

The Corporation of the City of Port Colborne

By-law No. \_\_\_\_\_

Being a By-law to Authorize Entering into a Lease Agreement with Big Momma's Fresh Cut Fries Regarding Food Vending Operations at H.H. Knoll Lakeview Park

Whereas at its meeting of April 12, 2021, the Council of The Corporation of the City of Port Colborne (Council) approved the recommendations of the Chief Administrative Office Report No. 2021-112, Subject: Awarding Food Vendor Contracts for H.H. Knoll Lakeview Park - 2021 Season; and

Whereas Council is desirous of entering into a Lease Agreement with Big Momma's Fresh Cut Fries for the purpose of food vending operations at H.H. Knoll Lakeview Park; and

Whereas the *Municipal Act*, 2001 S.O. 2001, c.25, as amended, confers broad authority on municipalities to enter into such agreements;

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That The Corporation of the City of Port Colborne enters into a lease agreement with Big Momma's Fresh Cut Fries, for the purposes of food vending operations at H.H. Knoll Lakeview Park.
2. That the Mayor and City Clerk be and they are hereby authorized and directed to sign the said agreement, attached hereto as Schedule "A", together with any documents necessary to complete the conditions of the said agreement, and the City Clerk is hereby authorized to affix the Corporate Seal thereto.

Enacted and passed this 10th day of May, 2021.

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William C. Steele  
Mayor

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Amber LaPointe  
City Clerk

**H.H. Knoll Lakeview Park Food Vending Agreement**

**THIS CONTRACT** made this \_\_\_\_\_ day of \_\_\_\_\_.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF PORT COLBORNE**  
(hereinafter called the “City”)

AND

**Big Momma’s Fresh Cut Fries**

(hereinafter called the “Licensee”)

**1. PURPOSE**

- 1.1 In consideration of the sum of the fees outlined in Section 3, the City hereby grants the Licensee the right to manage a food vending operation within a specified area at H.H. Knoll Lakeview Park (5 Marina Drive) as outlined on the plan attached as Schedule “A”.
- 1.2 The food vending station will be set up for operation throughout the City’s operational season (as hereinafter defined) at H.H. Knoll Lakeview Park. The Licensee will have the option to move the food station anywhere within the operating boundaries highlighted in Schedule “A” as approved by the Parks Supervisor.
- 1.3 The rights and privileges granted by this contract are for the management, operation, and maintenance of food vending operation for the general public to enjoy.
- 1.4 Nothing in this contract shall be construed as granting the Licensee any rights to conduct special events within the Park and any area other than that specified on the attached map unless otherwise approved by the City.

**2. TERM**

- 2.1 The term of the agreement shall be for one operating season commencing May 21, 2021 and expiring October 31, 2021. The operating season is subject to change at the City’s discretion based on provincial COVID-19 restrictions.
- 2.2 The Licensee will operate annually within periods that coincide with the City’s seasonal operations, generally from Victoria Day weekend to the beginning of October (weather permitting) (the “Operational Season”). Approximate daily hours, weather pending, are 11:00 a.m. to 9:00 p.m.

**3. FEES**

- 3.1. The Licensee will pay the following base fee structure (the “Seasonal Base Fee”):

Year	Seasonal Fee
2021	\$2500

OR 7.5% of the total annual gross operating sales before taxes and discounts (whichever is greater) (the “Gross Sales Fee”). The Licensee will provide a statement of gross operating sales (before taxes and discounts) to the City no

later than November 1<sup>st</sup>. After receiving the statement of gross operating sales, the City will calculate the Gross Sales Fee. If the Gross Sales Fee is greater than the Seasonal Base Fee, then the City will generate, and provide the Licensee with appropriate invoicing showing the amount by which the Gross Sales Fee exceeds the Seasonal Base Fee within 5 business days following November 1<sup>st</sup>. Payment will be required from the Licensee no later than November 15<sup>th</sup>. Additional property taxes or sublet fees will not be charged in addition to this.

3.2. For the right to manage a food vending operation at H.H. Knoll Lakeview Park, fees as outlined in 3.1 are as follows:

- The Licensee will pay a \$500 (no HST) non-refundable deposit no later than May 21, 2021, applied to the \$2500 seasonal fee.

3.3 The Licensee will ensure that they are in compliance with all regulations and requirements in relation to a food vending operation, obtain and pay for any permits, and other related costs that may be required from outside organizations, such as, but not limited to, Niagara Regional Public Health. The City does not make any representations as to the ability of the Licensee to operate a food vending station.

#### **4 DEFAULT**

4.1 If the fees above, or any part thereof, shall be in arrears or unpaid by the Licensee at any time or times, then, such non-payment of fees, defaults, breach or non-observance is not corrected within fifteen days from the date of written notice from the City to the Licensee, the City may terminate this contract by giving to the Licensee written notice. The notice will be delivered to the Licensee or any officer of the Licensee or mailed to the last known address of the place of business or office of the Licensee, with such notice served by mail to be deemed to have been given on the fifth (5<sup>th</sup>) business day following that on which the letter containing the notice was posted, and any notice which is given electronically or by facsimile, to be effective on the date delivered. Once the Licensee receives notice, this contract shall be ended, and in that event, it shall be lawful for the City, its employees or agents, to have all items removed at the expense of the Licensee without any compensation being payable to the Licensee and all outstanding obligations and fees owing under this Agreement to be performed or paid.

4.2 No acceptance of fees subsequent to any breach or default, other than non-payment of fees, nor any condoning, excusing or overlooking by the City on previous occasions of breaches or defaults similar to that for with re-entry is made shall be taken to operate as a waiver of this condition nor in any way to defeat or affect the rights of the City hereunder.

4.3 Any other breach of this Agreement, if not cured within 5 business days, shall entitle the City to cancel this Agreement in accordance with section 4.1, with all fees, expenses and other obligations currently due and owing under this Agreement at that date to be paid immediately.

#### **5. MAINTENANCE**

5.1 The Licensee shall be responsible to keep the area identified in Schedule "A" clean and clear of garbage and debris. All waste accumulation will be disposed of in the appropriate waste bins provided by the City.

5.2 In order to ensure that the facilities are being maintained to the satisfaction of

the City, the Licensee and the City will undertake joint inspections of the facilities at regular intervals as may be agreed upon between the parties, and the Licensee undertakes to rectify forthwith any maintenance deficiencies identified during such inspections.

- 5.3 The Licensee will be responsible for supplying and keeping all equipment aesthetically pleasing and in good repair, including damage caused by vandalism.

## **6. OPERATION**

- 6.1 The Licensee shall pay all operating expenses incurred in managing the food vending operation.
- 6.2 The Licensee agrees to manage and operate in a manner consistent with good business and safety practices satisfactory to the City in the City's sole discretion.
- 6.3 The facilities shall be managed by the Licensee in such a manner to provide a safe, enjoyable food and beverage service to the public in the City's sole discretion.
- 6.4 The Licensee will ensure that all staff used for the food vending operation are trained and certified under all safe food handling requirements as set out from time to time by the Niagara Region or other authority.
- 6.5 It is the Licensee's responsibility to cooperate with the Niagara Region Public Health Department, or comparable agency, for any required testing/inspections, as they deem necessary.
- 6.6 The Licensee is responsible for the safe and environmentally friendly installation and operation of the food vending station. The Licensee will ensure that any safety certification, and/or legislative requirements are satisfied for the operation of food vending services. Copies of any said certifications are to be provided to the City prior to each annual operating season.
- 6.7 The Licensee will provide any type of physical barrier between vehicle traffic areas and the food vending area.
- 6.8 Approved signage areas will be determined on site. The Licensee shall not erect any signs within the Park without obtaining approval from the Parks Supervisor or designate.
- 6.9 The City acknowledges and accepts that the Licensee is not obligated to stay open if they choose not to, due to weather, staffing, or any other reason to be determined.
- 6.10 The Licensee will have the option of adding new features/structures to the food vending station annually pending formal approval from the City. A request for any of said additions will be provided to the Parks Supervisor or designate.
- 6.11 The Licensee will be provided access to the hydro panel outlined on Schedule "A" in order to operate the food vending operation. The Licensee will incur all costs associated with alternative hydro access other than that which is outlined in Schedule "A".

## **7. FINANCES**

- 7.1 The Licensee will provide the City with a statement of gross total annual sales (before taxes and discounts) following the end of the operating season, no later than November 1<sup>st</sup> annually. Such statements will be used by the City for the

calculations of the annual rental fees, being either the Seasonal Base Fee or the Gross Sales Fee as outlined in section 3.1.

## **8. INDEMNIFICATION AND INSURANCE**

- 8.1 The Licensee agrees to defend, indemnify and save harmless the City from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the Supplier's status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the Supplier in accordance with this Contract and shall survive this Contract.

The Licensee shall indemnify and save harmless the City and its employees, trustees and officers, independent contractors, subcontractors, agents, volunteers, successors, and assigns (collectively the "City of Port Colborne"), of any and all losses, costs, claims, obligations, expenses, demands, actions, causes of action, deficiency, liability, or damages which may be brought against the City of Port Colborne or which it may suffer or incur, directly or indirectly, as a result of, in respect of or arising out of any act or any negligence by the Licensee or its employees, volunteers or agents, any non-performance or non-fulfilment of any terms of this Agreement, or any loss of use, revenue or profit by any person, organization or entity, including but not limited to, incidental, indirect, special and consequential damages. Liabilities include but are not limited to, any and all liability for damages to property and injury to persons (including death), judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind. Any expenses including but not limited to, legal fees on a solicitor-client basis, which indemnified persons, entities or organizations, may suffer or incur howsoever caused arising out of or in connection with, in any way related to, or as a result of:

- Anything done or omitted to be done by the Licensee or the Licensee's employees, volunteers, agents or personnel with respect to their obligations under the Contract, including any breach by the Licensee of its obligations under this Contract or any breach by the Licensee's representations, warranties and covenants set forth in the respondent proposal; and
- Any alleged infringement or infringement of any patent, copyright, trade mark, trade secret, or other intellectual or industrial property right or contractual right or obligation of any third party by reason of the purchase, use or possession of any of the services or deliverables under this Contract.

- 8.2 The Licensee shall provide the City of Port Colborne with a certified copy of Third-Party Liability in a form satisfactory to the City.

- Policy to be written on the comprehensive form including Contractual Liability and Complete Operations with an inclusive limit of not less than five million dollars (\$5,000,000.00) Bodily Injury and Property Damage with a deductible not greater than five thousand dollars (\$5,000.00). The Liability insurance Policy shall not contain any exclusions of liability for damage, etc., to property, building, or land arising from the removal or weakening of support of any property, building or land whether such support be natural or otherwise.
- Standard Automobile Policy on both owned and non-owned vehicles with inclusive limits of not less than five million dollars (\$5,000,000.00) Bodily Injury or Property Damage with a deductible not greater than five thousand dollars (\$5,000.00).
- A "Cross Liability" clause or endorsement. An endorsement certifying that the Corporation of the City of Port Colborne is included as additional insured.
- An endorsement to the effect that the policy or policies will not be altered, cancelled, or allowed to lapse thirty (30) days prior written notice to the City.

- 8.3.0 The Licensee shall maintain insurance against liability imposed by any Workers' Compensation Act or comparable legislation respecting the injury to or death of all permanent and part time employees engaged by the Licensee in the food vending operation.

## **9. SERVICE RESERVATION**

- 9.1 The City has the right to maintain and operate services installed on the lands owned or operated by the City known as H.H. Knoll Lakeview Park, including the lands designated in Schedule "A" as the Approved Food Vendor Area, and the right to grant leases or licenses, privilege or permission to install, lay, maintain and use services on, under, over or across the said lands, including but not limited to any utility or telecommunications lines. The Licensee shall not do anything or cause or permit anything to be done which will in any way interfere with the rights and privileges or permissions thereby granted.

## **10. ACCESS**

- 10.1 While acting in the scope of their duties, the City, its servants or agents shall, at all times and for all work purposes, have free access to any and every part of the area identified on Schedule "A".
- 10.2 During the term of this Agreement, the general public shall have at all times free and unrestricted access to the lands known as H.H. Knoll Lakeview Park, including the lands designated in Schedule "A" as the Approved Food Vendor Area.

## **11. SECURITY**

- 11.1 If required, the Licensee will coordinate security services for any items kept on the property. The City is not responsible for any loss or damage to the Licensee's property at any time.

## **12. CONSTRUCTION OF BUILDINGS OR STRUCTURES**

- 12.1 With the exception of the food vending station outlined in Appendix A, the Licensee shall not construct or erect any permanent buildings or other structures on the said facilities without the prior written consent of the City, and all such buildings or structures shall be constructed and thereafter maintained by and at the cost and expense of the Licensee to the satisfaction of the City.

## **13. COMPLIANCE WITH LAW**

- 13.1 The Licensee shall in all respects abide by and comply with all rules, regulations and by-laws of the municipality and other governing bodies in any manner affecting the said facilities.
- 13.2 The Licensee shall ensure that all products and services provided in respect to this contract are in accordance with and under the authorization of all applicable authorities municipal, provincial, and federal legislation, including, but not limited to; the Occupational Health & Safety Act of Ontario, Workplace Safety & Insurance Act, Environmental Protection Act, and the Ministry of Natural Resources Explosives Regulatory Division requirement.

## **14. ASSIGNMENT**

- 14.1 The Licensee shall not make any assignment of this contract nor any transfer of its rights or privileges under this contract without obtaining the prior consent in writing of the City to such assignment or transfer, which consent may be arbitrarily withheld in view of the special purpose nature of this contract.

## **15. INABILITY TO OPERATE**



IN WITNESS WHEREOF the parties have executed these presents.

SIGNED, SEALED AND DELIVERED    ) THE CORPORATION OF THE  
  ) CITY OF PORT COLBORNE

\_\_\_\_\_  
Mayor, William Steele

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) \_\_\_\_\_  
City Clerk, Amber LaPointe

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) \_\_\_\_\_  
Licensee