

AGREEMENT
Between
THE CITY OF BURLINGTON
DEPARTMENT OF PARKS & RECREATION
and
NORTH COUNTRY SPECIALTY FOODS, INC.

THIS AGREEMENT, made and entered into as of this day of , 2010 by and between the City of Burlington, a municipal corporation existing under the laws of the State of Vermont, acting by and through its Board of Parks and Recreation Commissioners (hereinafter referred to as the "City") and North Country Specialty Foods, Inc (hereinafter referred to as Concessionaire).

WITNESSETH

WHEREAS, the City manages Memorial Auditorium and the Concessionaire desires to operate therein a concession service for the sale of food and beverage, to carry out the functions of a snackbar concession, and the City seeks to provide for the sale of alcohol for selected events thru a qualified concessionaire,.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained the parties hereto agree as follows:

1. PREMISES

The Concessionaire is hereby granted use of certain space within the Memorial Auditorium, such space to be used for a snackbar and alcohol catering, so-called. The building has two primary concessions vending locations, the Main Lobby and the Annex. Depending on the requirements of each event, one or both of these locations may be utilized, as may other locations within the venue with the approval of the specific location by the City.

The Concessionaire shall have the right to use all concession equipment now on the premises. The City will provide normal and regular care and maintenance for such equipment, but the Concessionaire shall be responsible to the City for any damage or loss caused to such equipment by the negligence or willful misconduct on the part of its employees or agents. Concessionaire agrees to clean all such provided equipment on an event by event basis and, at the termination of each operating season and for the duration of this Agreement, shall return to the City all such equipment in the condition in which is was received, reasonable wear and tear excepted. It shall be the sole responsibility of the Concessionaire to obtain and to pay the cost of all licenses and fees necessary for the operation of the concession.

2. GENERAL DESCRIPTION OF CONCESSION GRANTED

Subject to terms and conditions hereinafter set forth, the Concessionaire may exercise the right on the premises of Memorial Auditorium to sell food, beverage and alcohol items as approved by the City prior to each season of operation. The Concessionaire shall have no authority to conduct general merchandising nor the sale of other items not herein specified.

3. INVESTMENT BY CITY

The premises will be furnished to the Concessionaire without improvements. Any desired temporary or permanent improvements proposed by the Concessionaire to the food concession area and/or annex area, must be approved in advance by the Director of the Burlington Department of Parks and Recreation. All such improvements shall meet Department and/or City requirements. Any fixtures affixed permanently to the Memorial Auditorium concession area shall be regarded as a part of that area thereof, and shall remain the property of the City at the conclusion of the Agreement. All improvements shall be made at the expense of the Concessionaire, unless otherwise agreed upon. All personal property and equipment of the Concessionaire not permanently affixed will remain the property of the Concessionaire, and must be removed from the premises on an annual basis by the Concessionaire within 14 days following the Labor Day holiday. Such personal property and equipment shall be removed without damage or destruction to the concession area or, the bath house building structure itself.

4. OBLIGATION OF CONCESSIONAIRE

a. For the purposes of this Agreement, the term Concessionaire shall include the Concessionaire, its employees, agents, officers and members.

b. The Concessionaire shall not sell any glass bottled items or use any items made with Styrofoam which contain chlorofluorocarbons (CFC's).

c. The Concessionaire shall submit to the City for its approval prior to the opening of his/her concession, a list of items to be sold by the Concessionaire and their prices. The list of items or the price of such items may not be altered without the consent of the Director of the Department of Parks and Recreation or a representative designated by him/her. The Concessionaire will prominently display to the public at all times signage that contains the Concessionaire's business name, a current menu listing of all available food, beverage and their prices.

d. The Concessionaire shall maintain and operate the concession area as well as any adjacent areas used by the public awaiting service, in a businesslike manner and shall keep the premises in a safe, clean, orderly and inviting condition at all times he/she is operating.

e. The Concessionaire shall not retain as an employee any person(s) on or about the premises who shall use improper language or act in a loud or boisterous or otherwise improper

manner. The Concessionaire agrees to discharge any employee whose conduct the City finds, with valid cause, is detrimental to the best interests of the City.

f. The Concessionaire shall at all times comply with the laws and regulations of the United States of America and the State of Vermont, and all applicable local ordinances and regulations, including the general rules and regulations of the Burlington Board of Parks and Recreation Commissioners. Violations thereof by the Concessionaire, or revocation of permits or licenses required in performance of this Agreement, shall be cause for termination of this Agreement at the option of the City if not corrected within a reasonable period, after notice thereof.

g. The Concessionaire shall pay all taxes or assessments that may be lawfully levied against it by reason of his/her operations on the premises of said City.

h. The Concessionaire shall keep the concession area and the adjacent public waiting area in a clean and sanitary condition at all times. The Concessionaire will dispose of all trash, garbage and refuse in heavy duty plastic bags furnished by the Concessionaire, and further, the Concessionaire will comply with application City recycling regulations. The City will remove all bagged refuse and recycling from a mutually agreed upon location. Piling of boxes, cartons, barrels or other similar items by the Concessionaire in an unsightly manner or unsafe manner, on or about the concession premises, is forbidden.

i. The Concessionaire shall, at his/her sole expense, provide necessary clean-up service for the maintenance of walks and turfing areas. The Concessionaire shall repair and/or replace all walkways, trees and improvements within the interior of the premises, damaged as a result of his/her activity.

j. The Concessionaire agrees that he/she shall not engage in other business or activities within the confines of Memorial Auditorium other than those expressly authorized by the City.

k. The Concessionaire agrees to sell only beverages or alcohol products approved by the Department. The Concessionaire shall be responsible for maintaining an appropriate number of recycling containers.

5. INDEMNIFICATION AND INSURANCE

a. The Concessionaire agrees to indemnify and save harmless the City, its agents, officers and employees, their successors and assigns, individually and collectively, from and against all liability for injuries to persons or damage to property occasioned by the Concessionaire, or by reason of these violations, disregard or breach of any law, ordinance, order or regulation by the Concessionaire. The Concessionaire further agrees to pay all expenses in defending against any claims made against the City, provided, however, that the Concessionaire shall not be liable for any damage, injury or loss occasioned by negligence on the part of the City, its agents, officers or employees. The Concessionaire shall give to the City immediate notice of any claims made or service of process in any suit concerning such injury or damage.

b. The Concessionaire shall maintain insurance in companies licensed to do business in the State of Vermont for the protection of the City and naming it as additional insured against all claims, losses, costs or expenses arising out of injuries or death to persons whether or not employed by the Concessionaire, damage to property whether resulting from the acts or omissions, negligence or otherwise of the Concessionaire and growing out of the use of the said Memorial Auditorium by the Concessionaire, such policies to provide for a comprehensive general liability insurance, the minimum amount of two million dollars (\$2,000,000.00) limit on account of each accident resulting in the single limit coverage as well as bodily injury or death to one person of not less than one million dollars (\$1,000,000.00), a liability limit on account of each accident resulting in bodily injury or death to more than one person of not less than one million dollars (\$1,000,000.00) and liability insurance of not less than twenty-five thousand dollars (\$25,000.00) for each accident for property damage. The Concessionaire shall also maintain alcohol liability insurance for one million dollars (\$1,000,000.00) for the duration of this agreement. The Concessionaire shall furnish evidence to the City of the continuance in force of said policies by depositing a copy of the policy with the City. Said policies shall be so worded to insure ten (10) days notice and cancellation to the City.

c. The Concessionaire shall furnish to the City on an annual basis and prior to May 1 of each year this Agreement is in effect, satisfactory evidence that it carries Worker's Compensation Insurance in accordance with the laws of the State of Vermont covering all employees of the Concessionaire who must by law be so covered.

6. TERM OF AGREEMENT

a. This agreement shall cover the period of January 1, 2010 through December 31, 2012 and will expire on December 31, 2012.

7. RENTALS AND ACCOUNTING RECORDS

a. During the first year of the agreement (January 1 – December 31, 2010), the Concessionaire shall pay to the City a fee of twenty-three percent (23%) of after tax Gross Revenues earned at the Memorial Auditorium food and beverage concession operation and twenty-five percent (26%) of all after tax Gross Revenues earned in the alcohol catering concession. During the second year of the agreement (January 1 – December 31, 2011), the Concessionaire shall pay to the City a fee of twenty-four percent (24%) of after tax Gross Revenues earned at the Memorial Auditorium food and beverage concession operation and twenty-five percent (27%) of all after tax Gross Revenues earned in the alcohol catering concession. During the third year of the agreement (January 1 – December 31, 2012), the Concessionaire shall pay to the City a fee of twenty-three percent (25%) of after tax Gross Revenues earned at the Memorial Auditorium food and beverage concession operation and twenty-five percent (28%) of all after tax Gross Revenues earned in the alcohol catering concession. Concessionaire shall furnish to the City statements showing Gross Revenue from all events the next business day after each event. Concessionaire shall furnish to City on the 1st day of each month a payment for the full amount of the above-stated percentages of its Gross Revenues due from the preceding month.

b. All supporting records, documents, books and accounts shall be kept and retained by the Concessionaire for a period of one year following the expiration of this agreement, and shall be open to inspection at reasonable times by authorized representatives of the City. At the request of the City and after the completion of each year of this agreement, and no later than February 10, of the next year, the Concessionaire shall submit to the Director of the Department of Parks and Recreation a written report of its annual gross income, and such other details as the Director of Parks and Recreation may require consistent with this Agreement, from the operations of said concession. Gross receipts shall be defined herein as the total receipts of all sales of merchandise and services and all other gross income from the operation of the concession herein granted, whether for cash or on credit, collected or uncollected.

8. RIGHTS OF INGRESS AND EGRESS

Subject to regulations governing the use of Memorial Auditorium the Concessionaire shall have for itself, for its employees, agents, officers, members, contractors, suppliers, guests, patrons and invitees, the right of access to and egress from the premises covered by this Agreement as mutually agreed upon.

9. TERMINATION BY CONCESSIONAIRE

This Agreement shall be subject to cancellation by the Concessionaire should any one or more of the following events occur:

- a. The permanent abandonment of Memorial Auditorium by the City.
- b. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of Memorial Auditorium should such injunction remains in force for at least thirty (30) days.
- c. The breach by the City of any of the terms, covenants or conditions of this Agreement to be kept, performed and observed by the City and the failure of the City to remedy such breach for a period of sixty (60) days after written notice from Concessionaire of the existence of such breach.
- d. The assumption by the United States Government, or any authorized agency of same, of the operation, control or use of Memorial Auditorium and its facilities in such a manner as to substantially restrict the Concessionaire from operating said concession, if such restriction be continued for a period of three (3) months or more.

10. TERMINATION BY CITY

This Agreement shall be subject to cancellation by the City should any one or more of the following events occur:

- a. If the Concessionaire shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against him/her and he/she is thereafter adjudicated a bankrupt pursuant to such proceedings; or if a court shall take jurisdiction of the Concessionaire and his/her assets pursuant to proceedings brought under the provisions of any Federal reorganization act; or if a Receiver for the Concessionaire's assets is appointed; or if the Concessionaire shall be divested of his/her rights, powers and privileges under his/her contract by other operation of law.
- b. If the Concessionaire shall default on or fail to make any payments at the times and in the amounts as required of him/her under this contract.
- c. If the Concessionaire shall abandon and discontinue the conduct and operation of said concession.
- d. If the Concessionaire shall fail to perform, keep and observe any of the covenants and conditions contained in this contract to be performed, kept and observed by him/her.
- e. If the Concessionaire fails to abide by all applicable laws of the United States and the State of Vermont and all City ordinances and regulations.

The City shall provide written notice to the Concessionaire of any known violation or default of subsections (b), (c) and (d) of this section. The Concessionaire shall have ten (10) days from the date of the mailing of such notice by the City to correct or cure such violation of subsection (b) or (c). The Concessionaire shall have thirty (30) days from the date of the mailing of such notice by the City to correct or cure a violation of subsection (d). The violation complained of must be corrected in a manner that is satisfactory to the City. If the violation is not corrected in a manner that is satisfactory to the City then the City shall have the right without further notice to the Concessionaire to terminate the Agreement and to enter upon and take full possession of the concession area.

Should the events described in subsection (a) or (e) occur, the Agreement shall be deemed to have been breached by the Concessionaire and no notice by the City will be required and the Agreement shall be automatically terminated. The Concessionaire shall remain liable for any funds due under this Agreement.

The acceptance of fees by the City for any period after a default of any of the terms noted above shall not be deemed to be a waiver of any rights on the part of the City to terminate this Agreement based on a violation of the Concessionaire.

Should the City agree to waive any terms of the Agreement, such waiver shall not be held to be a waiver by the City of any subsequent default on the part of the Concessionaire.

11. RESTORATION OF PREMISES

Upon termination of this Agreement or in the event that any of the space is relinquished pursuant to the provisions of Article 1 hereof, the Concessionaire shall restore the premises and

all improvements to the condition in which they were received, constructed or installed, reasonable wear and tear and damage by fire or the elements excepted.

12. DAMAGE OR DESTRUCTION OF PREMISES

It is understood and agreed that if the premises used shall be damaged or destroyed in whole or in part by fire or other cause during the term hereof, the City will repair and restore them to a good tenable condition with reasonable dispatch, and that the fee herein provided for shall abate entirely in case the entire premises are untenable, and prorate for the portion rendered untenable, in case a part only is untenable, until the premises shall be restored to a tenable condition; provided, however, that:

- a. There shall be no abatement of fee if such fire or other cause damaging or destroying the premises used shall result from the negligence or willful act of the Concessionaire, but such fee shall abate to the extent the City recovers such loss from insurance.
- b. In case the premises shall be destroyed to the extent of more than fifty (50) percent of the value thereof, the City or the Concessionaire may at their option terminate this Agreement forthwith by a written notice to that effect.

13. RIGHT OF INSPECTION

The Director of Parks and Recreation and his/her duly authorized representatives shall have at any and all reasonable times the full and unrestricted right to enter the premises for the purpose of inspecting or protecting such premises, and of doing any and all things with reference thereto which the City is obligated to do as set forth herein or which may be deemed necessary for the proper general conduct and operation of Memorial Auditorium in the exercise of the City's police power.

14. ASSIGNMENT AND SUBLETTING

The privileges contained herein are personal and the Concessionaire agrees that he/she will not assign, sublet or underlet the same or any part thereof without the express written consent of the City which shall not be unreasonably withheld, and any purported assignment in violation hereof shall be void.

15. RULES AND REGULATIONS

The City shall have the right to and shall adopt and enforce reasonable rules and regulations with respect to the use of Memorial Auditorium, which the Concessionaire agrees to observe and obey, provided said rules and regulations do not specifically negate any of the agreements herein made.

16. GENERAL PROVISIONS

a. Notices to the City provided for in the contract shall be sufficient if sent by registered mail, postage prepaid, addressed Director of Department of Parks and Recreation, 645 Pine Street, Suite B, Burlington, VT 05401, and notices to the Concessionaire if sent by registered mail, postage prepaid, addressed to North Country Specialty Foods, Inc., P.O. Box 25, Milton, VT 05468.

17. SUCCESSOR AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Agreement shall extend to and bind the successors and assigns of the respective parties hereto.

18. INVALID PROVISIONS

In the event that any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided that the validity of any such covenant, condition or provision does not materially prejudice either the City or the Concessionaire in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

19. COVENANT AGAINST DISCRIMINATION

The parties hereto covenant not to discriminate against any employee or member applicant for employment, or membership to be employed in the performance of this Agreement with respect to his/her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his/her race, religion, national origin or sex.

CITY OF BURLINGTON, BOARD OF PARKS AND RECREATION COMMISSIONERS

BY _____
Mari Steinbach, Director
Burlington Department of Parks & Recreation

BY _____
Dan Keough, Owner
North Country Specialty Foods

Date _____

Date _____

Mr. Dan Keough
North Country Specialty Foods, Inc
P.O. Box 25
Milton, VT 05468

Dear Dan,

Enclosed please find two copies of the Agreement between North Country Specialty Foods and the Department of Parks and Recreation for the Memorial Auditorium Concession.

Please sign and return one to me at the above address and keep one for your records. I look forward to working with you during the upcoming season. If you have any questions, please give me a call.

Sincerely,

Alan L. Campbell
Auditorium Manager & Parks Event Host