

Winfield Arena Operating Policy #72.2.1, Schedule "F"

COUNTY OF WETASKIWIN WINFIELD ARENA CONCESSION LEASE

This lease is dated for reference the ____ day of ____, ____.

BETWEEN:

County of Wetaskiwin, a municipality incorporated under the *Municipal Government Act of Alberta*, and having its office ½ mile outside of the County of Wetaskiwin, AB, T9A 2G5. Telephone Number (780) 352-3321. Fax Number (780) 352-3486

(the "County")

AND:

(the "Tenant")

WHEREAS:

- A. The County is the owner in fee simple of that land within the Hamlet of Winfield, legally described as:

The parcel containing 22.44 acres more or less on Pt. S.E. 18-46-3-W5M which lies east of the land divided under plan 3470 H.W. and north of northerly limit of the road as shown on Road Plan 3553 J.Y

On which is constructed the Winfield Agriplex (the land and building together called the "Facility"); and

- B. The Tenant wishes to lease from the County that portion of the Facility known as the North Winfield Arena Lobby & Concession for the purpose of operating a food and beverage concession.

NOW THEREFORE, this Agreement witnesses that in consideration of the rent to be paid and the covenants and agreements to be observed and performed and for other good and valuable consideration (the receipt and sufficiency of which are expressly acknowledged) the parties covenant and agree as follows:

1. Leased Land and Premises

The County hereby leases to the Tenant the premises (the “Premises”) within the Facility, known as the Winfield Arena Lobby & Concession.

2. Term

The term of this Lease is one year, commencing on _____, _____ and terminating at midnight on _____, _____. If the Tenant is not in default under this Lease, the Tenant has the option to renew this Lease on the same terms for a further one year term, if agreed to by the County. The Tenant must give written notice to the County of its request to renew the Lease no later than August 1, 20___. The County will provide a written response by no later than September 1, 20___. There is no other right to renew this Lease.

3. Rent

The Tenant shall pay rent to the County in the amount of \$ _____, which includes utilities, (the “Rent”) on the first day of every month commencing _____, _____.

4. Premises Use

The Tenant shall use the Premises only as a concession and café to serve food and beverages to the public, but the Tenant may not sell glass bottled goods, chewing gum or packaged seeds or nuts, and the Tenant shall operate the Premises in a safe, clean, first-class and proper manner as befits a restaurant within a public recreation facility. The Tenant shall operate the Premises under the name “Arena Concession” or another name approved by the County.

5. Hours of Operation

(a) Winter Season

During the winter season (October 1 to March 31 inclusive), the Tenant shall operate the Premises from the hours of 4:00 p.m. to 9:00 p.m. during weekdays (Monday to Friday inclusive) and 9:00 a.m. to 10:00 p.m. on Saturday and 10:00 a.m. to 7:00 p.m. on Sunday. Flexibility in hours of operation is based on annual ice allocation. The Tenant shall also operate the Premises during all public events, special events and concerts held at the Facility, with notice of such events to be provided by the Facility Maintenance manager to the Tenant.

(b) Summer Season

During the summer season (April 1 to July 15 inclusive), the Tenant will operate the Concession based on negotiations with the Facilities Manager for special events and other activities.

(c) Amended Schedule

The opening and closing hours of operation may be amended from time to time, through negotiation with the County and Tenant. Notwithstanding clause (b) above, during closures of the Facility for maintenance or any other reason chosen by the County, in its sole discretion, the Tenant is not required to operate the Premises during the specified hours and the Tenant is not entitled to any compensation for such closures. The Tenant will not have access to the Premises during non-regular operational hours of the Facility.

6. Promotional Preference

The County agrees, where practical and possible in booking public events, special events and concerts in the Facility, to promote the services and catering of the Tenant.

7. Quality of Operation

The Tenant shall offer food and beverages generally in accordance with the items shown on the menu attached as Schedule "B". The County shall have the right at all times to require the Tenant to take whatever steps may be necessary, in the County's opinion, for the Tenant to improve the quality of service, goods and operations of the Premises.

8. Inspection

The County will have the right (but not the obligation) to monitor the operation of and inspect the Premises at reasonable times to determine if the Tenant is in strict compliance with this Lease.

9. Showing Premises

The Tenant will permit the County and its agents and employees to show the Premises to prospective tenants during the last six months of this Lease.

10. State of Title

The Tenant will abide by and not breach any restrictions on the title to the Facility as of the date of this Lease and such other reasonable restrictions in easements, covenants rights of way and other charges granted by the County from time to time.

11. Utilities and Custodial Responsibilities

The parties will each perform and undertake the following custodial duties and service responsibilities:

- (a) The County will supply the following specified services:

(1) Electrical, Mechanical and Plumbing Installations

The County will supply and maintain separate male and female washrooms, appropriate to the Premises. The County will supply and maintain all electrical (including lamp fixture ballast), mechanical and plumbing installations in the Premises necessary for its adequate operation.

(2) Heating and Ventilation

The County will provide and maintain throughout the Premises heating, ventilation and air conditioning.

(3) Equipment

The County will supply and repair the equipment listed in Schedule "A".

(4) Hot and Cold Water

The County will provide adequate hot and cold water supply to the Premises.

(5) Telephone

The County will provide a telephone outlet in the Premises and the Tenant will be responsible for connection of telephone equipment and the telephone service.

(6) Cleaning

The Tenant will clean the lobby area in front of the Premises.

(7) Redecoration and Refurbishment

The County will redecorate and refurbish the Facility from time to time, as considered necessary by the County, in its sole discretion.

(8) Refuse Disposal

The County will provide a place for storage of garbage and the County will arrange regular removal of garbage from the storage place.

(9) Lighting

The County will provide exterior and interior illumination within the Premises and at work stations at the lighting levels acceptable to the Workers Compensation Board, including the annual cleaning and maintenance of all lighting fixtures and installation of such new bulbs and tubes as may be required.

(b) The Tenant will supply the following services:

(1) Food Preparation and Servery Areas of the concession

The Tenant will be responsible for all millwork and regular and effective cleaning of the food preparation and servery areas of the Premises to meet the requirements of the *Health Act* and other applicable laws.

(2) Lobby Area

The Tenant shall be responsible when the Premises are open for business to maintain the adjoining lobby area in a clean and tidy state. The Tenant will clean the counters and wipe up spills on the lobby floor in front of and around the Premises and clean the tables provided.

(3) Refuse Disposal

The Tenant shall remove all garbage and refuse from the Premises and the lobby area to the outside disposal bin maintained by the County.

(4) Equipment

The Tenant shall provide the equipment listed as the Tenant's equipment on Schedule "A", which equipment must meet all applicable fire, safety and health requirements.

12. Regulatory Compliance

The Tenant shall observe, perform and comply with all applicable laws. Without limitation, the Tenant must obtain a current business license from the County. It shall be the Tenant's responsibility to obtain, under the provisions of the *Health Act* and other applicable statutes, a permit to operate a food service establishment and the Tenant must prominently display the permit and the business license on the Premises. The Tenant must also operate by the rules and regulations applicable to the Facility. The Tenant must abide by any changes to the rules and regulations adopted by the County from time to time.

13. Renovations, Alterations and Capital Improvements

The Tenant may make alterations and additions to the Premises with the prior written consent of the County, which consent may be arbitrarily withheld. The Tenant shall be responsible for maintaining all of the equipment and chattels on the Premises in good working order, except the equipment supplied by the County, which the County will maintain under clause 11 (a)(3). If at the termination of the Lease, the County so requires, the Tenant will remove all its improvements and restore the Premises to the condition prior to commencement of the Lease. If the County does not require removal, then all improvements, with the exception of the Tenant's removable equipment listed in Schedule "A", become the property of the County on termination of this Lease.

14. Advertising/Promotion Materials

The Tenant shall be permitted, with the approval of the County and upon compliance with applicable sign bylaws, to erect an illuminated menu to the exterior of the Premises' walls and to hang temporary advertising banners, signs and other promotional materials in areas of the Facility where no existing signage is located. Any advertising must be submitted in writing to the County for consideration and should be tasteful for a family environment.

15. Environmental

The Tenant shall not contaminate or permit the contamination of the Premises or the Facility with any hazardous substances and should such occur, the Tenant shall undertake all necessary remediation. The Tenant waives any right it may have to receive a site profile from the County. The Tenant and all employees of the Tenant will observe the No Smoking rule within 5 meters of the Facility.

16. Tenant's Employees

The Tenant will hire competent, trained and polite staff to operate the Premises. The Tenant is solely responsible for its employees and the Tenant shall pay all remittances in relation to its employees, including employment insurance and workers compensation.

17. Lost, Stolen or Damaged Articles

The County is not responsible for lost, stolen or damaged articles of the Tenant, its members, directors, officers, employees, servants, agents, contractors, subcontractors, invitees, customers and other persons for whom it is responsible ("Its Related Persons").

18. Storage

The Tenant may not store any of its goods or equipment outside of the Premises.

19. Access

So long as this Lease is in effect, the Tenant and Its Related Persons shall have the right and license to the extent necessary, in common with other occupants of the Facility, to pass, repass and utilize all common and assigned areas of the Facility, including corridors, lobbies, washrooms, passages, parking and other exterior areas for the purposes of ingress and egress to the Premises and use of the Premises for the purpose outlined in this Lease. The indemnity, release, insurance and other provisions of this Lease, to the extent they can be applicable, apply to the license granted in this section.

20. Quiet Enjoyment

Provided the Tenant pays the Rent and the additional rent and performs its other covenants and agreements contained herein, the Tenant may peaceably possess and enjoy the Premises for the term hereby granted, without any interruption or disturbance from the County or persons lawfully claiming under the County.

21. Sublease and Assignment

The Tenant shall not assign this Lease or sublet, in whole or in part, or permit any other person to use the Premises, nor shall the Tenant charge or encumber or purport to charge or encumber its interest in the Premises or this Lease.

22. Indemnification

The Tenant hereby indemnifies and saves harmless the County and its elected and appointed officials, officers, employees and agents from and against any and all liability, actions, causes of action, claims, debts, suits, losses, costs (including actual costs of professional advisors), demands and harm, whether known or unknown, which the County now has or may at any time suffer in relation to death, bodily injury, property loss, property damage or other loss or damage of any kind whatsoever, arising from or connected with:

the Lease granted hereby;

- (a) the exercise by the Tenant of any right or permission under this Lease;
- (b) the use or occupation of the Premises, or adjoining area under the control of the Tenant, by any person;
- (c) the construction, maintenance, existence, use or removal of the Tenant's improvements and equipment;
- (d) any default or breach of the Tenant; or
- (e) the acts, omissions or negligence of the Tenant or Its Related Person.

No provision of this Lease and no act or omission or finding of negligence, whether joint or several, as against the County shall relieve the Tenant from liability to the County, whether such liability arises under this Lease or otherwise.

23. Insurance

The Tenant shall, throughout the term of this Lease, secure, maintain and pay for a general liability insurance policy, with a limit of not less than \$2,000,000.00 inclusive per occurrence for bodily injury and property damage. Additionally the Tenant is required to carry their own contents insurance.

The policy shall include the following coverages, including the Premises and related premises: contingent employers liability, owners protective liability, broad form property damage on an occurrence basis, including loss of use of property, contractual liability assumed under this Lease, cross liability and host liquor liability.

The County shall be added as an additional named insured.

The contract of insurance shall include a provision requiring the insurer to give the County 30 days prior written notice before making any material changes in the insurance, or termination or cancellation of it.

The policy shall be underwritten by a responsible insurance company licensed to do business in Alberta and who meets the reasonable approval of the County.

The Tenant shall furnish the County with a certificate of insurance that the required coverage is in force, including evidence of insurance renewal. Every certificate shall include certification by the insurer that the certificate conforms to the provisions of this section.

Maintenance of such insurance shall not relieve the Tenant of liability under the indemnity provisions of this Lease.

The foregoing provisions shall not limit the insurance required by law, nor relieve the Tenant from the obligation to determine what insurance it requires for its own purposes.

24. Release

The release in this section and indemnity in Section 23 shall survive the expiry or any earlier termination of this Lease.

25. Personal and Sexual Harassment

The Tenant shall adopt the County's Personal and Sexual Harassment Policy.

26. Workers' Compensation Coverage:

The Contractor must maintain all accounts with the Workers' Compensation Board in good standing and provide adequate coverage for all operators, including, if applicable, owners and directors of the Contractor's company. Due to the serious repercussions incurred in the event coverage is not provided, the County reserves the right to invoke a one (1) year suspension for any Contractor who is found in default of this requirement, with no compensation or further obligation to the Contractor for that one year period.

27. Surrender

The Tenant agrees to return the Premises to the County at the expiry or earlier termination of this Lease, with the Premises clean, tidy, free of contamination, and in good repair, subject only to reasonable wear and tear from use.

28. Events of Default

The following constitutes events of default by the Tenant:

- (a) the Tenant's failure to pay Rent when due, whether demanded or not,
- (b) the Tenant's breach or non-observance or non-performance of any of the conditions, covenants, agreements or provisos to be kept, observed or performed by the Tenant,
- (c) the Tenant vacating the Premises or leaving them unoccupied for more than two (2) days (except during facility closures),
- (d) using or losing the Lease in execution or attachment for any cause whatsoever.
- (e) The Tenant's failure to remedy any deficiency after 30 days once written notification has been given by the County.

30. Re-Entry by County

In the event of default by the Tenant, it shall be lawful for the County at any time thereafter to enter into and upon the Premises or any part thereof in the name of the whole and to have the same, repossess and enjoy as of its former estate, notwithstanding anything to the contrary contained in this Lease.

Whenever the County shall be entitled to re-enter the Premises, it may, at its option and without limiting its other remedies, terminate the Lease, reserving a right to claim all costs (on a solicitor and client basis), losses, damages and expenses arising from the Tenant's breach, including loss of future rent.

31. Registration

The Tenant agrees that the County is not required to provide this Lease is registrable form.

32. Legal Relationship

It is understood and agreed that nothing contained in this Lease nor any act of the parties shall be determined to create any relationship between the parties other than the relationship of landlord and tenant.

33. Severability

Should any provision of this Lease be illegal or unenforceable, it shall be considered separate and severable from the remainder of this Lease and the remaining provisions shall remain in force and be binding upon the parties as though the said provision had never been included.

34. Entire Agreement

The Tenant acknowledges that there have been no representations made by the County which are not set out in this Lease and this Lease constitutes the entire agreement between the parties.

35. Notice

Any notice to be sent by the County to the Tenant under this Lease may be posted on the Premises or sent by registered mail or sent by fax transmission to the Tenant at the address and fax number set out in the first page of this Lease. Notices will be deemed received by the Tenant if posted, on the date of posting, if sent by registered mail, four days after mailing, and if faxed, on the date sent.

36. Nuisance

The Tenant shall not do, suffer or permit to be done, any act or thing upon or to or in the said Premises, which will or would constitute a nuisance to the occupiers of the Facility or adjoining tenants in the vicinity of the Premises, or to the public generally.

37. Enurement

This Lease enures to the benefit of and binds the Tenant and the County and their successors.

38. Interpretation

Wherever the singular or masculine or neuter is used in this Lease it is to be construed as including the plural, the feminine or the body corporate where the context or the parties so require.

39. Time is of the Essence

Time is of the essence of this Agreement.

40. Governing Law

This Lease is governed by and is to be construed in accordance with the laws in force in Alberta.

IN WITNESS WHEREOF the County and the Tenant have executed this Lease as of the dates written below.

DATED the ____ day of _____, _____

The Corporate Seal of the County of)
Wetaskiwin was hereunto affixed in the)
presence of:)
_____)
Reeve:)
Garry Dearing)
_____)
County Administrator:)
_____)

Seal

DATED the ____ day of _____, _____

Signed by the Tenant in the presence of:)
_____)
Signature of _____))
_____)

Signature of Witness

Print Name of Witness

Address of Witness

**COUNTY OF WETASKIWIN
WINFIELD ARENA CONCESSION LEASE**

SCHEDULE "A"

List of Tenant Provided Equipment

List of County Provided Equipment/Furnishings

**COUNTY OF WETASKIWIN
WINFIELD ARENA CONCESSION LEASE**

SCHEDULE "B"

Menu