



RFQ2022-003 AGREEMENT

This agreement (the “contract”) made on the _____ day of _____ in the year 2022.

B E T W E E N:

The Corporation of the Town of Tillsonburg (The “Town”)

OF THE FIRST PART

- and -

(The “Operator”)

OF THE SECOND PART

The Town and the Operator agree as follows:

WHEREAS the Town of Tillsonburg is the owner of the Tillsonburg Community Centre and the Lake Lisgar Waterpark which contain the concession facilities; and

WHEREAS the Town wishes to retain the Operators to operate the snack bar and the concession on its behalf.

NOW THEREFORE the parties agree as follows:

Definitions

1. In this Agreement,
 - (a) “Complex” means the Tillsonburg Community Centre located at 45 Hardy Avenue, Tillsonburg;
 - (b) “Waterpark” means the Lake Lisgar Waterpark located at 9 Ross Street, Tillsonburg;
 - (c) “Snack Bar” means the snack bar concession facility located in the Complex;
 - (d) “Concession” means the concession facility located in the Waterpark;
 - (e) “Director” means the Director of Recreation, Culture & Parks or a designate; and

- (f) “term” means the term of this Agreement, including any renewal, as set out in Section 2.

Term

2. (a) The Town grants to the Operators the right to operate the Snack Bar for the purpose of providing snack bar services during the months of January to December, both inclusive, for the period beginning on or about January 1, 2023 and ending December 31, 2025.
- (b) If both parties agree, this Agreement may be extended on the same terms and conditions for up to two (2) one-year optional terms, beginning January 1, 2026 and ending December 31, 2027.
- (c) The Town grants to the Operators the right to operate the Lake Lisgar Waterpark Concession for the purpose of providing snack bar services during the period of June 17 – September 4, 2023.

Either the Operator or the Town may terminate this Agreement prior to its expiry by providing ninety (90) days’ written notice to the other.

General Terms and Conditions

3.1. Regulations – Operator agrees to comply with applicable federal, provincial, local rules and regulations. These include, but are not limited to, the following:

- 3.1.1. Federal, Provincial and local health, safety and licensing laws and/or regulations relating to sale(s) of goods; and Town of Tillsonburg By-Laws.
- 3.1.2. WSIB regulations maintaining valid clearance certificates for the duration of the Term and any extensions.

3.2. Liability of the Town

The Town shall not be liable to the Operator for any loss of or damage to the Snack Bar and/or Concession or any equipment or inventory in it, whether caused by fire, theft, and burglary or otherwise, unless such loss or damage was caused by the negligence of the Town, its servants, agents or employees. The Town will not responsible for loss of equipment due to electrical power surges.

The Operator shall indemnify the Town and each of its servants, employees and agents from and against all actions, suits, claims and demands which may be brought against any of them, and from and against all losses, costs, charges, damages and expenses which may be sustained by any of them as a result of the Operator’s use and occupation of the Snack Bar and Concession.

3.3. Insurance – Operator shall be required to take out and maintain insurance in the following amounts during the entire performance of its activities pursuant to a contract agreement:

- 3.3.1. Comprehensive General Liability Insurance, including products and completed operations coverage, for property damage and bodily injury liability with not less than \$5,000,000 (five million) combined single limits per occurrence.

3.3.2. Prior to any work or performance pursuant to a contract agreement, the Operator shall provide a Certificate of Insurance. A statement of additional insured with an endorsement page shall also be issued.

3.3.3. Operator agrees to provide at least thirty (30) written days' notice prior to cancellation of any of the insurance requirements set forth above. Cancellation of insurance shall be grounds for cancellation of any contract.

3.4. Maintenance - All maintenance and service performed on equipment and/or internal structures, including routine cleaning and servicing shall be the responsibility of the Operator.

3.5. Customer Service – The Operator understands the importance of providing high quality and effective customer service and agrees to comply with this standard. The Operator shall honor all reasonable requests for refunds from customers. All customers are expected to be treated with courtesy and adhere to the Rzone Policy.

3.6. Assignability – The Operator shall not assign any interest in the contract agreement and shall not transfer any interest in same.

3.7. Relationship – Nothing contained in the Agreement shall establish an employer-employee relationship between the Operator and its employees, sub-Operators or independent Operators. The Operator shall be solely responsible and shall assume exclusive liability for the actions, conduct, supervision and instruction of its employees, sub-Operators or independent Operators.

3.8. Duration – The contract agreement shall become effective as of the date to be determined and written through a three year period, provided however, that either party may terminate said contract agreement at any time with or without cause by giving ninety (90) days written notice of such termination and specifying the effective date.

3.9. Severability – If any provision of the contract agreement or its application to any person or circumstance is held invalid, the remainder of the contract agreement, or the application of the provision to other persons or circumstances shall not be affected.

3.10. Content and Understanding – The contract agreement shall contain the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation whether oral or written not set forth herein; provided, however, that any change(s) hereto duly executed by both parties shall be incorporated in written amendments to the contract agreement.

3.11. Freedom of Information and Protection of Privacy Act; The bid and any other accompanying documentation submitted by the Bidder prior to the closing date specified in this document shall become the property of the Town and shall not be returned. The bid shall be subject to the Freedom of Information and Protection of Privacy Act. The Bidder must identify any information contained in the bid that is submitted in confidence.

3.12. The contract is for the sole operation of the space identified within the Tillsonburg buildings (Waterpark Canteen and T.C.C. Concession) as noted in this tender, and is to be used solely and strictly for the purpose of the canteen operations and food sales in each facility. No food preparation or operations within town owned facilities shall be permitted for outside business.

4. Default Notice and Cancellation

4.1. The Town reserves the right to cancel the Contract without notice if a successful Bidder is in breach of its Contract, or if inferior quality of services are provided, or in the event of non-fulfillment of service. Should this occur, no payment will be made for such.

4.2. If the Operator should be deemed bankrupt, or makes a general assignment for the benefit of creditors because of the Operator's insolvency, or if a receiver is appointed because of the Operator's insolvency, the Town may, without prejudice to any other right or remedy by giving the Operator or receiver or trustee in bankruptcy notice in writing, terminate the Contract.

4.3. If the Operator should neglect to execute the work properly or otherwise fails to comply with the requirements of the Contract to a substantial degree and if the Operator has given a written statement to the Town that sufficient cause exists to justify such action, the Town may, without prejudice to any other right or remedy, notify the Operator in writing that the Operator is in default of the Operator's contractual obligations and instruct the Operator to correct the default in the 5 working days immediately following the receipt of such notice.

4.4. If the default cannot be corrected in the 5 working days specified, the Operator shall be in compliance with the Town's instructions if the Operator:

- 4.4.1. Commences the correction of the default within the specified time, and 5.4.1.2.
- Provides the Town with an acceptable schedule for such correction, and 5.4.1.3.
- Corrects the default in accordance with such schedule.

4.5. If the Operator fails to correct the default in the time specified or subsequently agreed upon, without prejudice to any other right or remedy the Town may:

4.5.1. Correct such default and deduct the cost thereof from any payment then or thereafter due, or

4.5.2. Terminate the Operator's right to continue with the work in whole or in part or terminate the Contract.

4.6. The Town reserves the right to terminate the Contract upon giving thirty (30) days written notice for just cause without cost or penalty to the Town and without liquidation damages. Examples of just cause include, but are not limited to:

4.6.1. Curtailment or reduction of funding

4.6.2. Unanticipated cancellation of a program

4.6.3. Closing of a location

4.7. Health and Safety

4.7.1. The leased premises are subject to inspection at any time by the Southwestern Public Health. The Operator must fully comply with the Health Inspector's mandated rectification of any deficiencies.

5. Other Conditions:

This Agreement shall not be assignable by the Operator without the consent of the Town, which consent may be arbitrarily refused.

This Agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

No amendment to this Agreement shall be effective unless it is in writing and signed by both parties.

The Operator shall not sublet the management/services of Concession stands at any time during this agreement.

Any notice to the Town under this Agreement shall be in writing and shall be delivered to the following address:

Town of Tillsonburg
200 Broadway #204
Tillsonburg, ON N4G 5A5
Attention: Manager of Recreation Services

Notice shall be sufficiently given if delivered in person or sent by registered mail, courier or facsimile transmission during normal business hours on a business day.

Each notice sent shall be deemed to have been received on the day it was delivered or on the third business day after it was mailed.

The parties may change their address for notice by giving notice to the other in the manner provided in this section.

IN WITNESS WHEREOF the parties hereto have executed this contract by the hands of their duly authorized representatives.

The Operator

Name of the authorized signing officer for the Operator

Signature

I have authority to bind the Corporation/Firm.

Please affix corporate seal, if applicable.

THE CORPORATION OF THE TOWN OF TILLSONBURG

Mayor

Town Clerk

We have authority to bind the Town.