Telephone: 905-545-0077
Fax: 905-545-8926
Email: mark@tigervending.com
Contact Name: Mark Vanderheyden
Contact Title: Owner

(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: kschmitz@haldimandcounty.on.ca
Contact Name: Katrina Schmitz
Contact Title: Manager, Community
Development & Partnerships

17. 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.

18. 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

“I have authority to bind the Corporation.”

“I have authority to bind the Corporation.”

Dated at this day of , 2021.

Per:

Operator (Signature)

Witness (Signature)

“I have authority to bind Tiger Vending &
Coffee Service.”

Operator (Please Print)

Witness (Please Print)