

HAGERSVILLE MARKET OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("this Agreement") made this _____ day of _____, 2017.

BETWEEN:

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

- and -

HAGERSVILLE CHAMBER OF COMMERCE
(hereinafter referred to as the "Chamber")

WHEREAS Haldimand is the owner of the lands and premises known as the Hagersville Market and more particularly described in Schedule "A" attached hereto (the "Facility");

AND WHEREAS Haldimand and the Chamber are desirous of entering into an Operating Agreement (the "Agreement") pursuant to which the Chamber will operate the Facility on market days and during special events as approved through Haldimand County;

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

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 Chamber

2. The Chamber will have care and control of the facility on market days and for special events as approved through Haldimand's special event process.
3. Generally, the market will operate up to two (2) days per week from April 1st to the end of December from 7:00 a.m. to 1 p.m. This schedule can be changed upon mutual agreement between the Chamber and the General Manager of Planning and Economic Development.
4. In consideration of the covenants hereinafter reserved and contained on the part of the Chamber 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 Chamber to operate a farmers market , for a term of five (5) years (hereinafter called the "Term", which term shall include all renewal terms of this Agreement, which Term shall commence on January 1, 2018) under the terms and conditions of this Agreement and any applicable by-laws.

Utilities, Maintenance and Operating Costs and Repair Costs

5. The Chamber will assume responsibility for and will be billed directly for the hydro, water and wastewater accounts associated with the market.

The Chamber shall be responsible to pay all property taxes levied in respect of the operations carried on by the Chamber in and upon or by reason of this use of the Facility. The Chamber, at its own expense, will be responsible for ensuring vendors have access to electricity on market days as well the opening, closing and cleaning of the market washrooms located adjacent to the market within the municipal building. Further, it will be the responsibility of the Chamber to ensure market vendors gather their own garbage at the Facility at the conclusion of each Market Day and dispose in the receptacle on premise. 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. Routine maintenance of the market structure including annual power-washing will be the responsibility of the Chamber. Haldimand will be responsible for snow removal of the facility.

6. On off market days, washroom maintenance and garbage pickup on the property will be the responsibility of Haldimand.

Assignment and Subletting

7. The Chamber shall not assign this Agreement 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 Chamber

8. The Chamber hereby agrees that it shall, from the commencement date of this Agreement and throughout the Term, operate the Facility primarily for the purposes of the municipality, its citizens and for a public use in accordance with all applicable legislation and municipal by-laws.
9. At commencement of this Agreement, the Chamber 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 out market spaces to vendors.
10. Vendors will be required to obtain and provide proof of insurance to the Chamber.
11. The Chamber will be responsible for ensuring that operations and vendors adhere to Provincial legislation and any applicable County by-laws.
12. All other applicable Haldimand County policies or procedures must be abided by.
13. As the overseer of market operations, the Chamber will have the right on market day to temporarily close access of market square to vehicular traffic to allow for safer pedestrian movement. One access will be required to be left open to allow access to businesses that are adjacent to market square.
14. The Chamber will be required to ensure a representative from their organization be onsite during market weekly to oversee all market operations, collect fees and provide site supervision as well as be responsible for addressing any vendor or customer concerns.
15. The Chamber may rent out the market space outside of regular market hours and outside of any municipal parking lot operating hours as defined by Haldimand. It will be the

Chamber's responsibility to ensure barricades are in place to control parking, and garbage is collected after each rental. Events must follow Haldimand's Special Event Guidelines. Events cannot interfere with regular office hours of adjacent municipal property. The market washroom can be used for these events.

16. Upon discovery of damages to any part of the Facility, the Chamber must notify Haldimand County within 24 hours.

Insurance and Indemnity Provisions

17. Throughout the Term, the Chamber 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 Chamber shall provide Haldimand with a Certificate of Insurance as evidence of such insurance prior to execution of this Agreement and upon the anniversary date of the applicable policy described herein.
18. Throughout the Term, Haldimand shall obtain and maintain property insurance in relation to the Facility.
19. The Chamber 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 Chamber, its employees, representatives or agents in connection therewith.

Damage or Destruction

20. 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 Agreement shall cease.

Events of Breach & Default

21. Each of the following shall be an event of default by the Chamber:
 - (a) the Chamber fails to pay utility rates 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 Chamber fails to observe or perform any of the terms, covenants or conditions contained in this Agreement to be observed or performed by the Chamber;
 - (c) the Chamber 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 Chamber's property;
 - (e) any steps are taken or any action or proceedings are instituted by the Chamber 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 Chamber or its assets;

- (f) the Chamber loses its status or its charter is revoked;
- (g) the Chamber provides notification to Haldimand that it desires to cease operation of the Facility for the purpose of a Farmers' Market;
- (h) the Chamber 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 Agreement;
- (i) the Chamber 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 Chamber, without prior written approval of Haldimand to any such alteration, amendment or change (except the election of different or other directors for the Chamber);
- (j) the Chamber is in default under or in breach of any term of a loan agreement or other financial commitments between the Chamber as borrower and Haldimand as lender;
- (k) the Chamber fails to obtain and/or maintain the insurance coverage(s) as required pursuant to this Agreement;

then Haldimand has, in addition to any other rights or remedies, it has pursuant to this Agreement 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 Chamber, 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.

- 22. Haldimand may at any time after such re-entry or simultaneous with such re-entry elect to terminate this Agreement for such previous breach. In such event Haldimand may recover from the Chamber 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 Chamber to Haldimand.
- 23. 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 Agreement or because of the breach of any other terms, covenants or conditions herein contained on the part of the Chamber to be kept or performed and a breach is established, the Chamber shall pay to Haldimand all expenses incurred therefore, including legal fees (on a solicitor and his client basis).

Improvements and Alterations by Chamber

- 24. If the Chamber 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 Chamber 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.
- 25. All improvements and alterations in and to the Facility shall remain upon the Facility at the end of the Term without compensation to the Chamber.

Financial Matters

26. The Chamber shall have the ability to charge its own vendor fee.

General Provisions

27. The division of this Agreement 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 Agreement.
28. The Schedule A which is attached to this Agreement is incorporated into this Agreement by reference and are deemed to be part hereof.
29. In this Agreement, 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.
30. In this Agreement, unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.
31. 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 Agreement.
32. This Agreement and the schedule referred to herein constitute the entire Agreement 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.
33. Each provision of this Agreement 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.
34. Any party which is entitled to the benefits of this Agreement 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 Agreement; 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 Agreement in respect of any other term and condition (whether of the same or any other nature).
35. No modification, supplement, termination, waiver or amendment to this Agreement may be made unless agreed to by the parties hereto in writing.
36. This Agreement shall be binding upon and endure to the benefit of the parties and their respective heirs, administrators, executors, successors and permitted assigns.
37. This Agreement 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.
38. Time shall be of the essence of this Agreement.

- 39. Provided the Chamber is not in default under the terms of this Agreement, the Chamber and Haldimand may, by agreement in writing, renew this Agreement for five (5) further terms of five (5) years each on the same terms and conditions as are contained in this Agreement except with respect to the final renewal, which shall be without any further right of renewal.
- 40. Any notice, request or demand herein shall be provided in writing 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 Chamber:

Hagersville Community Centre
 62 Main Street South
 Hagersville, ON N0A 1H0
 Email: info@hagersvillechamber.ca

- 41. Either party shall have the right at any time to terminate this Agreement upon giving at least 30 days written notice to the other party.
- 42. In the event the Chamber has breached or defaulted in any of its obligations in this Agreement 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 Agreement upon giving fifteen (15) days notice.
- 43. Upon termination of this Agreement, the Chamber 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 Chamber shall, at its own expense, replace and restore the Facility to a safe and proper condition to the satisfaction of Haldimand.
- 44. This Agreement shall not be registered on title to the Facility.
- 45. In the event of a dispute over any parts of this agreement the issue will be brought forward and adjudicated by the General Manager of Planning and Economic Development.

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

SCHEDULE "A" DESCRIPTION OF PROPERTY

Municipal Address

Hagersville Market Area

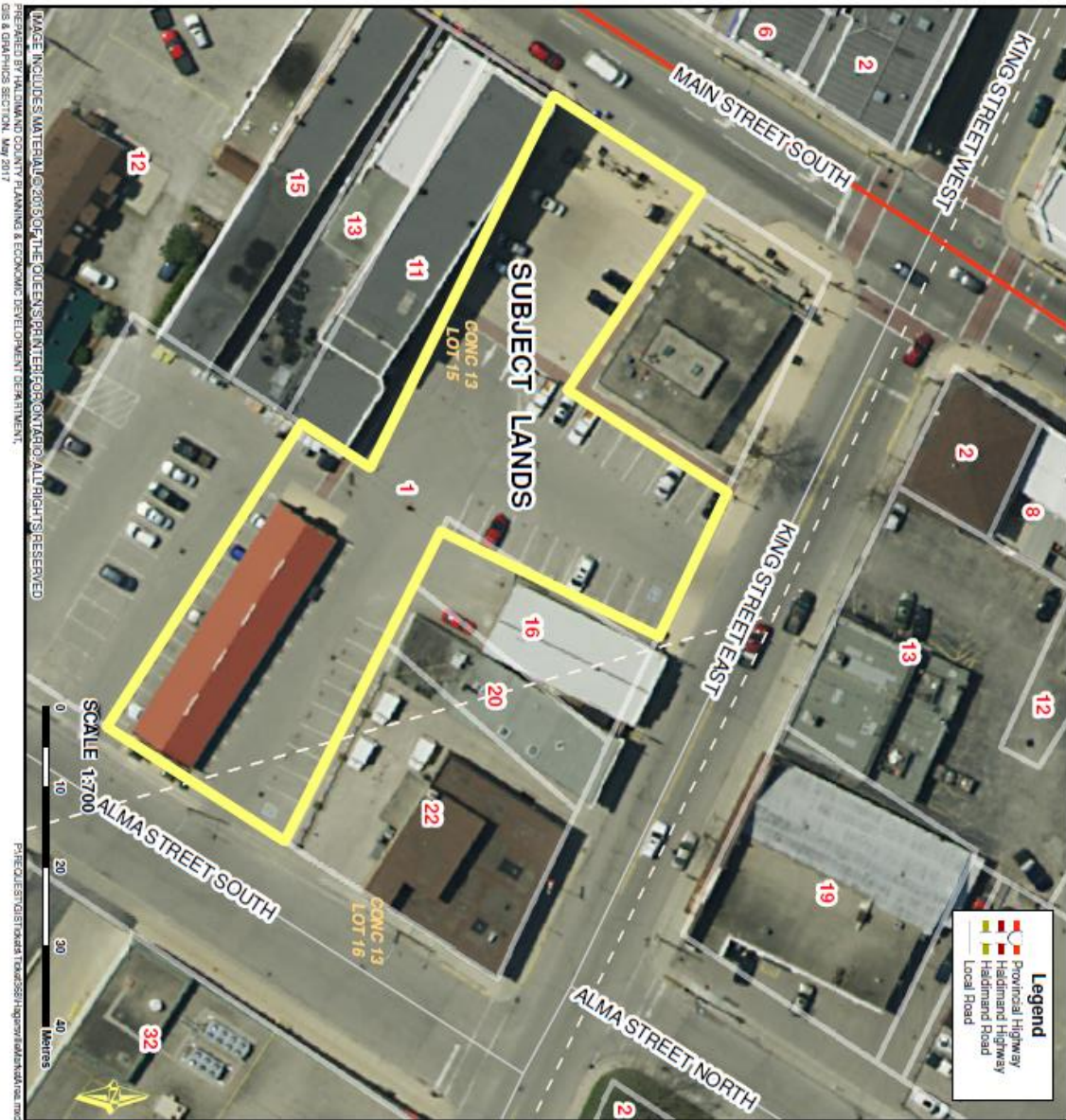


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PREPARED BY HALDIMAND COUNTY PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT,
GIS & GRAPHICS SECTION, MAY 2017

PH: 519-251-1044 T: 519-251-1044 FAX: 519-251-1044



Location:
1 MAIN STREET SOUTH
URBAN AREA OF HAGERSVILLE

Legal Description:
HAG PLAN 905 BLK 22 LOT 27
LOT 28 PT LOT 1, 25, 26

Property Assessment Number:
Part of 2810 154 004 31000 0000

Subject Lands Size:
approx. 0.28 HECTA RES (0.64 Acres)

Property Code:
400 Small Office Building (Generally Single Tenant or Owner occupied under 7500 S.F.)

Zoning:
CG (General Commercial)

HALDIMAND COUNTY, ITS EMPLOYEES, OFFICERS AND AGENTS ARE NOT PROVIDING A PROFESSIONAL OPINION OR SERVICE OF ANY KIND, WHETHER DUE TO THEIR OWN NEGLIGENCE OR OTHERWISE. DO NOT USE FOR OPERATING MAP OR DESIGN PURPOSES. ALL INFORMATION TO BE VERIFIED.

