

**THE CORPORATION OF THE CITY OF ENDERBY**

**ENDERBY CONCESSION SERVICES CONTRACT**

This agreement dated for reference this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**BETWEEN:**

**CITY OF ENDERBY**, a municipality duly incorporated and having its address at  
619 Cliff Avenue, PO Box 400  
Enderby, B.C. V0E 1V0

(hereinafter referred to as “the City”)

AND

**XXX**

(hereinafter referred to as “the Contractor”)

**WHEREAS** the City wishes to engage the services of the Contractor for the operation of the seasonal concession located in the Lions Gazebo at Riverside Park.

**NOW THEREFORE** in consideration of the covenants and agreements hereinafter set out, the parties agree as follows:

1. The Contractor shall provide a concession service for the concession located on the Lions Gazebo at Riverside Park (300 Kildonan Avenue, Enderby BC). The use of the Lions Gazebo concession is non-exclusive; other user groups may rent and use the Lions Gazebo concession for their own functions.
2. The term of this Contract shall be for two full seasons, which is approximately May 2024 through to mid-September 2025.

Subject to mutual agreement, this Contract may be renewed on a year to year basis.

3. Concession services shall be provided during weekend ball tournaments from May to mid-September of each year. Additional concession hours are available, but operation during those times is not a requirement.
4. The Contractor shall pay the City **XX of all monthly gross concession sales or XX per month** and will provide the City with a report or appropriate documentation to substantiate the payment.
5. The Contractor will provide a copy of its menu and prices to the City at the commencement of this Contract and provide at least 1 week’s advance notice to the City of proposed changes to pricing as well as any substantial and permanent changes to the menu products. The parties agree to act reasonably in discussing concerns with respect to a proposed change in menu or pricing.
6. The City will supply power, water, and garbage disposal services to the concessions and will provide use of the following City-owned equipment (“the included equipment”):

- a. Two-basket deep fryer
- b. Grill with overhead vent
- c. Stove with oven
- d. Upright fridge with freezer
- e. Upright fridge without freezer
- f. 4' x 3' freezer
- g. Two-basin sink
- h. Wash tub sink

The Contractor is responsible for all other supplies and inventory required for operation. All costs of operating the concessions shall be the responsibility of the Contractor. No compensation shall be paid to the Contractor by the City due to the loss or failure of any of the included equipment.

7. Any equipment of the Contractor must have approval from the City before installation. The City reserves the right to disallow any installation. Any associated electrical, mechanical, or other works involving changes to a facility must be approved by the City in advance.
8. The Contractor must clean and maintain all equipment in the same manner as a prudent owner during the term of this Contract, including all grease traps except when used by a third party, in which case it shall be the responsibility of the City to ensure that the grease traps are cleaned and the deep fryer oil replaced prior to the Contractor resuming use of the concession or, by mutual agreement, the City reimburses the Contractor for the actual costs of cleaning the grease traps and replacing the deep fryer oil. The City will be responsible for the annual commercial hood cleaning, inspection of the fire suppression system and fire extinguishers, and repairs to the City-owned equipment associated with normal wear-and-tear, but not damage caused directly or indirectly by the Contractor.
9. The Contractor agrees to obtain, at its sole cost and expense, all permits, licenses and service contracts required for the operation of the business and to deal with the disposal of all grease and other waste projects as required by statute, regulation, bylaw, or other enactment.
10. At all times of operation, at least one staff person working at a concession premises must hold a valid Food Safe Certificate, in addition to the Contractor.
11. The Contractor shall obtain and keep in force a policy of comprehensive general liability insurance in a minimum amount of Two Million Dollars (\$2,000,000.00) per occurrence against claims for death, bodily injury, property damage, and property loss, and include the City of Enderby and Regional District of North Okanagan as additional insured.
12. The Contractor shall provide the City with evidence of insurance at the time of execution of this Contract along with a WorksafeBC Clearance Letter prior to the start of contract seasons. The Contractor shall at all times during the term of this Contract be in possession of a valid and subsisting City of Enderby Business License.
13. Prior to commencing operations, and within two weeks of the date of this Contract, the Contractor shall develop a written Food Safety Plan and Sanitation Plan for approval by the Interior Health Authority. Both plans must conform to the Interior Health Authority's specifications and requirements. In the event that the Contractor is unable to obtain the approval of the Interior Health Authority within a reasonable amount of time, the City

reserves the right to terminate this Contract immediately without penalty or notice. The City is responsible for ensuring that the floor and building plans for the concessions meet the Interior Health Authority's specifications and requirements, with such efforts to be undertaken in a reasonable and good faith manner, subject to budget.

14. The Contractor will be responsible for removing all belongings from the concession facility at the end of the concession season and providing a final cleaning.
15. No compensation shall be paid to the Contractor by the City for lost or unrealized revenues by the Contractor for any reason, provided the City acts in good faith.
16. Either party may terminate this Contract during the term for any reason by giving to the other party a minimum of one (1) calendar month's notice.
17. In the case of cause, including breach of any terms of this contract, the party must be given written notice to the other party. Within seven (7) days of the written notice, the other party must commence to cure the breach. In the event that the other party refuses or otherwise cannot cure the breach, this Contract may be terminated without further notice.
18. Neither the Contractor or the City will be liable for any failure or delay in performing an obligation under this Contract that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, the generalized lack of availability of raw materials or energy, as well as any related public health, safety, or emergency measures issued by an authority having jurisdiction.  
  
For the avoidance of doubt, this shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.
19. This Contract is not a contract of employment. The Contractor is an independent contractor and nothing herein shall be construed to create a partnership, joint venture or agency and neither party shall be responsible for the debts or obligations of the other. It is understood that this Contract is strictly between the City and the Contractor and in no way shall be interpreted as creating an employment relationship between the City and the Contractor, its employees, agents, or sub-contractors (if any). Should any differences arise between the Contractor and its employees, agents or sub-contractors, they shall be resolved directly between them.
20. All employees are employees of the Contractor and have no employment relationship with the City. The Contractor is responsible for ensuring that the employees are remunerated in accordance with BC Employment Standards and is responsible for all WorkSafeBC remittances and assessments for all statutory deductions and remittances.
21. If any section of this Contract or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, shall be considered separate and severable and the remaining parts or sections shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

22. The Contractor acknowledges that the City is subject to the Freedom of Information and Protection of Privacy Act (British Columbia) and that this Contract and any records provided to the City may be subject to public disclosure under that Act.

**SIGNED, SEALED AND DELIVERED**

by the **CITY OF ENDERBY** in the presence of

\_\_\_\_\_  
Corporate Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date