

**OPERATING AGREEMENT FOR THE CITY OF TERRACE
SPORTSPLEX CONCESSION 2020-2021 AND 2021-2022 SEASON**

THIS AGREEMENT is dated for reference the _____ day of _____, 2020.

BETWEEN:

THE CITY OF TERRACE

a municipal corporation of the Province of British Columbia,
having a mailing address at 3215 Eby Street, Terrace, BC V8G 2X8

(herein referred to as “The City of Terrace”)

AND:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(herein referred to as the “Licensee”)

WHEREAS:

- A: The City of Terrace owns a number of recreation facilities with one of them being the Sportsplex.
- B. The Sportsplex houses two sheets of ice and several multipurpose rooms. Non-profit and profit events are held throughout the calendar year in the Sportsplex, with an increase in these events occurring during the months of September to March.

- C. The Terrace Leisure Services department is responsible for the operation of the Sportsplex and the operations within.
- D. The Licensee and the City of Terrace wish to enter into an agreement, to permit the Licensee to carry on certain business relating to the Concession, and to ensure appropriate compensation to the City of Terrace for permitting the Licensee to have such use of the Concession.

NOW THEREFORE THIS AGREEMENT WITNESSES, in consideration of the premises and of the covenants, representations and agreements herein contained, that the parties hereto covenant, represent and agree as follows:

1. USE OF FACILITIES

1.1. The City of Terrace hereby grants to the Licensee, for a period of two years commencing on August 1, 2020 and ending on May 31, 2022 the exclusive right and licence to use the Concession on the terms and conditions specified herein, (with an option of a one year extension should all terms of this agreement be met); as well as those chattels and equipment presently situated on those premises and listed in the list attached hereto and marked as “**Schedule A**” (which chattels and equipment are herein referred to as “the Equipment”).

1.2. The Licensee covenants with the City of Terrace to open, maintain and operate the Concession for the benefit of those members of the public using the Sportsplex, at the following events that take place at the Sportsplex during the time periods listed below, and any extension thereof:

- a. for 5 hours per weekday during the ice season, approximately 4:00pm to 9:00pm (or as agreed upon by Director of Leisure Services or designated Administrator);
- b. all weekend events (such as games, meets, tests, and carnivals) held throughout the regular ice season (September – March);
- c. any other times mutually agreed to in order to provide food services to the public within the Sportsplex;
- d. all times to be attached as “**Schedule B**”;
- e. all Public and Family Skate times (except for tot skates, adult lengths and drop-in hockey);
- f. and that any exceptions to this arrangement must be approved in writing by the Director of Leisure Services or designate;

1.3 The City of Terrace and the Licensee covenant and agree that the Licensee’s use of the Concession during the said period shall be limited to the times of normal operation of the Sportsplex, but subject to any specific provision herein.

1.4 The City of Terrace and the Licensee may enter into a written agreement for the use of the Concession, as an extension or renewal of the rights and obligations granted herein to the Licensee, on terms and conditions similar to the terms and conditions of this Agreement, except that the amount to be paid shall be subject to negotiation between the parties hereto, and except that there shall be no further right to renew or extend this Agreement.

1.5 Either the City of Terrace or the Licensee may terminate this Agreement by giving notice in writing to the other, at least sixty days prior to the effective date of such termination.

1.6 The City of Terrace may from time to time allow other profit and non-profit organizations to operate food services during special events that are scheduled in the Sportsplex.

1.7 As exclusivity has been awarded to Coca-Cola Bottling Company; all beverages sold in the Concession must be a product of the Coca – Cola Bottling Company.

1.8 The Licensee will ensure that 60% of food and beverage sold from concession is a healthy food choice and agree to display products within recommended guidelines.

1.8.1 Energy drinks and gum are prohibited. All menu items are subject to approval by The City of Terrace. All food and beverage displays must comply with FoodSafe regulations.

2. PAYMENT FOR USE OF FACILITIES

2.1 The sum as set out in “**Schedule C**” (**attached**) will be remitted by the Licensee to the City on the first day each month. In the subsequent years following the first year of this Agreement the amount will be reviewed each August and is subject to increases based on increases in costs of operation at the Sportsplex (utilities and wages).

2.2 The Licensee will supply to the City with an accurate record of gross monthly sales (excluding applicable tax). This record to be submitted on the 15th day of the following month or by the close of the nearest business day should the 15th fall on a weekend.

2.2.1 The City of Terrace will provide templates for submitting financial records.

3. TERMS OF USE: THE LICENSEE'S COVENANTS AND AGREEMENTS

3.1. The Licensee covenants and agrees that he or she shall, throughout the times of his or her use of the Concession during the period specified above, clean the Concession and all other areas of the Sportsplex used in conjunction with the Concession, including all tables and counter tops in the arena lobby, so that they shall be in a fit and proper condition for normal use. All garbage in the Concession shall be removed by the Licensee, to garbage bins (located outside) provided for that purpose.

3.2. The Licensee and the City of Terrace covenant and agree that the Licensee's use of the Concession and Equipment shall be limited to normal use for the retail sale of food and beverages in connection with this Agreement, and for no other purposes.

3.3. The Licensee covenants and agrees to act in accordance with any and all of the reasonable rules, regulations and directions of the City of Terrace in connection with the use of the Concession. The Licensee shall be responsible for the promotion, organization and management of his or her operation of the Concession as carried out in connection with this Agreement, and shall arrange for the proper and sanitary use of the Concession. All the acts and deeds of the Licensee, his or her servants, agents and employees carried out in connection with this Agreement shall be carried out in strict compliance with all applicable laws, statutes, regulations, ordinances, and by-laws, and in strict accordance with all standard industry practices relating to the proper, safe and sanitary management of facilities such as the Concession, and in compliance with all orders and directions of the Health officer or any similar officer or authority. The Licensee covenants and agrees that he or she shall at all times fully comply with all applicable health and food handling statutes and regulations, and sell only food and beverages fit for human consumption.

3.4 The Licensee shall ensure that all prices for food, beverages and other items sold from the Concession are competitive with prices charged from other local businesses in the City of Terrace area.

3.5 The Licensee shall repair according to any notice in writing received from the City of Terrace, any damage caused as a result of his or her negligent or wilful acts, or those of his or her agents or employees.

3.6 The Licensee shall maintain and leave the Concession and the Equipment in good repair at all times, and shall take good care of the Concession and the Equipment so that at the expiration or other termination of this Agreement he or she shall surrender the Concession and Equipment in as good condition as reasonable use will permit.

3.7 The Licensee shall permit any representative of the City of Terrace to enter the Concession at all reasonable times to examine the Concession and the Equipment, and to make such repairs, alterations and amendments that the City of Terrace considers to be necessary or advisable.

3.8 The Licensee shall permit any representative of the City of Terrace to enter the Concession at all reasonable times during the one month prior to the expiration of this Agreement, to exhibit the Concession and the Equipment to any prospective tenant or Licensee, and to put up and display the usual notices advertising the availability of the Concession and Equipment for operating agreement.

3.9 The Licensee shall not make or cause to be made any alterations, additions, or improvements to the Concession or the Equipment without first obtaining the written consent of the City of Terrace to do so. Any alterations, additions and improvements made to the Concession or Equipment by either the City of Terrace or the Licensee shall become the property of the City of Terrace, and shall remain upon and be surrendered with the Concession and the Equipment as a part of them at the expiration or earlier termination of the Agreement. Provided, however, that the Licensee may remove any fixtures or other equipment supplied by him or her and placed on the Concession, thereby gaining possession and ownership of such fixtures and equipment, as long as he or she does so no later than one month after any demand made by the City of Terrace that he or she do so.

3.10 The Licensee shall not assign any of the rights granted to him or her herein, nor shall he or she lease, sublease, mortgage or otherwise charge his or her interest in the Concession or the Equipment without first obtaining the written consent of the City of Terrace to do so.

3.11 The Licensee shall do nothing, nor permit anything to be done, that would constitute a nuisance in connection with his or her exercise of any rights granted to him or her herein, and he or she further covenants and agrees that he or she shall not neglect to do anything that might result in such a nuisance.

3.12 The Licensee shall not sell or distribute in any way, nor shall he or she permit any of his or her employees or agents to sell or distribute in any way, any bottled goods in any other format or packaging that the City of Terrace considers to have a tendency to be or to become dangerous or unsightly.

3.13 The Licensee covenants and agrees that he or she shall not in any way indicate that the Concession is operated by the City of Terrace, and further covenants and agrees that he or she shall at all times display in a conspicuous place about the Concession a sign indicating that the Concession is operated by him or her as proprietor or proprietress. Any such signs shall be displayed in accordance with policy of the City of Terrace.

3.14 The Licensee shall not assign or sublet or otherwise part with possession of the premises or any part thereof without the prior consent in writing of the City.

3.15 The Licensee will agree to provide customer service on behalf of the City of Terrace to the public in a professional, courteous and pleasant manner.

4. TERMS OF USE: THE CITY OF TERRACE'S COVENANTS AND AGREEMENTS

4.1 The City of Terrace shall pay any and all utility rates and municipal taxes assessed against the building or the Licensee on account thereof, for normal use or possession of the portions of the Sportsplex as indicated in this Agreement.

4.2 The City of Terrace shall, through its reasonable efforts and abilities and subject to any events or problems beyond its reasonable control, provide heat, electric power, water and other necessary utilities to the Licensee for his or her normal use of the Concession and the Equipment in connection with the rights granted to him or her herein. The City of Terrace shall have no liability to the Licensee for food spoilage or for lost sales attributable to utility failure, provided the City of Terrace makes reasonable efforts to restore such utilities.

4.3 The City of Terrace covenants and agrees that it shall provide the Licensee with reasonable access to the Sportsplex in connection with his or her use of the Concession pursuant to the terms of this Agreement.

5. PROVISIONS RELATING TO DEFAULT

5.1 The Licensee acknowledges that if he or she fails to make proper and timely payment of any monies due under this Agreement (whether lawfully demanded or not), or if he or she is in breach of any other term or covenant hereof (whether positive or negative), then the City of Terrace may at its option exercise any one or more of the following remedies, in addition to any other remedies that might be available to it at law:

- a. terminate this Agreement immediately and without notice;
- b. suspend its own obligations under this Agreement until such breach is remedied;
- c. re-enter the Concession;
- d. claim damages against the Licensee for any loss caused to the City of Terrace by such breach; and
- e. claim inventory and chattels located in the Concession.

5.2 If the Licensee makes an assignment for the benefit of creditors or, becoming bankrupt or insolvent, takes the benefit of any act that may from time to time be in force for the benefit of bankrupt or insolvent debtors, or if a receiving order in bankruptcy is made against him or her or if the term hereby granted is at any time seized or taken in execution or in attachment, then if the City of Terrace so decides this Agreement shall cease and the term hereby created shall be at an end, and the full amount of the rent for the current month and the balance of the term hereof shall immediately become due and payable, and the City of Terrace in such event may re-enter and take possession of the premises.

5.3 If the Licensee deserts or vacates the Concession for any other reason listed above, or if the Licensee otherwise fails to provide continued and proper operation of the Concession, the City of Terrace may at its option enter the Concession as the Licensee's agent, by force or otherwise, without being liable to the Licensee therefore, and to relet the Concession (including the equipment) as agent of the Licensee, and to receive the rent for the Concession and to apply the same to the payments due herein, holding the Licensee liable for any deficiency.

6. PROVISIONS RELATING TO LIABILITY AND INSURANCE

6.1 The City of Terrace shall not be responsible for any loss or damage caused by the Licensee, his or her agents, representatives or employees, or to any equipment or personal property of any kind owned or used by the Licensee or by any person or persons involved or participating in any of the activities of the Licensee carried on at the Sportsplex in connection with this Agreement, or by any person or persons who might otherwise be invited or permitted by the Licensee at or near the Concession.

6.2 The Licensee undertakes and agrees to indemnify the City of Terrace for any loss or damage caused to the City of Terrace as a direct or indirect result of the activities of the Licensee contemplated by this Agreement, or as a result of any person or persons using or otherwise becoming involved with the Concession.

6.3 The Licensee shall, at his or her own expense, provide and maintain his or her own insurance to cover his or her own equipment and property which may at any time be located at or near the Concession. The Licensee shall also, at his or her own expense, provide and maintain in force, with an insurance company licensed in the Province of British Columbia, a comprehensive liability insurance policy satisfactory to the City of Terrace, covering bodily injury, death and property damage with inclusive limits of at least three million dollars (\$3,000,000) per occurrence. The policy to contain a cross-liability clause which shall indemnify and save harmless the City of Terrace, its officers and officials from any and all claims and liability of any nature arising directly or indirectly from the performance of the Licensee concerning the operation of the concession. Suitable evidence of the said policies is to be submitted to the City of Terrace at the signing of this agreement, showing insurance as aforesaid covering the Licensee's operations and activities in connection with this Agreement, and showing the City of Terrace as additional named insured in such policies. The Licensee shall provide to the City of Terrace, no later than the anniversary date of this Agreement, proof satisfactory to the City of Terrace that the Licensee has fully complied with the provisions of this paragraph.

6.4 The Licensee shall, at his or her own expense, provide a valid Terrace Business License prior to the execution of this Agreement and for the duration of the Agreement.

6.5 The Licensee will provide the City of Terrace a copy of a valid Worker's Compensation Clearance Certificate.

6.6 The Licensee will provide the City of Terrace a copy of a valid FoodSafe Certificate.

6.7 The Licensee will be responsible for their own WCB, Insurance and Revenue Canada remittances.

7. MISCELLANEOUS COVENANTS AND CONDITIONS

7.1 This Agreement shall be binding not only on the parties hereto, but also on their respective administrators, successors and assigns. Provided, however, that the rights of the Licensee shall not be assigned without the prior written consent of the City of Terrace.

7.2 Wherever the singular or plural is used in this Agreement, the same shall include the other, as the context or the parties may require. Wherever the masculine, feminine or neuter is used in this Agreement, the same shall include the other, as the context and the parties may require.

7.3 Time shall be the essence in all respects of this Agreement.

7.4 This document contains the whole Agreement between the parties hereto in respect of the subject matter hereof; there are no warranties, representations, terms, conditions or collateral agreements, express, implied or statutory, other than those expressly set forth herein.

7.5 Any notice to be given pursuant to this Agreement shall be duly and properly given if delivered, or if mailed by prepaid registered post from British Columbia addressed to the other party or parties at the address or addresses shown at the beginning of this agreement, or at such other address as the parties may from time to time designate by notice in writing given to the other. Any such notice shall be deemed to be received, if delivered, on the date of such delivery, and if mailed, on the third business day after the date of such mailing. In the event of a strike by postal workers or any other work stoppage or other similar disruption of postal service, notice must be delivered to be effective.

7.6 Nothing in this Agreement shall be construed so as to entitle the Licensee to consider that he or she is in any way entitled to a renewal or extension of this Agreement at the end term outlined. Renewals or extensions will require a new Agreement.

SCHEDULE "A" – Chattel and Equipment

The chattel and equipment listed below will remain the property of the City of Terrace. Use of the chattel and equipment will be permitted under the terms and conditions of this agreement.

Item:

- 1)
- 2)
- 3)
- 4)
- 5)
- 6)
- 7)
- 8)
- 9)
- 10)
- 11)
- 12)
- 13)
- 14)
- 15)

SCHEDULE "B" – Hours Of Operation

The Licensee agrees to the following schedule as defined below (unless other times are agreed upon by the Director of Leisure Services)

Monday 4:00pm until 9:00pm

Tuesday 4:00pm until 9:00pm

Wednesday 4:00pm until 9:00pm

Thursday 4:00pm until 9:00pm

Friday 4:00pm until 9:00pm

Saturday / Sunday As per Section 1.2-b – All weekend events held throughout the regular ice season during the months of September to March.

Schedule “C” – Schedule of Payments

The Licensee agrees to the following payment total and covenants as set out in **Section 2.1**.

Payment Due Dates	Amount		
October 1, 2020 & 2021	\$ [REDACTED]		
November 1, 2020 & 2021	\$ [REDACTED]		
December 1, 2020 & 2021	\$ [REDACTED]		
January 1, 2021 & 2022	\$ [REDACTED]		
February 1, 2021 & 2022	\$ [REDACTED]		
March 1, 2021 & 2022	\$ [REDACTED]		
April, May, June, July, August , September inclusive of contract	[REDACTED] % of net sales		
	Plus applicable tax		

Schedule "D" – Example of Menu and Pricing

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the date first noted above.

Name (print)

(Signature of Licensee)

(Date)

Name (print)

(Signature of Director of Leisure Services)

(Date)