

**(DRAFT) LICENCE AND SERVICE AGREEMENT**

THIS AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

B e t w e e n

**CITY OF HAMILTON**  
(hereinafter called the "Licensor" or "City")

Of The First Part,

- and -

**Grant Armstrong, President**  
**in his personal capacity and as an agent of the Rotary Club of Dundas Valley Sunrise**  
(hereinafter collectively called the "Licensee")

Of The Second Part,

**WHEREAS** the City is the owner of the lands known municipally as 71 Cross Street, Dundas, also known as Dundas Driving Park (the "Premises");

**AND WHEREAS** the Licensee has organized and carried out a Victoria Day Celebration and Fireworks on the Premises on behalf of the City during the May 2010 to May 2019 long weekends inclusive;

**AND WHEREAS** the City wishes to enlist the Licensee's services to organize and carry out a Victoria Day Celebration and Fireworks on the Premises on behalf of the City during the May 2020 long weekend and to reserve the option to enlist the Licensee's services for the same during the May 2021, 2022, 2023 and 2024 long weekends;

**NOW THEREFORE** in consideration of the payments, covenants, terms, warranties, conditions and provisos contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Grant of Licence**

(1) The Licensor hereby grants to the Licensee a licence (the "Licence") to use the Premises solely and actively for the purpose of carrying on the Victoria Day Celebration and Fireworks (the "Event").

(2) The Premises will be open to the public on the following days and times:

**Sunday, May 17, 2020 at 6:00pm through to Sunday, May 17, 2020 at 11:00pm**

The Licensee will be permitted on the Premises starting on **Sunday, May 17, 2020 at 7:00am to set up** and will complete the **tear down by Sunday, May 17, 2020 at 11:59pm**.

(3) In the event inclement weather prohibits the Event from taking place on Sunday, May 17, 2020, the following shall apply in lieu of subsection 1(2):

The Premises will be open to the public on the following days and times:

**Monday, May 18, 2020 at 6:00pm through to Monday, May 18, 2020 at 11:00pm**

The Licensee will be permitted on the Premises starting on **Monday, May 18, 2020 at 7:00am to set up** and will complete the **tear down by Monday, May 18, 2020 at 11:59pm**.

(4) The Licensee accepts the Premises in their present condition and acknowledges and agrees that the Licensor has not given any representation, warranty or condition, express or implied, in fact or by law, as to the state, quality or condition in, on, or of the Premises, whether with respect to environmental matters or otherwise, or that the Premises are suitable for any particular use or purpose (including, but not limited to any use permitted by this Agreement) or as to any other matter or thing, whether or not related to any of the foregoing. Furthermore, the Licensee assumes all risks relating to the physical condition of the Premises, including the surface and subsurface conditions thereof. Neither the Licensee nor any permitted occupant shall have any recourse to the Licensor as a result of the nature or condition of the Premises, whether or not the Licensor has or had actual or imputed knowledge of such nature and condition as at the commencement date of this Agreement or at any other time during the Term or any renewal or extension thereof. The Licensee acknowledges and agrees that the Licensee shall be an occupier pursuant to the *Occupiers' Liability Act* (Ontario), as amended.

(5) No legal title or leasehold interest in the Premises shall be deemed or construed to have been created or vested in the Licensee by anything contained in this Agreement. The Licensee will not register this Agreement or notice thereof against title to the Premises or any part thereof.

(6) The Term of this Agreement shall commence on the day this Agreement has been fully executed by the parties and shall continue in effect until 11:59pm on the last day upon which the Licensee is obligated to carry out the Event, including any events carried out pursuant to the option found in section 20 in favour of the Licensor, in accordance with this Agreement.

## **2. Fee Payable by Licensee**

The Licensee shall pay to the Licensor a park permit fee for use of the Premises for the Event (the "Licence Fee"), without deduction, abatement or set-off, of **ONE DOLLAR (\$1.00)** inclusive of all applicable taxes, the receipt of which is hereby acknowledged.

## **3. Fee Payable by Licensor**

- (1) The Licensor shall pay to the Licensee up to **THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00)**, exclusive of all applicable taxes, for organizing and carrying out the Event on the Premises and for no other purpose. Said amount shall be payable as follows:
  - (a) Twenty-Six Thousand and Two Hundred and Fifty Dollars (\$26,250.00), exclusive of all applicable taxes, shall be payable at least thirty (30) days before the Event, provided the City has approved the Licensee's City of Hamilton Festival and Event Approval Application and is satisfied, in its sole discretion, that the Event deliverables have been or are being met; and

- (b) An additional payment of up to Eight Thousand and Seven Hundred and Fifty Dollars (\$8,750.00), exclusive of all applicable taxes, shall be payable within forty-five (45) days after receipt of the following items, satisfactory in form and substance to the City:
  - (i) a post-Event report, containing a review of the successes, safety-related issues and areas for improvement, as they relate to the Event; and
  - (ii) the Licensee's post-Event financial statement showing that an additional payment of up to and no greater than Eight Thousand and Seven Hundred and Fifty Dollars (\$8,750.00) is required to balance the Licensee's books, as they relate to the Event.

Both of the foregoing items must be submitted to the City within 90 days of the event end date.

(2) If inclement weather causes the Event to be rescheduled or cancelled, then in addition to the amount payable pursuant to subsection 3(1), the City shall also be responsible for any reasonable additional costs incurred by the Licensee resulting from the date change, but only where the costs are actually incurred, for police services, Parks staff, emergency medical services/first aid, portable toilets, sound equipment, and/or watering services for the structures on the Premises. The City shall not be responsible for the costs incurred by the fireworks provider or any other services or expenditures not enumerated above. Where there is any dispute about what is a "reasonable additional cost", "necessary service" or "non-essential service", the decision of the City, acting reasonably, shall be final.

(3) While the Licensee must permit entry onto the Premises by the public free of charge, the Licensor grants the Licensee permission to solicit financial donations from the public at the Premises' entrances during the Event in support of Event operations, logistics and programming expenses and/or the activities of the Rotary Club of Dundas Valley Sunrise and its Dundas Valley Foundation.

#### **4. Non-exclusivity**

(1) The License granted herein shall be non-exclusive to the Licensee, which shall permit the Licensor and the public to attend the Event and to access the Premises during the Event free of charge and without obstruction, excepting any restricted areas required to conduct the Event.

(2) Notwithstanding anything herein contained, the Licensor shall have unrestricted access to the Premises at all times. In the event that emergency work is necessitated as a result of the act, omission or neglect of the Licensee, such work may be undertaken immediately, without notice, by the Licensor and all reasonable costs, expenses and expenditures of the Licensor of such emergency work shall be borne by the Licensee to the extent the emergency situation was caused by the Licensee, and payable forthwith upon written demand by the Licensor, and the Licensor shall have no liability to, or obligation to compensate, the Licensee for any loss or damage whatsoever resulting from such action by the Licensor. Without limiting the generality of the foregoing, the Licensor may suspend for such period of time as it deems necessary in its sole discretion or terminate the Event and the Licence hereunder in an emergency, or whenever in

its sole opinion such suspension or termination may be necessary to ensure the safety of life, or of a structure, or of a neighbouring property, or whenever in its sole opinion the use of the Premises or any part or parts thereof are being carried out in an unsafe manner, and the Licensor shall not be responsible for any loss, expense, costs, charges, damages, indemnities and/or liability which may be sustained, paid or incurred by the Licensee or any other person or persons, by reason of such suspension or termination by the Licensor.

**5. Warranties of Authority of Licensee**

The Licensee expressly represents, acknowledges, agrees and warrants, in addition and not to derogate from the representations and warranties found elsewhere in this Agreement as follows:

- (a) The Rotary Club of Dundas Valley Sunrise has authorized the Licensee to enter into this Agreement and is not prohibited or restricted from entering into any of the obligations assumed, liabilities imposed, or restrictions accepted by the Licensee under this Agreement by any agreement, constating documents, constitution, legislation, statute, act, regulation, order or otherwise,
- (b) To the best of the Licensee’s information and belief and after making diligent inquiries, the Licensee is not aware of any material facts or circumstances having a bearing upon its ability to perform or comply with its obligations under this Agreement

**6. Responsibilities of the Licensee**

- (1) Without limiting or restricting in any way any other responsibilities and obligations of the Licensee in this Agreement, the Licensee shall, at its sole cost:
  - (a) submit a Festival and Event Approval Application to the City of Hamilton Special Event Advisory Team (S.E.A.T) to seek approval to hold the Event; and satisfy all conditions as outlined in the Festival and Event Approval Application Guidelines and in written correspondence from S.E.A.T to the Licensee that are applicable to the Event;
  - (b) use the fee payable by the Licensor pursuant to section 3 of this Agreement towards the Event, and bear all excess costs and expenses in connection with the Event except as outlined in subsection 3(2);
  - (c) permit entry onto the Premises by the public, free of charge;
  - (d) arrange for the supply of, and payment for, fireworks, services, materials, a sound system for emergency and cancellation announcements, and any other items required for the Event;
  - (e) work with the Hamilton Fire Department to plan for fire protection on the Premises in the event of an emergency;
  - (f) arrange for the supply of, and payment for, paramedic and/or first aid services on the Premises during the Event;
  - (g) arrange for the supply of, and payment for, security protection upon the Premises through either the Hamilton Police Service and/or private sector company security personnel licensed by the Province of Ontario;
  - (h) arrange for the supply of, and payment for, closure of the Premises to non-permitted vehicles and traffic management services on streets adjacent to the Premises;
  - (i) arrange for the securing of, and payment for, fireworks permits, road closure permit and road closure services for Helen Street, and other permits required for delivery of the Event;

- (j) not knowingly allow the introduction or use of beer or other alcoholic beverages or liquors upon the Premises without the written consent of the City and on such conditions as the City may impose including, but not limited to, strict compliance with the City of Hamilton Municipal Alcohol Policy.
- (k) not knowingly allow the introduction or use of illegal narcotics upon the Premises;
- (l) accept responsibility for any performance of copyright music. The Licensor will in no way be responsible for any infringement of copyright which may occur on the Premises during the occupancy of the Licensee;
- (m) provide clean-up services for the Premises;
- (n) provide sufficient portable toilets, having regard to the estimated number of attendees;
- (o) erect a fence barrier to maintain a safety perimeter around the fireworks, in accordance with federal laws and regulations, Hamilton Fire Department requirements, and any other applicable law or regulation;
- (p) promote the Event and, in so doing, include either visual acknowledgement of the City's support of the Event through use of the City's logo or verbal acknowledgment through use of the phrase: "produced with the support of the City of Hamilton";
- (q) display signage upon the Premises that includes visual acknowledgement of the City's support of the Event through use of the City's logo or through use of the text phrase: "produced with the support of the City of Hamilton";
- (r) work with Hamilton Emergency Services to develop an Event Emergency Management Plan that includes how the Licensee will communicate effectively with the public about any emergencies that arise during the Event (including but not limited to, lost children);
- (s) water down the Dundas Tennis Club's tennis courts to prevent damage from fireworks debris;
- (t) contract food vendors to supply food and non-alcoholic beverages upon the Premises during the Event. All food vendors must have a valid City of Hamilton issued license to participate at the Event. Furthermore, the Licensor acknowledges that any food concessionaire operating out of the Premises under contract with the City of Hamilton does not have the right to be the sole food vendor during the Event;
- (u) at all times keep the Premises and any buildings, structures, erections or improvements thereon reasonably clean and free from debris, discarded or unnecessary materials, equipment or supplies, waste paper, empty containers and all other unsightly or potentially dangerous rubbish;
- (v) not permit any damage, disfiguration or injury to the Premises or any of the equipment, chattels, fixtures, buildings, structures, landscaping, erections or improvements of the Licensor thereof, and promptly to report any such damage, disfiguration or injury to the Licensor pursuant to section 10;
- (w) ensure that all materials, equipment and supplies delivered to the Premises are neatly and safely stored or contained upon delivery and shall be so maintained until used up;
- (x) take all required measures, including those required by authorities having jurisdiction or instructed by the Licensor, to protect the public and those employed on the Premises from bodily harm and to protect adjacent public and private property and Licensor's property from damage, including but not limited to the cancellation or termination of the Event;
- (y) not use or produce on the Premises or allow to be brought on to the Premises any noxious, offensive, toxic or hazardous substance or any vehicles, equipment or parts which contain any such substances, or any substance which if it were to remain on or escape from the Premises would contaminate the Premises or any other property to which it came in contact. This provision shall not apply to prevent the Licensee from bringing vehicles and equipment, which contain gasoline and engine oil, upon the

Premises provided that such vehicles are adequately protected against the escape of such substances, nor shall it prevent the Licensee from displaying the fireworks for the Event in accordance with this Agreement;

- (z) reimburse the City for costs relating to the provision of Parks staff services and associated fees, as determined in advance by the appropriate authority within the City's Parks department or as otherwise determined by the City.
- (2) If inclement weather threatens the carrying out of the Event, then the following provisions shall apply:
  - (a) the Licensee or the Licensor may determine the necessity of cancelling the Event in the event of health, safety, or security by 8:00pm on the scheduled day of the Event;
  - (b) the Licensee shall immediately notify the City staff person responsible for the management of deliverables in this Licence and Service Agreement, the City's Fire Prevention office, Hamilton Street Railway Control Centre, and Hamilton Police Service office of the cancellation and any changes to fireworks display time and/or date;
  - (c) the Licensee shall notify the public of the cancellation through the sound system on the Premises;
  - (d) if the Event does not take place on either of the days set out in subsections 1(2) and 1(3), the Licensee shall reimburse the Licensor the amounts paid pursuant to section 3(2) hereof, but only to the extent that any such amounts are not owed to Event vendors and/or suppliers of goods and services rendered.

**7. Responsibilities of the Licensor**

The Licensor shall, at its cost:

- (a) provide lighting and access to existing washroom facilities during the Term;
- (b) provide garbage cans;
- (c) notify the public of the cancellation of the Event and any changes to fireworks display time and/or date through the Licensor's social media accounts and issuance of a public service announcement to local media.

**8. Observance of Laws, Statutes and Regulations**

(1) The Licensee shall comply at its own expense with, and conform to, all applicable statutes, laws, by-laws, policies, regulations, ordinances, notices, rulings and orders of the federal, provincial or municipal government from time to time in effect during the Term of this Agreement and any renewal or extension thereof. Without limiting the foregoing, the Licensee, at its own expense, shall obtain all necessary municipal, provincial, federal or other governmental approvals, permits and licences to conduct its business, operations and/or activities in or upon the Premises prior to entering the subject Premises.

(2) Without limiting the generality of subsection 8(1), the Licensee shall comply with all applicable City policies and procedures, including but not limited to the Licensor's Festival and Event Approval Guide and the Policy for Commercial Advertising and Sponsorship. The Licensee acknowledges having received a copy of the Festival and Event Approval Guide and Policy for Commercial Advertising and Sponsorship.

(3) Where there is any conflict between the terms of this Agreement and the Festival and Event Approval Guide, the provisions of this Agreement shall prevail and be given effect to.

(4) The Licensee shall further comply at its own expense with the rules and regulations established by the Licensor for the Premises from time to time, including without limitation those relating to permitted hours of use.

(5) The Licensee acknowledges that the City is bound by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 and that any information provided to the City in connection with this Agreement is subject to disclosure in accordance with the requirements.

## **9. Alterations and Additions**

The Licensee shall not make any alterations or additions whatsoever to the Premises without the prior written approval of the Licensor. Without limiting the generality of the foregoing, the Licensee shall not construct, renovate, install or erect any buildings, structures, fixtures, grounds, improvements or other facilities without first obtaining the written approval of the Licensor for such works. The Licensee shall at its own cost and expense prepare the Premises appropriately for the approved use, and the Licensor shall not be responsible in any way for any improvement or preparation of the Premises. The Licensee shall implement, at its sole cost and expense, all precautions, measures and safeguards as are necessary and as instructed by the Licensor to protect the public from injury during any approved alterations or additions of the Premises.

## **10. Notice of Accident, Injury or Harm**

The Licensee shall give immediate written notice with complete details thereof, to the Licensor of any accident, injury or harm to any person on or using the Premises and conducting the Event or of any damage, loss or defect in or to any part of the Premises or any damage or loss of any property of any person using the Premises or any damage or loss of any property of the Licensor in the Premises which comes to the attention of the Licensee, its officers, employees, members, servants or contractors, notwithstanding that the Licensor may not have any obligation with respect to same.

## **12. Insurance and Indemnification**

(1) For the purposes of this Section, "Licensor" means the City of Hamilton, as well as any and all of its elected officials, representatives, officers, employees, servants, consultants, agents and contractors (other than the Licensee) and "Licensee" means the Licensee as well as any officer, employee, servant, member, contractor, subcontractor, consultant, agent, permitted assign and invitee of the Licensee or of any person permitted or allowed by the Licensee to enter upon or use the Premises.

(2) The Licensee agrees to obtain and maintain in force throughout the duration of this Agreement, including any permitted possession after the Term, at its sole cost and expense including the payment of all deductibles, the following policies of insurance for the specified limits, or such other policies of insurance or higher limits as the Licensor acting reasonably and prudently may from time to time require:

- (a) Commercial General Liability insurance covering against any and all claims for bodily injury, including death, personal injury, and property damage or loss, including acts or omissions of the Licensee, its employees, contractors, sub-contractors, agents and invitees and in a form and with an insurance company acceptable to the Licensor. Such policies of insurance shall have a limit of coverage of not less than Five Million Dollars (\$5,000,000.00) per occurrence or such higher limits as the Licensor, acting reasonably and prudently, may from time to time require. Such policies of insurance shall include, but not be limited to the following: blanket contractual liability; land and premises liability; occupier's liability, completed operations liability; products liability; owners and contractors liability; non-owned automobile liability; cross-liability and severability of interest provisions;
  - (b) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario including third party liability insurance and at least Two Million Dollars (\$2,000,000.00) inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or operated by or on behalf of the Licensee; and
  - (c) such other forms of insurance as may be reasonably and prudently required by the Licensor from time to time.
- (3) The Licensee shall cause its subcontractor providing the display of fireworks for the Event to obtain and maintain in force throughout the duration of the Agreement and to provide proof of the following insurance;
- (a) Commercial General Liability insurance covering against any and all claims for bodily injury, including death, personal injury, and property damage or loss, including acts or omissions of the fireworks provider, its employees, contractors, sub-contractors, and agents and in a form and with an insurance company acceptable to the Licensor. Such policies of insurance shall have a limit of coverage of not less than Five Million Dollars (\$5,000,000.00) per occurrence or such higher limits as the Licensor, acting reasonably and prudently, may from time to time require. Such policies of insurance shall include, but not be limited to the following: blanket contractual liability; land and premises liability; occupier's liability, completed operations liability; products liability; owners and contractors liability; non-owned automobile liability; cross-liability and severability of interest provisions.
- (4) The Licensee shall maintain Property Insurance, as may be applicable, with respect to loss or damage (including fire, theft, burglary, etc.) of its own property and property in its care, custody and control, including but not limited to its equipment, tools, stock, used in connection with this Agreement.
- (5) All such Commercial General Liability insurance policies and certificates shall name as additional insured the Licensor. Such policies shall also require at least thirty (30) days' written prior notice of any change to or amendment, cancellation, expiration or termination of the coverage under such policies to be given to the Licensor herein and be in a form satisfactory to the Licensor. All insurers shall be licensed to do business in Ontario, and such insurers and the insurance coverages shall be acceptable to the Licensor acting reasonably and prudently. The



Licensee shall deliver to the Licensor certificates of insurance originally signed by authorized insurance representatives, or, if required by the Licensor, certified copies of such policies prior to the execution of this Agreement and for all renewals/extensions thereafter during the Term of this Agreement no later than sixty (60) days prior to their renewal date and at any other time upon request by the Licensor. In the event that the Licensee fails to do so, then this Agreement may be immediately terminated at the Licensor's option without further notice. All insurance coverages to be provided by the Licensee herein shall be primary and not call into contribution any other insurance coverages available to the Licensor. Insurance requirements and coverage herein shall not limit, reduce, or waive any of the Licensee's obligations to indemnify the Licensor pursuant to this Agreement herein or the liabilities assumed by the Licensee under this Agreement. The Licensee shall not do or omit to do anything that may breach, limit, restrict, or prejudice the terms or conditions of the insurance coverages referred to herein.

(6) The Licensee shall defend and indemnify the Licensor and save it harmless from any and all losses, costs, damages, or claims, actions, demands, liabilities and expenses (including, without limitation, solicitor fees) in connection with loss of life, personal injury and/or damage to or loss of property: (a) arising out of the Event or any occurrence in or about the Premises; (b) occasioned or caused wholly or in part by any act or omission of the Licensee or anyone for whom it is responsible at law; or (c) arising from any breach by the Licensee of any provisions of this Agreement. The foregoing indemnity shall survive the termination of this Agreement notwithstanding any provision of this Agreement to the contrary.

(7) The Licensee shall use the Premises at its sole risk, and the Licensor shall not be liable for any loss, injury or damage caused to persons using the Premises or to any property, except to the extent that same is attributable or caused by the negligence of the Licensor, the responsibility for insuring against any such loss, injury or damage being that of the Licensee. In addition and without limitation, the Licensee agrees that the Licensor, except to the extent that same is attributable or caused by the negligence of the Licensor, shall not be liable for and hereby releases the Licensor from:

- (a) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Premises or from the water, steam or drainage pipes or plumbing works of the Premises or from any other place or quarter;
- (b) any and all claims, actions, causes of action, damages, demands for damages and other liabilities for or related to:
  - (i) any bodily injury, personal injury, illness or discomfort to or death of the Licensee or any of its employees, contractors, invitees, customers, others for whom it is in law responsible or any other, in or about the Premises; and
  - (ii) any loss or damage to all property in or about the Premises owned by the Licensee or others;
- (c) any indirect or consequential damages including, but not limited to, loss of profit.

**13. Breach/Failure to Perform**

(1) Any of the following occurrences or acts shall constitute an event of default by the Licensee:

- (a) the Licensee fails to make any payment of any sums herein required to be paid, regardless of whether demand for payment is made or not;
- (b) the Licensee fails to perform any covenant, condition or obligation required to be performed or observed under this Agreement;
- (c) the Licensee (i) becomes bankrupt; (ii) has its property seized or attached in satisfaction of a judgment; (iii) has a receiver appointed; (iv) commits any act or neglects to do anything with the result that a construction lien or other encumbrance is registered against the Lands or any part thereof; (v) without the Licensor's written consent, makes or enters into an agreement for a sale of its assets to which the *Bulk Sales Act* applies; (vi) takes action with a view to winding up, dissolution or liquidation of the Licensee;
- (d) any insurance policy is canceled or not renewed by reason of the use or occupation of the Premises or by reason of non-payment of premiums; and
- (e) the Premises become vacant or abandoned or are used by any other person or persons for any purpose other than as provided for in this Agreement without the Licensor's written consent.

(2) When a default on the part of the Licensee has occurred:

- (b) all amounts payable in respect of the Licence Fee, together with all other amounts owing by the Licensee to the Licensor, including those payments not yet due if any, shall immediately become due and payable; and
- (b) the Licensor shall have the right to terminate this Agreement, or in lieu of termination, the Licensor shall have the right to re-enter the Premises and to retake possession of the Premises and deal with them as it may choose.

(3) When a default has occurred and the Licensor chooses not to terminate this Agreement, the Licensor shall have the right, but not the obligation, to take any and all necessary steps to rectify any or all acts of default of the Licensee and to charge the costs of such rectification (including but not limited to, solicitor fees on a substantial indemnity basis) to the Licensee and to recover the costs from the Licensee, which amount shall be immediately due and payable.

(4) No acceptance of the Licence Fee subsequent to any breach or default, other than non-payment of Licence Fee, shall be taken to operate as a waiver or condoning of any term, condition or covenant of this Agreement nor in any way to defeat or affect the rights of the Licensor hereunder. The Licensor's rights under this Agreement shall not in any manner be prejudiced even if the Licensor has overlooked or condoned any non-compliance, breach or default with the terms, covenants and conditions of this Agreement by the Licensee nor shall the Licensor's rights in any way be limited or restricted by any other right or privilege that the Licensor may have under this Agreement or provided by law. Upon default by the Licensee under any term, covenant or condition of this Agreement, and at any time after the default, the Licensor shall have all rights and remedies provided by law and by this Agreement. No delay or

omission by the Licensor in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy. Furthermore, the Licensor may remedy any default by the Licensee in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Licensee. The failure of the Licensor to insist upon strict performance of any of the covenants, terms or conditions of this Agreement, in any one or more instances, shall not be construed as a waiver of its right to insist on compliance with same or any other covenant, term or condition at any time. All rights and remedies of the Licensor granted or recognized in this Agreement or by law are cumulative and may be exercised at any time from time to time independently or in combination. No covenant, term or condition of this Agreement shall be deemed to have been waived by the Licensor unless the waiver is in writing and signed by the Licensor.

**15. Removal of Licensee's Property**

Upon the expiration of the Term or earlier termination of this Agreement, the Licensee shall immediately cease activities and operations at the Premises and make whatever arrangements are necessary to leave the Premises in a clean, tidy and safe condition free from any hazards. In addition, the Licensee shall remove, at its own expense, all equipment, chattels, fixtures, buildings, structures, erections, improvements, approved additions and approved alterations pursuant to section 9 placed or made by the Licensee on the Premises or supplies and materials deposited on the Premises by the Licensee, and replace any top soil or trees removed and shall restore the Premises to the satisfaction of the Licensor, and upon failure to do so within ten (10) days of expiration or earlier termination as aforesaid, the Licensor may remove all or any of the said equipment, chattels, fixtures, buildings, structures, erections or improvements of the Licensee or supplies and materials so deposited by it and restore the Premises to their former condition and shall be entitled to recover all costs and expenses arising from and related to same from the Licensee and in no event shall the Licensor be required to pay compensation to the Licensee in respect of any such equipment, chattels, fixtures, buildings, structures, erections or improvements or supplies or materials or return same to the Licensee. Notwithstanding anything contained herein to the contrary, the Licensee shall not be entitled to remove any equipment, chattels, furnishings, fixtures, buildings, structures, erections or improvements or supplies or materials donated or supplied to the Premises by the Licensor.

**18. No Assignment, Transfer or Encumbrance**

The Licensee shall not assign or transfer this Agreement or any part thereof, or encumber its rights hereunder, nor shall it sublet or part with or share possession of the whole or any part of the Premises. Any attempt to assign, transfer or encumber any of the rights, duties or obligations in this Agreement or sublet the Premises is void.

Notwithstanding the foregoing, the Licensee shall subcontract to a third party to provide the display of fireworks. The Licensee shall ensure that such third party is acceptable to the City, that the third party is qualified to display the fireworks and perform all related works, and that all safety precautions, permits, laws and regulations are fully complied with at all times. No subcontracting by the Licensee shall relieve the Licensee of any responsibility for the full performance of all obligations of the Licensee under this Agreement, and despite the subcontracting to any third party, the Licensee shall be fully responsible for every subcontractor's activities, works and acts.

**19. Miscellaneous**

(1) All notices, or any other thing to be given or delivered pursuant to this Agreement, unless otherwise specified, shall be given in writing and delivered personally, transmitted by facsimile or by prepaid registered mail, and addressed

to the Licensor at: City of Hamilton  
City Hall, 71 Main Street West  
Hamilton, Ontario  
L8P 4Y5  
Attention: City Clerk

with a copy to: City of Hamilton  
Tourism and Culture Division  
28 James Street North, 2<sup>nd</sup> Floor  
Hamilton, Ontario  
Attention: Director, Tourism and Culture Division

and to the Licensee: Rotary Club of Dundas Valley Sunrise  
c/o L. Ross Bannatyne  
43 Valleyside Lane  
Dundas, Ontario  
L9H 0A7  
Attention: Grant Armstrong, President

or such other address as the Licensor or Licensee may, from time to time, advise each other by notice in writing. All notices delivered personally shall be deemed received upon delivery. All notices delivered by e-mail or facsimile shall be deemed received upon mechanical confirmation of transmittal. All notices mailed hereunder shall be deemed to have been given and received by the addressee seventy-two (72) hours following mailing. In the event of actual or threatened postal interruption, all notices shall be delivered personally, by e-mail or by facsimile.

(2) This Agreement and all terms, covenants, conditions, provisions and licence fees herein reserved shall be binding upon and shall enure to the benefit of the Licensor and Licensee and their respective heirs, executors, administrators, successors and permitted assigns.

(3) The Licensor shall have the right to satisfy any amount from time to time owing by it to the Licensee by way of a set-off against any amount from time to time owing by the Licensee to the Licensor, including but not limited to any amount owing to the Licensor pursuant to the Licensee's indemnification of the Licensor in this Agreement.

(4) To the extent that the Licensor is unable to fulfil, is delayed or is restricted in fulfilling any of its obligations contained in this Agreement by reason of any act of God, act of terror, any labour strike or disruption, or by reason of any statute, law or order-in-council, or any regulation, by-law or order passed thereunder or made pursuant thereto, including a by-law of the municipal Council of the City, or the order or direction of any government department, official or other authority, including the Licensor acting in its capacity as a municipal authority, or of any administrator, controller or board; not being able to obtain any permission or authority required by or under any statute, law or order-in-council, or any regulation, by-law or order; or any other

cause beyond its control, whether of the foregoing character or not, the Licensor shall, in its sole discretion, be entitled to terminate this Agreement, extend the time to fulfil its obligation or amend the obligation thereby restricted to conform with such restriction and the Licensee or any other person affected is not entitled to any compensation whatsoever whether for any inconvenience, nuisance, discomfort, damages, loss or otherwise thereby occasioned.

(5) This Agreement contains the entire agreement between the parties hereto with respect to the subject matters hereof. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressed in it. No amendment, modification or supplement to this Agreement shall be valid or binding unless set out in writing and executed by the parties hereto.

(6) A reference to any act, by-law, rule or regulation or to a provision thereof shall be deemed to include a reference to any act, by-law, rule or regulation or provision enacted in substitution therefor or amendment thereof.

(7) The headings to each section are inserted for convenience of reference only and do not form part of the Agreement.

(8) This Agreement shall be governed by, and construed under, the laws of the Province of Ontario.

(9) All obligations of the Licensee will expressly, or by their nature, survive termination or expiry of this Agreement until, and unless, they are fulfilled or by their nature expire.

(10) Time is of the essence for this Agreement and for every part hereof.

(11) This Agreement shall not be construed to constitute an agency, partnership or joint venture between the parties hereto.

(12) Any schedules attached to or referred to in this Agreement shall form an integral part of this Agreement.

(13) Without restricting or limiting the rights and privileges of the Licensor to any broader interpretation, any "breach" or "default" of or in respect of a term, covenant, warranty, condition or provision of this Agreement caused by an officer, employee, servant, member, contractor, subcontractor, consultant, agent, permitted assign, invitee, licensee of the Licensee or of any person permitted or allowed by the Licensee to enter upon or use the Premises shall constitute a breach or default by the Licensee.

(14) If any provision or provisions of this Agreement or parts thereof or the application thereof to any person or circumstances shall be found by any court to any extent to be invalid or unenforceable or to be void or illegal, such provision or provisions or parts thereof shall be deemed severable and all other provision or provisions or parts of this Agreement shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found void and/or illegal. The remainder of this Agreement and its application to any person or circumstances shall not be affected thereby; and the parties hereto will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(15) If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) sign this Agreement as the Licensee, the liability of each such individual, corporation, partnership or other business association to pay the Licence Fee and to make and perform all other payments and obligations hereunder shall be deemed to be joint and several. In like manner, if the Licensee is a partnership or other business association, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be joint and several. The Licensee warrants and represents that it is duly formed and in good standing, and has full corporate or partnership authority, as the case may be, to enter into this Agreement, and has taken all corporate or partnership action, as the case may be, necessary to make this Agreement a valid and binding obligation, enforceable in accordance with its terms.

(16) The Licensee acknowledges and agrees that it has been advised by the City to consult a lawyer before executing this Agreement. The Licensee further acknowledges and agrees that it, its officers and directors have either obtained independent legal advice from their own lawyer with respect to the terms of this Agreement prior to execution or declined seeking such independent legal advice. Nevertheless, the Licensee and its authorized signing officers set out below acknowledge that they have read this Agreement, understand the terms and conditions and the Licensee's rights and obligations under this Agreement and agree to be bound by same. Lastly, the Licensee and its authorized signing officers set out below acknowledge and agree that this Agreement is being executed voluntarily.

**20. Option to Renew**

(1) The City shall have the option to renew this Agreement for the May 2021 long weekend by no later than January 1, 2021 upon written notice to the Licensee, upon the same terms and conditions as are herein contained, save and except that:

(a) the Event shall be held on **Sunday, May 23, 2021**, and if inclement weather prohibits the Event from taking place on said date, the Event shall be held on **Monday, May 24, 2021**, and the dates in the Agreement shall be adjusted accordingly.

(2) Whether or not the City has exercised its option to renew in subsection 20(1), the City shall have the option to renew this Agreement for the May 2022 long weekend by no later than January 1, 2022 upon written notice to the Licensee, upon the same terms and conditions as are herein contained, save and except that:

(a) the Event shall be held on **Sunday, May 22, 2022**, and if inclement weather prohibits the Event from taking place on said date, the Event shall be held on **Monday, May 23, 2022**, and the dates in the Agreement shall be adjusted accordingly.

(3) Whether or not the City has exercised its option to renew in subsection 20(1) or 20(2), the City shall have the option to renew this Agreement for the May 2023 long weekend by no later than January 1, 2023 upon written notice to the Licensee, upon the same terms and conditions as are herein contained, save and except that:

(a) the Event shall be held on **Sunday, May 21, 2023**, and if inclement weather prohibits the Event from taking place on said date, the Event shall be held on **Monday, May 22, 2023**, and the dates in the Agreement shall be adjusted accordingly.

- (4) Whether or not the City has exercised its option to renew in subsection 20(1), 20(2) or 20(3), the City shall have the option to renew this Agreement for the May 2024 long weekend by no later than January 1, 2024 upon written notice to the Licensee, upon the same terms and conditions as are herein contained, save and except that:
- (a) the Event shall be held on **Sunday, May 19, 2024**, and if inclement weather prohibits the Event from taking place on said date, the Event shall be held on **Monday, May 20, 2024**, and the dates in the Agreement shall be adjusted accordingly.

**[signature page to follow]**

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement by its officers duly authorized in that behalf and caused to be affixed its corporate seal.

**CITY OF HAMILTON**

\_\_\_\_\_  
Mayor – F. Eisenberger

\_\_\_\_\_  
City Clerk – A. Holland

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: Grant Armstrong

Title: President  
in his personal capacity and as an agent  
of the Rotary Club of Dundas Valley Sunrise

\_\_\_\_\_  
Witness  
[sign name]

\_\_\_\_\_  
Witness  
[print name]

\_\_\_\_\_  
Date