

THIS AGREEMENT to come into effect the 1st day of **October 2022**.

B E T W E E N :

THE CORPORATION OF THE TOWN OF FORT FRANCES

hereinafter called the "Town".

- AND -

TESS’S KITCHEN

hereinafter called the "Concessionaire, or Operator, or Canteen Operator".

WHEREAS the Town is the owner of the Memorial Sports Centre situated within the Town of Fort Frances;

AND WHEREAS the Concessionaire is desirous of contracting with the Town for the operation of the two (2) Concessions situated within this facility;

NOW THEREFORE, in consideration of the covenants and promises herein contained, the parties hereby agree as follows:

1. DEFINITIONS

In all documents forming part of this Contract, unless the context requires otherwise:

"Town Equipment" means the equipment supplied to the Concessionaire on an "as is" basis and owned by the Town as described in Schedule "A".

"Facility" means the buildings within which the concession areas (as are described in the Agreement) are located, includes the entire Memorial Sports Centre.

"Gross Sales" means, when used in relation to any period of time, the entire amount charged by the Concessionaire on all concession sales of merchandise, foods, beverages, services and any other products or services whatsoever which are provided under this Contract during any such period of time whether or not such sales are made on a cash basis or on credit, paid or unpaid, collected or uncollected, including deposits not refunded to customers, but gross sales shall not include, to the degree that the Concessionaire has included them therein:

any sales or excise tax imposed by any government authority and added to the price of a sale or service or absorbed therein and collectable from the customer;

the amount of money recovered on any return of goods to suppliers of the Concessionaire; and

the amount of any credit or refund for any merchandise returned or exchanged or any allowance made for loss of or damage to merchandise sold.

2. THE CONCESSION

The Town hereby grants to the Concessionaire/Operator the exclusive rights to sell at the Concessionaire's sole expense, food, beverages, services, and miscellaneous products (subject always to the approval of the Town through the Recreation and Culture Manager), in the concession areas more particularly detailed in section four (4) hereinafter set out. The Concessionaire agrees to operate the concessions and to sell the said food, beverages, services and miscellaneous products during the term of this Agreement in a good and professional like manner subject always to all terms of the Agreement.

3. EXCEPTED SALES AND SPECIAL EVENTS

Although the Concessionaire has the authority to sell the products (in the discretion of the Town) that are herein provided in the concession locations specified in section four (4), the Concessionaire acknowledges and agrees as follows:

Circus - The Town has historical arrangements with the Shriners that allow them to sell candy floss, peanuts, plus novelty, and souvenir items.

The Concessionaire must agree and adhere to this stipulation under this contract and any subsequent extensions to other groups as deemed appropriate by the Town.

Socials and Weddings – The Town rents the Auditorium to community members for socials, youth dances, weddings, beer gardens, and banquets where they can provide their own food and beverage or contract to a caterer. It is therefore agreed that the Concessionaire would have the option to provide these services subject to all terms & conditions herein. The concessionaire can provide services at the renter's request that would be subject to all terms & conditions herein, including the gross sales calculation payable to the Town. The Concessionaire agrees to not limit, inhibit, or otherwise obstruct this past practice.

Festivals and Trade Shows – the Town rents the arenas for a variety of events when the ice is out, including but not limited to Pow-Wows, Employee Appreciation Days, Trade Shows, and the like where the renter provides food and beverage as part of the activities. This agreement will not limit, inhibit, or otherwise obstruct the renter's ability to provide food & beverage for their activities. The concessionaire can provide services at the renter's request that would be subject to all terms & conditions herein.

4. CONCESSION AREAS

The said concession areas, in addition to being detailed below, are more particularly outlined on the plans attached hereto as Schedule "B":

Memorial Sports Centre: Main Foyer contains approximately 64 square meters of concession's space inclusive of receiving and storage area. Ice For Kids Arena concession – 2nd floor.

5. PAYMENT FOR PRIVILEGES

In consideration of the Concessionaire's rights herein to provide services, the Concessionaire shall pay to the Town \$500 for each month they are in operation during the specified period set out in section nine (9); herein this Agreement sometimes referred to as 'percentage charges'. Canteen services shall operate between the months of October and May for the life of this agreement. Proposed changes to this schedule must be submitted in writing and are subject to approval by the Recreation & Culture Manager.

In the event that this Agreement or the concession privileges hereby granted are terminated prior to the end of the term hereof, the payment to the Town shall be apportioned to the date of termination and paid forthwith by the Concessionaire to the Town, all without prejudice to any other claims entitlement of the Town.

6. RECEIPTS FROM CONCESSION OPERATION

The Town shall have the right to have access to all financial information of the Concessionaire in the Facilities, the Concessionaire shall be entitled to retain all receipts derived from the Concession for its own use absolutely.

7. ALTERATIONS AND ADDITIONS

The Concessionaire shall not alter, add to, or in any way vary a Concession area or Town property without first obtaining consent in writing of the Town from the Recreation and Culture Manager.

8. REPORT OF ACCIDENTS:

The Concessionaire shall give immediate notice to the Town of any accident arising out of the operation of any Concession and any damage to any part of the facility.

TERM

This Agreement shall be for a term commencing on the 1st day of October 2022 and terminating on the 30th day of June 2024.

9. EQUIPMENT AND FACILITIES

The Town equipment shall be maintained and repaired by the Town. In those circumstances where damage was a direct result of neglect by the concessionaire, any of its employees or agents, the concessionaire shall be solely responsible for repairs. The Concessionaire shall be responsible for any additional or new equipment necessary for the efficient operation of the concessions. The Concessionaire will maintain the premises and fixtures in a clean and wholesome condition at all times. The Concessionaire will not allow refuse or other objectionable material to accumulate on or around the premises and will keep the premises in a clean and tidy condition at all times.

10. COMPLIANCE WITH REGULATIONS

The Concessionaire agrees to comply with all laws and regulations, including Federal, Provincial, Municipal, and all Municipal bylaws and regulations pertaining to the storage and serving of food goods and refreshments. The Concessionaire agrees to comply with all labor and employment laws & regulations in the operation of the concession and will, at his or her own expense, obtain and pay for all required licenses or permits that may be required.

11. COVENANT TO OPERATE

The Concessionaire shall provide its concession services in the concession areas at Memorial Sports Centre during the operating hours and seasons hereinafter set out, the Concessionaire may extend the hours if business demand dictates with the approval of the Town. The Concessionaire may also propose alternate operating hours to correspond with changing business volume. These proposed hours are subject to approval of the Recreation & Culture Manager.

i. OPERATING HOURS

Weekdays 03:30 p.m. to 10:00 p.m. and weekends 08:00 a.m. to 10:00 p.m. These hours are only subject to change in order to meet the program needs of the Sports Centre upon written agreement by both parties. The Concessionaire will ensure that the Canteen is operational during all Laker and Muskie games and tournaments.

ii. CLOSING OF FACILITIES

The Town at all times reserves the right to close the Facilities, or part of them, in the Town's sole and absolute discretion. The Town may consider closing the Facilities during inclement weather, for repairs, or in cases of an emergency. The Town may also close parts of the facility in the event that a season is shortened due to lack of interest in the use of the facility. In such event, the operating hours and days for which the facilities are not opened shall be correspondingly reduced in this agreement.

12. VENDING MACHINES

The Memorial Sports Centre staff will assume the responsibility of the vending machines and they will not be subject to revenue for the concessionaire in any way. The concessionaire hereby relinquishes any right or privilege to the revenue generated by the vending machines and will not otherwise inhibit the ability for such to generate revenue for the facility.

13. OCCUPANCY OF PREMISES

Notwithstanding anything herein contained, the Concessionaire is not and shall not be a tenant of the Town and is not and shall not be entitled to exclusive possession or occupancy of any part of the Facilities or concession areas. The use of the Facilities is limited to their use in order to provide the services under this Contract by the Concessionaire, to the extent necessary to do so and only to that extent. The Town and its authorized personnel shall have access to all parts of the Facilities, including the concession areas without any prior notice for any and all purposes, including, but not limited to Public Health and Fire Inspections. The Town shall use reasonable best efforts not to interfere with the performance of services hereunder.

14. TERMINATION Notwithstanding the foregoing:

- i) Either party to this Agreement shall have the right to terminate this Contract giving fifteen (15) days written notice to the other and neither party, in the event of exercising its right of early termination, shall have to provide any reason whatsoever for terminating the Contract.
- ii) If the Concessionaire is in default hereunder, the Town shall have the right to immediately

terminate this Contract by the delivery of written notice to the Concessionaire, in which case this contract shall be at an end and the parties shall have no further obligations except any outstanding payments due, one to another, save and except.

iii) The Concessionaire shall be responsible for any obligations incurred in this agreement or breaches of this agreement up to date of termination.

iv) The Concessionaire will be obligated to continue to account and provide all information and payments under this Agreement with respect to any net profit made or transacted before the termination hereof.

v) The right of the Town to any and all financial and sales information for the period up to termination will survive beyond the termination of this Agreement for at least one year.

15. DEFAULT

For the purpose of this section, the Concessionaire will be deemed to have defaulted under the terms of this Contract upon incidence of any of the following:

i) The Concessionaire breaches any of the terms or conditions of this contract.

ii) The Concessionaire violates any law, commits or becomes involved in any situation or occurrence which, in the opinion of the Town or Recreation and Culture Manager, would tend to bring the Town into public disrepute or dishonor.

16. VERBAL AND OTHER ARRANGEMENTS

This Contract may not be amended, modified, or in any way changed except by a written document of equal formality herewith.

17. DAMAGE TO PROPERTY OF THE TOWN

In carrying out the operation from its inception and until the conclusion of the same, the Concessionaire shall make good any damage, due to neglect, caused to property of the Town at its own expense.

18. DAMAGES AND INDEMNITY

The Concessionaire shall be responsible for any and all claims, demands, damages, law suits, other proceedings, causes of action, liabilities, claims for lien, civil and criminal penalties and charges, costs and other expenses including reasonable legal fees done or caused by it, its employees or patrons, or resulting from the prosecution of the operation or caused by reason of the existence or location or condition of the premises or of any equipment used therein, or which may happen by reason thereof, or any and all claims, demands, damages, law suits, other proceedings, causes of action, liabilities, claims for lien, civil and criminal penalties and charges, costs and other expenses including reasonable legal fees whatsoever which may arise as a result of the operations of the Concessionaire, the Concessionaire's servants, agents or employees, or arising or related to the use or the occupation of the concession areas and Facilities or the exercise of any privileges herein granted or arising from any failure, neglect or omission on their part, or on the part of any of their employees, to do or perform any or all of the several acts or things required to be done by them under and by these conditions, and covenants and agrees to hold the Corporation harmless and indemnified for all such claims, demands, damages, lawsuits, other proceedings, causes of action, liabilities, claims for lien, civil and criminal penalties and charges, costs and other expenses including reasonable legal fees; and in case of the Concessionaire's failure, neglect or omission to observe and perform faithfully and strictly, all the provisions of these Conditions, the Town may either with or without notice (except where in these Conditions notice is specially provided for, and then upon giving the notice therein provided for), take such steps, procure such materials and workers, do such work or things as deemed advisable toward carrying out and enforcing the same, and any and all expenses so incurred may be deducted or collected by the Town from the Concessionaire, and any such action by the Town as herein empowered to take, shall not in any way relieve the Concessionaire from any liability under this Contract.

19. CONCESSIONAIRE'S EQUIPMENT

Equipment and property of the Concessionaire are not protected against fire, theft, vandalism or other risks by the Town, and the protection of such, and any damage caused too such, is the sole and complete responsibility of the Concessionaire.

20. CONCESSIONAIRES' REPORTS AND AUDITS

i) The Concessionaire shall submit to the Town on or before the 15th day following the end of each

calendar month and partial calendar month during the term of this agreement, written statements signed by the Concessionaire certified to be true and correct showing the amount of gross sales for the preceding month or partial calendar month.

ii) For the purpose of ascertaining the amount payable under section five (5) and for permitting verification by the Town, the Concessionaire shall keep at the Facilities or at its office, for a period of not less than 3 years following the end of each calendar year or a part thereof within the term of this Contract adequate books and records including but not limited to records of inventories, purchases and receipts of merchandise and all sales and other transactions by the Concessionaire.

iii) In addition to any other right of the Town, the Town, its employees and authorized representatives may require an audit of the books and records of the sales and expenses of the Concessionaire and all persons conducting business on or from the premises necessary to verify "Gross Sales". The report on the audit made by the Town's auditor will be final and binding upon the Concessionaire and the Town upon all questions relating to financial matters or compensation. Acceptance by the Town of any payments under this Contract is without prejudice to the Town's right to an audit of the books and records of the Concessionaire.

21. WORKPLACE SAFETY AND INSURANCE BOARD (ONTARIO)

Upon the execution of this Contract, the Concessionaire shall deliver to the Town, certificates of good standing from the Workplace Safety and Insurance Board of Ontario, with respect to all the employees of the Concessionaire and shall provide such additional certificates as often as is deemed necessary by the Town during the term, but in any event shall provide such a certificate at least annually on the anniversary date of the commencement of the term. The Concessionaire shall be responsible, at its expense, for the charges, assessments or other payments required to be paid to the WSIB with respect to the Concessionaire's employees. The Concessionaire shall pay to the Workplace Safety and Insurance Board of Ontario all assessments and levies owing to the Board in respect to this contract and any unpaid assessments or levies shall be the sole responsibility of the Concessionaire.

22. OCCUPATIONAL HEALTH AND SAFETY ACT

The Concessionaire shall be solely responsible for employee safety and for compliance with the Occupational Health and Safety Act and Regulations and the Concessionaire shall, at its sole cost and expense, ensure that all contractors, agents, servants and employees comply with the Act and Regulations and the Concessionaire shall indemnify the Town against any contravention thereof whatsoever.

23. TAXES

The Concessionaire shall be solely responsible for the payment of all taxes and necessary permits of any kind whatsoever including, but not limited to, income, sales, business, employer health and all other applicable taxes which may be assessed or levied against the Concessionaire or which may relate to the Concessionaire, its operations. The Concessionaire shall reimburse, indemnify and save harmless the Town of and from any liability for all such taxes.

24. UTILITIES

The Town shall provide all heat, electrical power, fuel, refrigeration, ventilation and air conditioning (where installed), and utility services reasonably required for the efficient provision of services under this contract.

25. GLASS OR CROCKERY

In the Arena Facilities the Concessionaire shall not use glass or crockery or bottles for the service of food, tea, coffee, milk, or beverages, but shall use paper containers for this service.

26. CONCESSION SEATING AREA

During specified hours of operation, the concessionaire is responsible for cleaning and housekeeping of the concession seating area in the lobby of the Arena and shall keep all tables clean and remove used dishes and refuse there from.

27. ITEMS FOR SALE

For the purpose of providing Food Service, the Concessionaire agrees to offer commonly accepted fast food items, snacks and abide by the contractual requirements between the Town and Pepsi Cola Limited. The Town will provide at the cost to the concessionaire all the necessary products from Pepsi for resale. The sale of sunflower seeds and peanuts in the shell is not permitted.

28. PRICES TO BE DISPLAYED

Prices must be displayed in prominent places, in order that the patrons may be kept informed of such prices. Menus must be displayed at each of the concession areas in the facility.

29. ALCOHOL

The Concessionaire and its employees, agents and representatives, shall not offer for sale, sell, serve, store, consume or permit to be consumed, any liquor or alcohol products in the concession areas and Facilities. Such rights are reserved to the Town in the Facilities and the Concessionaire acknowledges that the Town may carry on liquor and alcohol sales as aforesaid. As well, the Town may permit any other groups, clubs, persons to sell liquor or alcohol products in its facilities as the Town in its absolute discretion deems advisable. The Concessionaire specifically acknowledges the Town's exclusive rights in this regard.

30. SECURITY

The Concessionaire shall be responsible for his/her own cash control and handling procedures, including insuring that cash is picked up on a daily basis.

31. INSURANCE

The Concessionaire shall provide and maintain during the term of the Contract Comprehensive General Liability insurance acceptable to the Corporation of the Town of Fort Frances and subject to limits of not less than \$5,000,000.00 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof.

32. NO ASSIGNMENTS

Neither this Contract and the rights granted to the Concessionaire hereunder nor any part thereof are assignable by the Concessionaire without the prior written approval of the Town to such assignment, which approval may be withheld without reason by the Town.

33. MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

i) All of the records and documents of the Concessionaire referred to and cited in this Agreement where such records and documents have been created in order to comply with the terms, provisions, requirements and obligations of the Concessionaire as set out in this agreement are "records" of the Town as "records" are defined in the Municipal Freedom of Information and Protection of Privacy Act.

ii) The records and documents referred to in the paragraph above are, for the purposes of this Agreement, in the joint care and custody of the Concessionaire and of the Town; and

iii) The Concessionaire hereby agrees with the Town that the records and documents referred to in the first paragraph above will be managed and administered in accordance with the requirements of the Municipal Freedom of Information and Protection of Privacy Act.

34. NOTICE

To the Concessionaire by mailing the notice to:

Tess's Kitchen

1030 Scott Street, Fort Frances, ON, Canada, ON P9A 1J7 Attention: Tess Coish, Caterer

To the Town by mailing the notice to:

The Corporation of the Town of Fort Frances

320 Portage Avenue Fort Frances, ON P9A 3M3 Attention: Gabrielle Lecuyer, Clerk

OR to such other address as each party may advise the other by notice in writing. Notice given in this manner shall be deemed to have been given and effective as of the fifth day following the date of mailing.

IN WITNESS WHEREOF the Town hereto has affixed its Corporate Seal and attested by its proper Officers duly authorized on their behalf and has hereunto set

SIGNED SEALED
AND DELIVERED

) THE CORPORATION OF THE TOWN
) OF FORT FRANCES

MAYOR: _____

CLERK: _____

Per: _____ Printed: _____

Per: _____ Printed: _____

Witness: _____ Printed: _____

SCHEDULE "A" Town Owned Canteen Equipment

One Quest gas grill and oven combination

One Quest two basket deep fryer

One popcorn machine

Four deep freeze chests

Two Bunn coffee machines with glass pots

One Espresso Machine

Various pots, utensils, and can opener

Two Pepsi Display Coolers

Schedule 'B' – Concession Areas (Two Drawings Attached)



