

# **THE MOHAWK COLLEGE OF APPLIED ARTS AND TECHNOLOGY OPERATING AGREEMENT**

THIS OPERATING AGREEMENT ("this Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**BETWEEN:**

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

- and -

**THE MOHAWK COLLEGE OF APPLIED ARTS AND TECHNOLOGY**  
(hereinafter referred to as "City School by Mohawk")

**WHEREAS** Haldimand is the owner of the lands and premises known as the Dunnville Memorial Arena and Community Lifespan Centre (parking lot) and more particularly described in Schedule "A" attached hereto (the "Area");

**AND WHEREAS** Haldimand and City School by Mohawk are desirous of entering into an Operating Agreement (the "Agreement") pursuant to which the City School by Mohawk will operate the mobile training trailer on the Dunnville Arena parking Area as approved through Haldimand County;

**AND WHEREAS** the operation of the mobile training trailer 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.

## **Terms and Conditions**

2. City School by Mohawk will operate on the designated Dunnville Memorial Arena & Lifespan Centre parking area from May 28, 2018 to August 24, 2018 (the "Term"). This schedule can be changed, extended, or renewed for additional terms, upon mutual agreement between City School by Mohawk and the General Manager of Planning and Economic Development.
3. City School by Mohawk will utilize the Area identified in Schedule A, during the Term subject to the terms and conditions set out in this Agreement.
4. Acting reasonably and with prior notice, Haldimand reserves the right to modify the placement of the mobile training trailer anytime during the Term.
5. It is agreed the Area as identified in Schedule A shall be provided to City School by Mohawk without charge for the duration of this Agreement.

6. City School by Mohawk, at its own expense, will be responsible for ensuring the mobile training trailer has access to required utilities.
7. Haldimand will provide keyed access to washroom facilities. Washrooms are located adjacent to the mobile training trailer parking Area within the Dunnville Memorial Arena and Community Lifespan Centre (entrance to washrooms are at the rear of the building).
8. City School by Mohawk shall accept the Area in 'as is' condition and at all times keep the Area in good repair, order and condition and in a clean and tidy state and obtain the consent of Haldimand prior to making any changes to the Area or placement of the mobile training trailer.
9. At the expiration or sooner termination of this Agreement, City School by Mohawk agrees to remove its fixtures (fencing, barricades, cones, stations etc. and storage container) which Haldimand requires be removed; and leave the Area in good repair, order and condition, subject only to reasonable wear and tear.

### **Assignment and Subletting**

10. Neither party shall assign this Agreement or any part hereof to any other person or party without the prior written consent of the other.

### **Operation of Facility and Provision of Facility by City School by Mohawk**

11. City School by Mohawk hereby agrees that it shall, from the commencement date of this Agreement and throughout the Term, operate the mobile training trailer for a public use in accordance with all applicable legislation and municipal by-laws.
12. City School by Mohawk will be responsible for ensuring that operations adhere to Federal, Provincial and Municipal legislation and any applicable Haldimand by-laws.
13. All other applicable Haldimand County policies or procedures must be abided by.
14. Upon discovery of damages to any part of the Facility (Dunnville Memorial Arena & Lifespan Centre or parking Area), City School by Mohawk must notify Haldimand within 24 hours. City School by Mohawk will indemnify Haldimand County of any damage that occurs as a result of the activities proposed under this Agreement.
15. City School by Mohawk is required to provide and monitor their own security system for the training trailer.

### **Insurance and Indemnity Provisions**

16. Throughout the Term, City School by Mohawk shall obtain and maintain at its cost, 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 cross liability and severability of interest clauses and provide for 30 days' notice of cancellation or material change. City School by Mohawk shall provide Haldimand with a Certificate of Insurance as evidence of such insurance prior to execution of this Agreement.
17. Throughout the Term, Haldimand shall obtain and maintain property insurance in relation to the Facility.
18. City School by Mohawk 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/or the operation of the mobile training trailer, its employees, representatives or agents in connection therewith.

19. City School by Mohawk shall indemnify, defend and hold harmless Haldimand against all manner of claims, damages, loss, costs and charges whatsoever related to injuries to any of its employees arising either directly or indirectly as a result of its activities and/or the operation of the mobile training trailer.

#### **Damage or Destruction**

20. It will be the sole responsibility of City School by Mohawk to replace or repair damages to the mobile training trailer. Haldimand shall not be responsible either directly or indirectly, for any damage suffered to the mobile training trailer howsoever caused that may occur arising from the activities and/or the operation of the mobile training trailer unless the damage was a result of negligence or wilful misconduct on the behalf of Haldimand.

#### **Events of Breach & Default**

21. Each of the following shall be an event of default by City School by Mohawk:
  - a) City School by Mohawk fails to observe or perform any of the terms, covenants or conditions contained in this Agreement;
  - b) City School by Mohawk 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;
  - c) a receiver or a receiver and manager is appointed for all or a portion of the City School by Mohawk property;
  - d) any steps are taken or any action or proceedings are instituted by the City School by Mohawk 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 City School by Mohawk or its assets;
  - e) City School by Mohawk provides notification to Haldimand that it desires to cease operation of the mobile training trailer;
  - f) City School by Mohawk assigns, transfers, encumbers, sublets or permits the occupation or use or the parting with or sharing possession of all or any part of the parking Area and mobile training trailer by anyone except in a manner permitted by this Agreement;
  - g) City School by Mohawk fails to obtain and/or maintain the insurance coverage(s) as required pursuant to this Agreement;
22. Haldimand may at any time after breach or default elect to terminate this Agreement. In such event Haldimand may recover from City School by Mohawk all costs, expenses and damages it incurs by reason of such breach or default.
23. Following any termination of this Agreement for breach or default, City School by Mohawk shall remove the mobile training trailer from Haldimand property, at the expense of City School by Mohawk, within ten (10) days. In the event City School by Mohawk fails to remove the mobile training trailer within ten (10) days following termination of this Agreement, Haldimand shall be permitted to remove the training trailer at City School by Mohawk's expense.

## **General Provisions**

24. 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.
25. Schedule A is incorporated into this Agreement by reference and deemed to be part hereof.
26. 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.
27. 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.
28. 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.
29. 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.
30. 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.
31. 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).
32. No modification, supplement, termination, waiver or amendment to this Agreement may be made unless agreed to by the parties hereto in writing.
33. This Agreement shall be binding upon and enure to the benefit of the parties and their respective heirs, administrators, executors, successors and permitted assigns.
34. 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.
35. Time shall be of the essence of this Agreement.
36. 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](mailto:opportunity@haldimandcounty.on.ca)

if made to the City School by Mohawk:

Mohawk College of Applied Arts and Technology  
135 Fennell Avenue  
Hamilton, ON  
L9C 0E5

Attn: Emily Ecker  
Associate Dean, Community Partnership and Learning

37. 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.
38. In the event City School by Mohawk 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.
39. Upon termination of this Agreement, City School by Mohawk 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. City School by Mohawk shall, at its own expense, replace and restore the Facility to a safe and proper condition to the satisfaction of Haldimand.
40. This Agreement shall not be registered on title to the Facility.
41. 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.

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**THE CORPORATION OF HALDIMAND COUNTY**

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Per:

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Ken Hewitt, Mayor

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Evelyn Eichenbaum, Clerk

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I/We have authority to bind the corporation.

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**THE MOHAWK COLLEGE OF APPLIED ARTS AND TECHNOLOGY**

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Per:

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Paul Armstrong, Vice President

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**Tom Ferns, General Counsel and Corporate Secretary**

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I/We have authority to bind the corporation.

**SCHEDULE "A"**  
**DESCRIPTION OF PROPERTY**

Dunnville Arena



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1:1,128  
0 0.0075 0.015 0.03 mi  
0 0.01 0.02 0.04 km  
Esri HERE Garmin OpenStreetMap contributors  
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