

October 23, 2017

Dear Bidder,

The City of Auburn is accepting written proposals from qualified bidders for the supply and operation of **Norway Savings Bank Arena Concessions and Tavern Services Contract**. The City reserves the right to accept or reject any or all proposals in whole or in part and to waive any informality the City may determine necessary. The City also reserves to itself the exclusive right to accept any proposal when it is deemed by the City to be in its best interest. The City of Auburn is governed by Title 1 M.R.S.A. § 401-410, otherwise known as the Freedom of Access Act, which considers bid specifications as public documents. In awarding any proposal, the City may consider, but not be limited to, any of the following factors: Bidder qualifications, price, experience, financial standing with the City, warranties, references, bonding, delivery date, and service of Bidder. Vendors/Contractors shall be current on all amounts due to the City of Auburn prior to the City entering into any contract agreement. All proposals must include FOB to Auburn, Maine unless otherwise specified.

Proposals will not receive consideration unless submitted in accordance with the following instructions to bidders. Please mark sealed envelopes plainly: **“Norway Savings Bank Arena Concession and Tavern Services Proposal 2018-017”**. Documents can be obtained on the first floor of Auburn Hall at 60 Court Street.

Questions regarding this Request for Proposals should be directed to Jason Paquin, General Manager, Norway Savings Bank arena, at (207) 333-6688 Option #3.

Please submit your proposal to the City of Auburn by 2:00 p.m. **Thursday, November 16th, 2017**. Proposals must be delivered to **Derek Boulanger, Facilities Manager/ Purchasing Agent, 60 Court Street, Auburn, Maine 04210** on or before the date and time appointed. No proposals will be accepted after the time and date listed above. Proposals will be opened at 2:00 p.m. on that date.

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CONDITIONS AND INSTRUCTIONS TO BIDDERS

- 1.** The City reserves the right to accept or reject any or all proposals in whole or in part and to waive any informality the City may determine necessary. The City also reserves to itself the exclusive right to accept any proposal when it is deemed by the City to be in its best interest.
- 2.** In awarding any proposal, the City may consider, but not be limited to, any of the following factors: Bidder qualifications, price, experience, financial standing with the City, warranties, references, bonding, delivery date, and services provided of the Bidder.
- 3.** Bid proposals must include firm name, filled out in ink, and signed by firm official. All proposals must state the nature of the entity that is submitting the proposal (i.e. partnership, corporation, sole proprietorship), and include the names of all interested parties. Bids may be withdrawn prior to the time set for the official opening.
- 4.** Bidders shall use the enclosed bid form for quotations. Whenever, in bid forms, an article is defined by using a trade name or catalog number, the term "or approved equal", if not inserted, shall be implied.
- 5.** All transportation charges, including expense for freight, transfer express, mail, etc. shall be prepaid and be at the expense of the vendor unless otherwise specified in the bid.
- 6.** All proposals must include a list of current financial and credit references.
- 7.** All proposals must include a list of any operational references that the Bidder may have from prior ventures of a similar nature.
- 8.** If a bidder submits more than one proposal, each proposal submitted shall state the total number of proposals that the entity has submitted pursuant to this RFP. A bidder may submit a proposal for concessions or lounge services only, if for lounge services only, bidder must submit a plan for the provisions of food to meet the minimum requirements by State of Maine Law for obtaining the appropriate licenses.

9. Please state "**Norway Savings Bank Arena Concessions and Tavern Services Bid #2018-017**" on submitted, sealed envelope.
10. Bidder will clearly outline all options that are included in the bid.
11. Bids will be opened publicly. Bidders or representatives may be present at bid opening.
12. No contract may be assigned without the written consent of the City Manager or his designate. The contract shall not be considered valid until a notice of award has been issued to the successful bidder.

GENERAL CONDITIONS

1. Equal Employment Opportunity

The City of Auburn is an Equal Opportunity Employer and shall not discriminate against an applicant for employment, and employee or a citizen because of race, color, sex, marital status, physical and/or mental handicap, religion, age, ancestry or natural origin, unless based upon a bona-fide occupation qualification. Vendors and contractor or their agents doing business with the City shall not violate the above clause or the Civil Rights Acts of 1964. Violations by vendors shall be reviewed on a case-by-case basis and may mean an automatic breach of contract or service to the City of Auburn.

2. Save Harmless

The Bidder agrees to protect and save harmless the owner from all costs, expenses or damages that may arise out of alleged infringement of patents of materials used.

3. Subcontracting

The Bidder shall not subcontract any part of the work or materials or assign any monies due it without first obtaining the written consent of the municipality. Neither party shall assign or transfer its interest in the contract without the written consent of the other party.

4. Warranty

The Bidder warrants that all work will be of good quality and free from faults and defects, and in conformance with the specifications. All work not so conforming to these standards

may be considered defective. The Bidder agrees to be responsible for the acts and omissions of all of its employees and all subcontractors, their agents and employees, and all other persons performing any of the work under a contract with the Bidder

5. Insurance

The Contractor, at its own expense, shall maintain adequate insurance during the performance of the work to protect the interests of the participants. This insurance shall include Contractor's public liability and property damage insurance, motor vehicle public liability and property damage insurance, and Workers' Compensation insurance. The Contractor shall provide a Certificate of Insurance naming the City of Auburn as additional insured with provision for a thirty (30) day cancellation notice to the City of Auburn, prior to commencement of any work, the Contractor shall provide a Certificate of Insurance to the City with a combined single minimum limit of \$1,000,000 with statutory requirements for Workers' Compensation and Fleet Insurance.

6. Safety and Health Regulations

The Contractor shall, at all times, comply with all Local and State health codes and regulations and enforce the subcontractors to abide accordingly. Any violation either by the Contractor or his/her subcontractors shall be the sole responsibility of the Contractor.

PROPOSAL

Definitions:

"City" – is the City of Auburn.

"Bidder" – an individual or business submitting a bid to The City of Auburn.

"Contractor" – one who contracts to perform work or furnish materials in accordance with a contract.

"Premises/Arena" – Norway Savings Bank Arena.

"Concession and Tavern Services – Food Beverage Including Alcohol.

Purpose of Proposal:

The City of Auburn is seeking proposals from qualified suppliers to provide services for the sale, distribution, and merchandising of food and beverages (including but not limited to soda, water, sports drink, beer, wine and alcoholic beverages) for the Auburn Ice Arena. The selected Contractor will be expected to provide high quality product and service, utilizing state of the art equipment, provide high quality and responsive service, routine care, cleaning and replacement of all necessary equipment, a user friendly ordering system, predictable and reliable delivery of services within the facility. The City of Auburn has entered into sponsorship agreements for the facility that provide exclusivity and pouring rights of certain beverage services. The selected contractor shall be responsible for compliance with the sponsorship agreements for the service of products and services provided by the Pepsi Cola Beverages Company.

This RFP provides instructions for submitting proposals, protocols and procedures by which the City of Auburn intends to govern the relationship between it and the selected bidder.

This proposal does not include any other city facilities.

Facility Information:

The long standing tradition of youth hockey in the Androscoggin Valley has built a new home on Turner Street in Auburn. The City of Auburn and the surrounding area will benefit from the vision of innovative people who have recognized the areas unique needs and

opportunities. Their efforts have made our community an outstanding place to live and visit. A multi-purpose double surface ice arena, with its associated ice sports programs and dry floor uses is another in a long, successful line of innovative projects that continues to enhance the quality of life in Auburn and the surrounding communities.

While we naturally aspire to build outstanding opportunities for hockey and ice sports programming, we also desire to have a broader positive impact on the community. This facility encompasses the physical fitness, recreational and economic benefits that the Auburn community continues to enjoy by with the only double surface ice arena in the State of Maine. Located in the center of the regional retail and hospitality district, the arena is in position to offer its partners a unique and valuable opportunity at this facility.

The tourism industry is becoming a major source of our community's economic vitality. The facility will help to enliven the local economy throughout the year. This facility continues host hockey tournaments for all levels of play, (youth, junior, and adult hockey), clinics, camps and league play. Additionally, the facility has also been designed to accommodate non-ice related events, such as trade shows, expos, graduation ceremonies, and other sporting events. Because of the geographic location of the facility, and size, a significant advantage will be gained over other regional ice facilities in attracting tournaments. Events such as these can draw people to our community for anywhere from 1 to 3 days. With ample resources, our community is in an exceptional position to host these activities and the addition of such events will only add to the positive economic impact of the facility.

The facility (approximately 72,000SF) provides two regulation size hockey rinks (200 x 85), viewing for approximately 1,100 people in the Main arena, and 700 in the secondary arena, and providing additional viewing space from an elevated mezzanine for an additional 200 people. 10 locker rooms, 6 coaches' rooms and 1 officials' room shall provide adequate space for running at full capacity. A full kitchen space shall be utilized for concessions and catering. A trade show, graduation or special event in the main arena, expands capacity to as much as 4,300 people. A full service pro shop provides equipment repairs and service the needs of skaters, both hockey and figure. A full line of rental skates will be available to accommodate over 300 persons for a public recreational skating event as well as private rentals for birthday parties and family events. Attendance figures for the year have been estimated up to 500,000.

SCOPE OF SERVICES

The primary goal of this RFP is for the implementation of a concessions and Tavern services contract for a provision of food and beverage within the facility with the intent to maximize revenues, promote and increase revenue, control costs, provide exceptional service to the users, and visitors of the Arena. The city desires to develop a model relationship that substantially advances food services related opportunities at the Arena, which capitalizes on the immediate and long term priorities of the Arena and its Concessions Contractor.

The RFP outlines and described the products and services expected by the City. Any contract resulting from this RFP is intended to award the contractor sole and exclusive "food service " rights to provide food, beverage, and at particular locations within the arena. This RFP does not include any vending and beverage services that shall be provided throughout the facility. Locations for service to include but not limited to the concessions service kitchen/counter, arena floor, bleacher seats, appropriate placed kiosks, and Tavern space for a separate twenty-one (21+) and over Tavern. Seating and dining areas shall be provided within the Mezzanine and consumption of food can take place within the footprint of the arena.

MANAGEMENT AND OPERATIONAL REQUIREMENTS:

- 1.** The Contractor is responsible for the set-up and operational efficiency of all necessary food and beverage service equipment, accessories, product ordering, preparation, and delivery.
- 2.** The Concessions and Lounge Services Contract will be in effect during the entire year, but with reduced sales volumes during the summer months. The level of services must be acceptable and relayed to the City at all times.
- 3** The premises, equipment, supplies and facilities shall be maintained in a satisfactory condition throughout the term of this contract. The Contractor shall adhere to the highest standards of cleanliness and sanitary practices.
- 4.** Recognizing that a successful food and beverage program depends on favorable response from users, the Contractor shall meet regularly to work with facility/operations

managers and/or authorized persons to maintain maximum efficiency and good public relations with occupants and staff. Any and all items installed within the facility shall be equipped with energy miser technology at no charge to the City.

5. The Contractor shall maintain complete and accurate records of all food and beverage sales and financial transactions in accordance with accepted industry accounting standards and shall keep all such financial records and statements pertaining to the operations at the Arena for a period of three years from the close of each year's operation.

6. The Contractor shall provide complete reports of food and beverage sales of reports of all financial transactions for the Concessions and Lounge space throughout the term of the agreement.

Report data shall include but not be limited to:

- Commissions and guaranteed revenues
- Gross sales, net sales as broken down by food category and menu items.

7. The City may require a percentage based Concessions and Tavern revenue share of 5% to 10% during non-ice related special events. Percentage based on attendance.

The City, or a designated representative, reserves the right to audit the Contractor's financial and operational records annually or more frequently if required.

The Contractor shall abide by any facility contracts for the advertisement or provision of exclusive product goods and services that pertain to the development and service of locally, regionally or nationally branded beverage or food service products within the facility. Contractual agreements and marketing opportunities through concessions and lounge services are the property/rights of the facility. Any marketing opportunities and partnerships developed in conjunction with the provision of services through this contract shall be relayed and openly discussed with Arena management. Currently the Arena has exclusivity contracts with Pepsi Co. for the provision of beverage services (bottled and fountain beverages, served through concessions and vending machines. Other relationships are being developed and will be released and relayed to the appointed vendor upon the completion of agreements.

CONCESSION EQUIPMENT

The following is a list of equipment provided to the Lessor for use during the lease period:

- 1 Up right freezer
- 2 Horizontal freezers
- 1 Dean fryolators
- 1 Pitco fryolator
- 1 Pizza oven
- 1 Grill
- 1 Micro-wave unit
- 2 Stainless steel tables
- 1 Pizza warmer
- 1 Heat lamp
- 1 Hood system
- 1 Walk-in Refrigerator

The Lessee shall be responsible to maintain all equipment in good operating condition and must have all equipment properly inspected where required by law, for the duration of said lease agreement.

PROPOSAL FORM:

Due Thursday, November 16, 2017

To: City of Auburn
Derek Boulanger,
Facilities Manager/Purchasing Agent
60 Court Street
Auburn, ME 04210

The undersigned individual/firm/business guarantees this price for thirty days (30) from the proposal due date. The undersigned submits this proposal without collusion with any other person, individual, or firm or agency. The undersigned ensures the authority to act on behalf of the corporation, partnership or individual they represent; and has read and agreed to all of the terms, requests, or conditions written herein by the City of Auburn, Maine.

By signing this form, the firm listed below hereby affirms that its bid meets the minimum specifications and standards as listed above.

Signature _____ Company _____
Name (print) _____ Telephone # _____
Title _____ Fax # _____
Address _____
Email Address _____
Web Site _____

STATE OF MAINE

_____, SS.

Date: _____

Personally appeared _____ and acknowledged the foregoing instrument to be his/her free act and deed in his/her capacity and the free act and deed of said company.

Notary Public

Print Name
Commission Expires _____

CONTRACT PROVISIONS



If a contract is awarded, the selected bidder will be required to adhere to a set of general contract provisions, which will become part of any formal agreement.

VII.A Reporting of Contractor

1. The Contractor is required to report to the Arena Manager/Finance Department of their designee and will cooperate and confer with him/her as necessary to insure satisfactory work progress.
2. All reports, estimates, memoranda and documents submitted by the Contractor must be dated and bear the Contractor's name.
3. All reports made in connection with these services are subject to review and final approval by the City Manager.
4. The City may review and inspect the Contractor's activities during the term of this contract.
5. When applicable, the Contractor will submit a final, written report to the Arena Manager.
6. After reasonable notice to the Contractor, the City may review any of the Contractor's records, reports or insurance policies.

VII.B Term

This contract shall be for a term of no more than five (5) years commencing on January 1, 2018 and ends on December 31, 2022, unless otherwise negotiated.

VII.C Personnel

1. The contractor will provide the required services and will not subcontract or assign the services without the City's written approval.
2. The Contractor will not hire any City employee for any of the required services without the City's written approval.
3. The parties agree that the Contractor is neither an employee nor an agent of the City for any purpose.

VII.D Indemnification/Release

1. Except for claims arising out of the wrongful acts or negligence of the City, Contractors shall protect, indemnify, save and keep harmless the City, its agents, employees, and invitees against and from all claims, losses, costs, damages or expenses, including reasonable attorneys fees, arising out of or from any accident or other occurrence in, on or at the Premises described herein, the occupancy of use of the Premises, or any act or omission of Contractor, its employees, agents, invitees, subtenants, licensees, assignees or contractors. The Contractor shall protect and save and keep the City harmless and indemnify it against and from any penalty or damage or expense, including reasonable attorneys fees, or charges

imposed for any violations of any law or ordinance whether occasioned by the neglect of the Contractor or those holding under the Contractor, and also will protect, indemnify, save and keep harmless the City or the City's employees, tenants, or invitees against and from any and all claims and against and from any and all loss, cause, damage, liens or expense, including reasonable attorneys fees, arising out of any failure of the Contractor in any respect to comply with and perform all the requirements and provisions of this agreement;

2. The Contractor shall also indemnify and hold the City harmless against all claims, demands, liabilities, lawsuits, damages, costs and expenses, including legal fees, incurred by the City as a result of any mechanics liens, or security agreement filed against the Contractor, or any equipment therein, or any materials used in construction, alteration or improvement of the Premises;
3. The Contractor agrees to make no claim against the City and to assume responsibility of defending, at Contractor's own expense, including reasonable attorney's fees, any claim which will be made against the City by any agent, employee, licensee or invitee of the Contractor or by others claiming the right to be on or about the Premises through or under the Contractor for any injury, loss or damage to person or property occurring upon the Premises, from any cause other than the negligence of the City.

VII.E Insurance Requirements

The Contractor covenants and agrees, at its sole cost and expense, to obtain, keep and maintain in full force and effect for the mutual benefit of the City and the Contractor the following policies of insurance:

1. Statutory Workers Compensation;
2. A commercial general liability policy including a combined single limit of not less than \$1,000,000 per occurrence, with respect to bodily injury, death or property damage, and an aggregate limit of not less than \$2,000,000. Provided, however, that the City shall have the right during the contract term to require Contractor to obtain increased liability coverage to reflect the cost of living increases during the term of this agreement, or to comport with generally accepted industry standards in the trade at such time;
3. During any construction or alterations performed by the Contractor or by the City, the City or Contractor, as the case may be, shall keep in force for the protection of the City and the Lessee, workers compensation insurance coverage with an insurance carrier licensed to do business in the State of Maine, covering-all persons employed by Contractor or by the City, or its contractors, in connection with the construction or alterations, and satisfying the requirements of the statutes of the State of Maine;

4. The Contractor shall insure his personal property on the Premises against physical loss or damage by at least the perils of fire and lightning, extended coverage, vandalism, malicious mischief and where pertinent, sprinkler leakage. The City shall have no obligation to replace, restore or repair any fixtures or personal property installed in or improvements made on the Premises by the Contractor;
5. All insurance required under this paragraph shall be effected under valid enforceable policies issued by insurers as recognized responsible and authorized to do business in the State and otherwise reasonably acceptable to the City. All property (i.e. casualty) insurance policies shall name the City as additional insured. All liability insurance policies shall list the City as a certificate holder and additional insured. Upon the execution of this agreement, the original policies procured by Contractor pursuant to this paragraph, or conforming copies thereof, shall be delivered to the City at least thirty (30) days prior to the expiration date of any policy of insurance required to be procured by Contractor under this paragraph, the original renewal policy (or conforming copies thereof) for such insurance shall be delivered by the Contractor to the City and any additional insured, loss payee, or mortgagee, as the case may be, and certificates thereof shall be delivered as aforesaid, together with satisfactory evidence of payment of the premium thereon. All policies referred to in this paragraph shall, to the extent then generally obtainable, contain agreements by the insurers that (a) any loss shall be payable to the City, notwithstanding any act or negligence of the City which might otherwise result in forfeiture of said insurance, (b) such policies shall not be canceled except upon ninety (90) days prior written notice to each name insured, additional insured mortgagee and loss payee, as the case may be, and (c) the coverage afforded thereby shall not be affected by the performance of any work in or about the Premises;
6. If the Contractor fails to procure the aforesaid insurance policies and pay the premiums for the same and deliver all such original policies or conforming copies thereof to the City within the time provided for in this lease, the City shall nevertheless have the right, without being obligated to do so, to procure such insurance and pay the premiums therefore, and all such premiums paid by the City shall be paid to the City on demand as additional revenue. Contractor's failure to repay the same as aforesaid shall constitute a default under this agreement;

VII.F Waiver of Subrogation

The City and Contractor agree that all fire and extended coverage insurance policies and comprehensive general liability policies carried by them, respectively, covering the Premises or any property located thereon, shall contain a clause permitting the insured to waive the insurance

carrier's right of subrogation against any third person arising out of the occurrence of any casualty insured against. The City and Contractor agree that each of them waives to the other such right of subrogation. Provided, however, this waiver of subrogation provision shall become inoperative and null and void if the insured party contracts for insurance required to be carried under the terms of this agreement with an insurance company which (i) takes the position that the existence of this waiver of subrogation provision vitiates or would adversely affect any policy insuring the insured party in a substantial manner or (ii) requires the payment of a higher premium by reason of the existence of this waiver of subrogation provision, unless in the latter case, the other party within ten (10) days notice thereof from the insured party pays such increase in premium.

VII.G Taxes

The Contractor hereby certifies that he is in good standing with respect to, or in full compliance with, plan to pay any and all taxes due any local, state and federal agencies as of the date of the execution of this agreement.

VII.H Default

The City may cancel and terminate this agreement, upon giving five (5) days written notice to the Contractor, if the Contractor shall violate any terms or conditions of this agreement or at anytime fails, neglects, or refuses to fulfill or to perform any of the stipulations of this agreement. In such case it shall be lawful for the City, its agents or assigns, to commence forcible entry and detainer action against the Contractor pursuant to state law. The Contractor shall pay and indemnify the City against all costs, charges and expenses, including reasonable attorneys fees, incurred by the City in connection with the enforcement of its rights under this agreement, including the collection of commissions or other amounts due under this agreement, or in obtaining possession of the Premises after the default of the Contractor or after the Contractor's default in surrendering possession upon the expiration or earlier termination of the term of this agreement or extended term, or enforcing any covenants of the Contractor herein contained.

VII.I Waiver of Jury Right

Contractor shall, and does hereby, waive trial by jury in any action, proceeding or claim brought by the City against Contractor or by Contractor against the City on any matters arising out of or in any way connected with this agreement, the relationship of the City and Contractor, the Contractor's use or occupancy of the Premises or the Contractor 's rights thereto.

VII.J Waiver

No waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of the covenants, conditions or agreement itself or of any subsequent breach thereof.

VII.K Entire Agreement

This document represents the entire agreement between the parties and supersedes all prior representations, negotiations or agreements whether written or oral.

VII.L Governing Law

This agreement shall be construed and governed by the laws of the State of Maine

VII.M Severability

If any of the terms, provisions or conditions of this agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this agreement and the application of such terms, provisions, or conditions to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each of the other terms, provisions and conditions of this agreement shall be valid and enforceable to the fullest extent permitted by law.

VII.N Termination

Either party has the right to terminate said agreement by placing a written Ninety (90) days notice of such termination in the United States Mail, postage prepaid and addressed to, in the case of the City of Auburn, **Peter Crichton, City Manager, 60 Court St Auburn, ME 04210.**

CITY OF AUBURN

**Norway Savings Bank Arena Arena
SAMPLE CONCESSION AND TAVERN SPACE LEASE AGREEMENT**

THIS AGREEMENT made and entered into by and between the **CITY OF AUBURN** (hereinafter called the "**Lessor**" or "**Landlord**") and _____ (hereinafter called the "**Lessee**" or "**Tenant**")

WITNESSETH: That the Lessor for and in consideration of the covenants and agreements hereinafter mentioned to be kept and performed by the Lessee, hereby lets and leaves to the Lessee, certain Premises, properties and improvements thereon, situated at the Auburn Ice Arena, 985 Turner Street Auburn Maine, and more specifically described in Schedule A attached hereto.

1. **Term:** This rental agreement shall be for the period **commencing December 1st, 2017 and terminating June 30th, 2024.**

2. **Rents:** The Lessee agrees to pay to the Lessor as rental payments the amount of:

\$ _____ **(00.00) per month.** All monthly payments shall be received by the **1st** day of each month for the duration of said lease agreement. Payments are to be made by check payable to the City of Auburn, Auburn Ice Arena account. Any amount, which is past due, shall be subject to 1½% additional charge each month until paid. The Lessee agrees to execute a security agreement providing the City with a first priority lien upon all assets, property and effects of the Lessee to secure the payments of the above-mentioned rents.

Note: If the Lessee makes payment by check and there are insufficient funds to cover said amount being paid, it shall be cause for the City to immediately terminate this contract and the City shall pursue any legal action required for the proper collection.

3. **Period of Operation:** The Lessee agrees to operate the concession weekdays, from 4:00 p.m. to 8:00 p.m., except on non-school days and holidays when the hours of operation will be 7:00 a.m. to 8:00 p.m. Concession hours on Saturdays and Sundays shall be 7:00 a.m. to 8:00 p.m. with the following exceptions: The concession stand shall remain open for high school interscholastic games, tournaments, and other special events as directed by the TRF Management or their designee. If, due to inclement weather conditions or mechanical breakdowns, or other reasons beyond the control of the Lessee, the concession may choose not to open for the day in question, if agreed by the TRF Management or their designee.

4. **Use of the Premises:** The Premises shall be used for the sole purpose of providing food and beverage concessions to persons attending the Auburn Ice Arena. All food and beverages provided by the Lessee shall be paid for at prices, which are predetermined and posted at the concession stand.

5. **Records and Statements:** The Lessee agrees to keep a full and true account of all receipts and disbursements in a form prescribed by the City for that purpose and shall furnish to the City at time of monthly payments, a statement of the gross income derived from the operation of the concession, as defined in paragraph 2 above, for the duration of this agreement. All books, accounts, records and operation of the concession shall be open to inspection by the City at all reasonable times.

6. **Equipment and Fixtures:** It is understood and agreed that the Lessee shall have the use of all equipment now on the Premises which are necessary for the operation of the concession, and which are more particularly described in Schedule B attached hereto. Lessee shall provide at his or her own expense, any additional equipment which may be necessary or desirable for the proper operation of the concession. Should any equipment or fixtures need to be attached or installed to the Premises, the Lessee agrees to get written consent from the Lessor prior to any installation and shall be at the Lessee own expense.

7. **Utilities:** The City agrees to supply electrical power and heat to the Premises for the use by the Lessee. Any gas service or telephone required by the Lessee shall be provided for by the City and maintained and paid for by the Lessee at a predetermined rate (subject to metering and contractual agreements for the provision of services within the facility ie, internet, pos, gas and phone).

8. **Signs:** No signs will be permitted inside or outside of the lease Premise unless approved in writing by the Lessor or it designate. All signs approved in writing shall meet City rules, regulations, codes and ordinances that exist. All installation and or removal cost will be at the Lessees expense.

9. **Maintenance and Repairs:** The Lessee shall keep and maintain in good order, condition and repair (which repair shall mean replaced if necessary) the Premises and every part thereof, including without limitation, all doors, windows, glass, fixtures, interior walls, floors, equipment and ceilings. The Lessee shall make such repairs and/or maintenance promptly and in a good and workman-like manner. If Lessee refuses or neglects to commence or complete repairs promptly and adequately, the City may, but shall not be required to do so, make or complete said repairs and Lessee shall pay the costs thereof to the City upon demand. The Lessor and Ice Arena Management retains the right, to enter the said lease Premises (with appropriate notice) for inspection and maintenance at any reasonable time for the duration of said lease agreement.

10. **Personnel:** The Lessee agrees during the period of operation of the concession and lounge space described in this agreement, to operate the concession personally or to employ qualified personnel, who shall be fully authorized to act and represent the Lessee in all matters pertaining to the operation and management of the concession and to the satisfaction of the Lessor covered in the agreement. The personnel shall at all times be neat and dressed in clean and suitable attire. Personnel must all wear hats or hairnets and aprons. In addition, utensils will be used to handle food items as much as possible. The employment of any such person not meeting these requirements or is considered objectionable shall receive disciplinary action or work termination in writing by the Lessor or their designate.

11. **Exclusivity:** During the time that this agreement is in full force and effect, the City shall not grant a lease or agreement to any other person or company which shall in any way compete with the concession herein granted to the Lessee **during the hours that the Lessee is in operation**. This agreement, however, shall not preclude the general public from bringing into the arena, for personal use, but not for sale, food or other articles for their own consumption. This agreement, also, does not preclude a private party or group from hiring a caterer for their own use. **The City, however, reserves the right to maintain beverage dispensing machines and vending machines to be located outside of the concession, for soda and all sport beverages and snack foods**

12. **Assignment and Subleasing:** This concession and/or Lounge space shall be not sublet in whole or in part without the written consent of the City.

13. **Compliance With Laws:** The Lessee agrees to comply strictly with all laws of the City of Auburn, State of Maine, and United States of America and all rules and regulations governing the conduct of the personnel and management of the concession. All licenses or permits are the responsibility of the Lessee.

14. **Sanitation:** The Lessee agrees to keep all equipment, fixtures and the Premises themselves in a clean and sanitary condition at all times, and to remove all rubbish, waste and garbage promptly to a place designated by the City. **The Lessee shall at all times comply with all regulations and codes set forth by the State or local government in the proper handling and serving of food items to the public. Violation of any code infraction could lead to immediate termination of the lease agreement.**

15. **Insurance:** The Lessee covenants and agrees, at its sole cost and expense, to obtain, keep and maintain in full force and effect for the mutual benefit of the City and the Lessee the following policies of insurance:

(a) A commercial general liability policy including a combined single limit of not less than \$500,000 per occurrence, with respect to bodily injury, death or property damage, and an aggregate limit of not less than \$1,000,000. Provided, however, that the City shall have the right during the lease term to require Lessee to obtain increased liability coverage to reflect the cost of living increases during the term of this lease, or to comport with generally accepted industry standards in the trade at such time;

(b) During any construction or alterations performed by the Lessee or by the City, the City or Lessee, as the case may be, shall keep in force for the protection of the City and the Lessee, workers compensation insurance coverage with an insurance carrier licensed to do business in the State of Maine, covering-all persons employed by Lessee or by the City, or its contractors, in connection with the construction or alterations, and satisfying the requirements of the statutes of the State of Maine;

(c) The Lessee shall insure his personal property on the lease Premises against physical loss or damage by at least the perils of fire and lightning, extended coverage, vandalism, malicious mischief and where pertinent, sprinkler leakage. The City shall have no obligation to replace, restore or repair any fixtures or personal property installed in or improvements made on the Premises by Lessee;

(d) All insurance required under this paragraph shall be effected under valid enforceable policies issued by insurers as recognized responsible and authorized to do business in the State and otherwise reasonably acceptable to the City. All property (i.e. casualty) insurance policies shall name the City as additional insured.

All liability insurance policies shall list the City as an additional insured. Upon the execution of this lease, the original policies procured by Lessee pursuant to this paragraph, or conforming copies thereof, shall be delivered to the City at least thirty (30) days prior to the expiration date of any policy of insurance required to be procured by Tenant under this paragraph, the original renewal policy (or conforming copies thereof) for such insurance shall be delivered by Tenant to Landlord and any additional insured, loss payee, or mortgagee, as the case may be, and certificates thereof shall be delivered as aforesaid, together with satisfactory evidence of payment of the premium thereon. All policies referred to in this paragraph shall, to the extent then generally obtainable, contain agreements by the insurers that (a) any loss shall be payable to the City, notwithstanding any act or negligence of the City which might otherwise result in forfeiture of said insurance, (b) such policies shall not be canceled except upon thirty (30) days prior written notice to each name insured, additional insured mortgagee and loss payee, as the case may be, and (c) the coverage afforded thereby shall not be affected by the performance of any work in or about the Premises;

(e) If Tenant fails to procure the aforesaid insurance policies and pay the premiums for the same and deliver all such original policies or conforming copies thereof to the City within the time provided for in this lease, the City shall nevertheless have the right, without being obligated to do so, to procure such insurance and pay the premiums therefore, and all such premiums paid by Landlord shall be paid to Landlord on demand as additional rent. Tenant's failure to repay the same as aforesaid shall constitute a default under this lease;

16. **Waiver of Subrogation:** The City and Lessee agree that all fire and extended coverage insurance policies and comprehensive general liability policies carried by them, respectively, covering the Premises or any property located thereon, shall contain a clause permitting the insured to waive the insurance carrier's right of subrogation against any third person arising out of the occurrence of any casualty insured against. Landlord and Tenant agree that each of them waives to the other such right of subrogation. Provided, however, this waiver of subrogation provision shall become inoperative and null and void if the insured party contracts for insurance required to be carried under the terms of this lease with an insurance company which (i) takes the position that the existence of this waiver of subrogation provision vitiates or would adversely affect any policy insuring the insured party in a substantial manner or (ii) requires the payment of a higher premium by reason of the existence of this waiver of subrogation provision, unless in the latter case, the other party within ten (10) days notice thereof from the insured party pays such increase in premium.

17. **Taxes:** The Lessee hereby certifies that he is in good standing with respect to, or in full compliance with, plan to **pay** any and all taxes due the State of Maine and the Internal Revenue Service as of the date of the execution of this agreement.

18. **Indemnification/Release:**

(a) Except for claims arising out of the wrongful acts or negligence of the City, Tenants shall protect, indemnify, save and keep harmless the City, its agents, employees, and invitees against and from all claims, losses, costs, damages or expenses, including reasonable attorneys fees, arising out of or from any accident or other occurrence in, on or at the Premises described herein, the occupancy of use of the Premises, or any act or omission of Lessee, its employees, agents, invitees, subtenants, licensees, assignees or contractors. Lessee shall protect and save and keep the City harmless and indemnify it against and from any penalty or damage

or expense, including reasonable attorneys fees, or charges imposed for any violations of any law or ordinance whether occasioned by the neglect of Lessee or those holding under Lessee, and also will protect, indemnify, save and keep harmless the City or the City's employees, tenants, or invitees against and from any and all claims and against and from any and all loss, cause, damage, liens or expense, including reasonable attorneys fees, arising out of any failure of Lessee in any respect to comply with and perform all the requirements and provisions of this lease;

(b) The Lessee shall also indemnify and hold the City harmless against all claims, demands, liabilities, lawsuits, damages, costs and expenses, including legal fees, incurred by the City as a result of any mechanics liens, or security agreement filed against the leased property, or any equipment therein, or any materials used in construction, alteration or improvement of the Premises;

(c) Lessee agrees to make no claim against the City and to assume responsibility of defending, at Lessee's own expense, including reasonable attorney's fees, any claim which will be made against the City by any agent, employee, licensee or invitee of Lessee or by others claiming the right to be on or about the Premises through or under Lessee for any injury, loss or damage to person or property occurring upon the Premises, from any cause other than the negligence of the City.

19. **Default:** The City may cancel and terminate this agreement, upon giving five (5) days written notice to the Lessee, if the Lessee shall violate any terms or conditions of this lease or at anytime fails, neglects, or refuses to fulfill or to perform any of the stipulations of this agreement. In such case it shall be lawful for the City, its agents or assigns, to commence forcible entry and detainer action against the Lessee pursuant to state law.

20. The Lessee shall pay and indemnify the Landlord against all costs, charges and expenses, including reasonable attorneys fees, incurred by the City in connection with the enforcement of its rights under this lease, including the collection of rents or other amounts due under this lease, or in obtaining possession of the Premises after the default of the Tenant or after the Tenant's default in surrendering possession upon the expiration or earlier termination of the term of this lease or extended term, or enforcing any covenants of the Lessee herein contained.

21. **Destruction or Damage by Fire or Other Casualty:** This lease is made on the condition that if the Premises or any part thereof be damaged or destroyed by fire or other casualty so as to render said Premises unfit for use and occupancy, a just and proportionate part of the rent, according to the nature and extent of the injury to said Premises, shall be suspended or abated until said Premises have been put in as good condition for the use and occupancy as at the time immediately prior to such damage or destruction, unless said destruction or damage was caused by the acts or negligence of the Lessee, its employees, agents or invitees. The City will proceed at its expense and as expeditiously as may be practical to repair the damage, unless the City should decide not to repair or restore the Premises or the building in which said Premises are located, in which event and at the City's sole option, the City may terminate this lease forthwith, by giving Tenant a written notice of its intention to terminate within thirty (30) days after the date of the casualty.

22. **Waiver of Jury Right:** Lessee shall, and does hereby, waive trial by jury in any action, proceeding or claim brought by the City against Lessee or by Lessee against the City on any matters arising out of or in any

way connected with this lease, the relationship of the City and Lessee, the Lessee's use or occupancy of the Premises or the Lessee's rights thereto.

- 23. **Waiver:** No waiver of any breach of any covenant, condition or agreement herein contained shall operate as a waiver of the covenants, conditions or agreement itself or of any subsequent breach thereof.
- 24. **Entire Agreement:** This lease contains the entire agreement of the parties in regard to the Premises. There are no oral agreements existing between them.
- 25. **Governing Law:** This lease shall be construed and governed by the laws of the State of Maine.
- 26. **Severability:** If any of the terms, provisions or conditions of this lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this lease and the application of such terms, provisions, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each of the other terms, provisions and conditions of this lease shall be valid and enforceable to the fullest extent permitted by law.

27. Either party has the right to terminate said contract by placing a written Ninety (90) day notice of such termination in the United States Mail, postage prepaid and addressed to, in the case of the City of Auburn, **Peter Crichton, City Manager, 60 Court St. Auburn Maine, 04210**, or in the case of the Lessee _____ or by hand delivery to appropriate office mentioned above.

IN WITNESS WHEREOF, the parties have executed this instrument hereto on the date first above written.

Dated: _____

Witness:

OWNER: CITY OF AUBURN _____

By: _____
Peter Crichton, City Manager
City of Auburn, Maine

Dated: _____

Witness:

Lessee: _____

By: _____
Authorized Signature