

CITY OF HAMILTON

COMMUNITY SERVICES DEPARTMENT
Recreation Division

TO: Chair and Members Emergency Services & Community Services Committee	WARD(S) AFFECTED: WARD 6
COMMITTEE DATE: April 10, 2012	
SUBJECT/REPORT NO: Hamilton Olympic Club Facility Use Agreement (CS12008) (Ward 6)	
SUBMITTED BY: Joe-Anne Priel General Manager Community Services Department	PREPARED BY: Steve Sevor 905.546.2424 ext 4645 Jason Fesyk 905.546.2424 ext 3860
SIGNATURE:	

RECOMMENDATION

- (a) That the Licence Agreement between the City of Hamilton and the Hamilton Olympic Club for the use of the track and field facility and storage space located at Mohawk Sports Park be renewed;
- (b) That the Mayor and City Clerk be authorized and directed to execute the Licence Agreement between the City of Hamilton and the Hamilton Olympic Club for the use of the track and field facility and storage space located at Mohawk Sports Park in a form satisfactory to the City Solicitor; and,
- (c) That the General Manager of Community Services or designate be granted the delegated authority to approve any changes to the Licence Agreement between the City of Hamilton and the Hamilton Olympic Club and to execute any documentation as may be required to give effect thereto, in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY

This report recommends that the City enter into an agreement with the Hamilton Olympic Club (HOC) for the preferred use of the track and field complex located at Mohawk Sports Park. The previous agreement between Hamilton Olympic Club and the City of Hamilton was established in 2008 and expired on November 30, 2011.

HOC has operated in the city since 1926 making it the oldest track and field club in the country. HOC is the primary user of the track and field facility at Mohawk Sports Park. The Club also shares use of the concession, storage and change rooms that are located in the utility building immediately adjacent to the track and field complex. Other groups that rent the track facility will continue to have access to these facilities.

The agreement being proposed will provide for a continuation of the existing partnership between the City and the HOC. The HOC will purchase track and field equipment (e.g. hurdles) for use at the complex and will allow the equipment to be used at the track by other organizations (e.g. CANUSA). Equipment purchases will be equal to or greater than the normally assessed facility user fees for the track and field season in any given year (300 hours per annum = \$5,133.00). The HOC will also donate 150 hours of volunteer time to other organizations to help them run their events. In exchange, the City will waive the permit fees for use of the track and provide the HOC with storage space in the utility building.

The new agreement will provide for a greater degree of accountability and define performance expectations in more precise terms. The new agreement will stipulate the value of the equipment to be purchased, the number of volunteer hours to be donated, outline the roles and responsibilities of the City and HOC, identify outcomes to be achieved and stipulate other operating and reporting requirements.

The proposed agreement has been negotiated with the HOC. They are prepared to execute the agreement if approved by City Council.

The partnership with HOC will allow the City of Hamilton to leverage the expertise of the HOC to provide quality sport opportunities in a manner that is cost effective and that fully utilizes the current track facility at Mohawk Park.

Alternatives for Consideration - N/A

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial:

The Agreement will allow for a waiver of the City's facility user fee for use of the track in exchange for an equal amount from the HOC in equipment purchases.

Based upon an average of the previous five years, the annual usage in hours is approximately 300 hours. The track and field complex is assessed at the Council approved rate of an "A" class field (\$17.11 per hour). The Agreement stipulates that the minimum amount of equipment purchases per annum will represent an amount equal to the total facility user fees owed for use of the track during the track and field season (300 hours X \$17.11 = \$5,133.00).

Staffing:

There are no staffing implications associated with Report CS12008.

Legal:

The Licence Agreement has been drafted in consultation with Legal Services and will be approved by the City Solicitor prior to being executed by the Mayor and City Clerk. Any amendments made under Recommendation (c) will also be made in a form satisfactory to the City Solicitor.

HISTORICAL BACKGROUND

The Hamilton Olympic Club (HOC) has been the primary user at Mohawk Sports Park since September of 2002. The club is committed to providing its membership with the best training opportunities possible so they can achieve their goals of participating at their chosen level of competition.

The facility at Mohawk Sports Park is the only City owned track and field facility in Hamilton. Although the Hamilton Olympic Club is the primary tenant of the facility, other organizations also rent the facility.

The previous agreement with the Hamilton Olympic Club expired on November 30, 2011.

The HOC provides volunteer hours for non club events that are run at the track at Mohawk Sports Park. For example, the HOC supports the efforts of CANUSA, the Hamilton-Wentworth District and Hamilton Separate School Boards and Special Olympics when they utilize the track for their programming.

City staff and HOC Executives have developed a new, multi-year agreement that will support sport development in the city and assist in maximizing the utilization of the track and field complex at Mohawk Sports Park.

The previous agreement with HOC was established in 2008. Since that time the HOC has provided receipts for each year of the agreement for equipment purchases. The total equipment purchased during the four (4) year agreement exceeded \$40,000.00, compared to the corresponding facility rental fees for that same period of time which

equalled \$16,559.24. The new agreement will provide congruency between the value of the time used at the track by the HOC and the value of the equipment purchased (\$5,133.00). This will not preclude the HOC from purchasing more than \$5,133.00 of equipment in any given year, or sharing this equipment with other organizations using the track facility.

The new agreement will provide for a greater degree of accountability by defining specific outcomes to be achieved, specifying detailed reporting requirements and providing for the collection of data and development of performance measures.

The agreement will be reviewed on an annual basis by City staff and the HOC.

The HOC Board of Directors has reviewed the draft agreement and supports it in principle.

POLICY IMPLICATIONS

N/A

RELEVANT CONSULTATION

City staff consulted with the HOC executive on the development of the new agreement. The HOC executive is pleased with the level of interaction and direction that this revised agreement will now provide. The ability to purchase equipment in lieu of permit fees is a concept that they have been working under through the last agreement and are in full support of continuing this practice. HOC is also encouraged with the opportunity to provide leadership as it relates to the development of track and field within the community. While a final agreement will need to be reviewed by their legal counsel, they have approved the spirit of the agreement in principle.

City staff have completed initial consultations with user groups that have benefitted from HOC's leadership in this regard. CANUSA and Special Olympics Hamilton are two examples of organizations that have been positively impacted by the involvement of HOC at the track and field complex at Mohawk Park.

Staff consulted with the CANUSA President on the partnership that they have had with the HOC. CANUSA is satisfied that the partnership has been beneficial in their efforts to run quality track and field competitions at CANUSA events hosted in Hamilton and they appreciate the leadership role that HOC has played within the sport community.

The track and field complex is highly utilized by both the Hamilton Wentworth District School Board and the Hamilton Wentworth Catholic District School Board. The Athletic

Coordinators for both boards were consulted and indicated no issues with the involvement with HOC as it pertains to the track and field complex. HOC allows the school boards to use their equipment for their track and field activities. HOC also provides equipment and logistical support when the school boards host larger provincial competitions.

City Recreation staff have also consulted with Parks staff within the Public Works Department. Parks staff indicated that HOC has been a good tenant and have taken good care of the space that they have at the park. The partnership between the City and the HOC has been a good one from their perspective.

The following City departments were consulted on the recommendations:

- City Manager's Office
- Legal Services Division
- Parks Division
- Public Works

ANALYSIS / RATIONALE FOR RECOMMENDATION

The Agreement provides the City with a continued opportunity to leverage the work and expertise of a stakeholder partner to build sport capacity and create additional opportunities for participation in sport.

The new Agreement provides greater clarity as to the exact nature of the partnership between the City and the HOC by detailing:

- The roles and responsibilities of the partners;
- The specific contributions to be made by the HOC for equipment purchases and volunteer hours to be donated;
- Outcomes to be achieved;
- Data to be collected so that performance measures can be developed;
- Reporting requirements;
- The City policies to be reviewed with HOC that impact on the operation of the track and field facility.

The Agreement will benefit other organizations who will utilize the volunteer services and equipment provided by the HOC for their events.

The Agreement will ensure that the track and field facility is being utilized and programmed at a high rate of capacity.

ALTERNATIVES FOR CONSIDERATION

None

CORPORATE STRATEGIC PLAN

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Skilled, Innovative and Respectful Organization

- A culture of excellence

Growing Our Economy

- An improved customer service
- A visitor and convention destination

Social Development

- People participate in all aspects of community life without barriers or stigma

Healthy Community

- An engaged Citizenry

APPENDICES / SCHEDULES

Appendix A: License Agreement: City of Hamilton and the Hamilton Olympic Club

LICENCE AGREEMENT

THIS AGREEMENT made as of the 1st day of May, 2012.

Between:

CITY OF HAMILTON

(Hereinafter called the "Licensor" and "City")
OF THE FIRST PART,

-and -

HAMILTON OLYMPIC CLUB

(Hereinafter called the "Licensee")
OF THE SECOND PART,

WHEREAS the City is the owner of certain premises known as Mohawk Sports Track & Field Facility, more particularly described in the attached Schedule "A" (hereinafter referred to as the "Licensed Premises"), and located within Mohawk Sports Park, Limeridge Road East and Upper Kenilworth Avenue, in the City of Hamilton (hereinafter referred to as the "Lands");

AND WHEREAS the Licensee is a not-for-profit corporation committed to supporting the growth and development of amateur athletics in the Province of Ontario and throughout Canada, more particularly described in the attached Schedule "C";

AND WHEREAS the Licensee wishes to use and occupy the Licensed Premises for the purposes of competition, track meets, clinics and practices;

AND WHEREAS in accordance with Item____, Emergency & Community Services Committee Report No. 12-____, adopted by Council for the City of Hamilton on the____day of April, 2012, the Licensee has agreed to grant a license to the Licensor to use and occupy the Licensed Premises on certain terms and conditions set out herein;

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:

Article 1 – Definitions and Interpretation

1.1 In this Agreement and in any schedules that may form part of this Agreement, unless there is something in the subject matter or context inconsistent

therewith or defined elsewhere in this Agreement, the following terms and expressions have the following meanings.

- 1.1.1 “Agreement” means this agreement and the schedules attached thereto as at the date hereof and as amended from time to time, in writing;
- 1.1.2 “Business Day” means a day other than a Saturday, Sunday, statutory holidays, or statutory vacation day that is observed by the City of Hamilton.
- 1.1.3 “City” means the City of Hamilton as created by the *City of Hamilton Act*, S.O. 2001, c.14;
- 1.1.4 “Council” means the Council of the City of Hamilton;
- 1.1.5 “General Manager” means the City’s General Manager of Community Services or a person designated by him or her to act on behalf of the General Manager with respect to this Agreement;
- 1.1.6 “Municipal Alcohol Policy” means the City’s Municipal Alcohol Policy as described further in Schedule “B”;
- 1.1.7 “Permitted Uses” means those uses more particularly described in Article 2.1;
- 1.2 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 therefore or amendment thereof.
- 1.3 The headings to each section are inserted for convenience of reference only and do not form part of the Agreement.
- 1.4 Any schedules attached to or referred to in this Agreement shall form an integral part of this Agreement.

Article 2 – Term and Grant of Licence

- 2.1 The City hereby grants to the Licensee a licence (the “Licence”) to use the Licensed Premises primarily and actively for the purposes of competition, track meets, clinics and practices and for no other purposes whatsoever, for a term of five (5) years commencing on **May 1, 2012** and ending on **April 30, 2017** (the “Term”), unless terminated early in accordance with the terms of this Agreement.

- 2.2 It is acknowledged and agreed by the Licensor and the Licensee that the Licensee shall not have exclusive use of that portion of the Licensed Premises comprised of the track and its associated field and shall share use of the portions of the Licensed Premises comprised of the adjacent change rooms, concessions and storage facilities (the “Shared Use Areas”).
- 2.3 The Licensee acknowledges and agrees that, subject to Article 2.2, the Licence being granted herein is non-exclusive and that it shall have primary but not exclusive right to use the Licensed Premises. For clarity, the Licensed Premises, except those areas designated as the Shared Use Areas, shall be available for use by the public and the Licensor.
- 2.4 The Licensee may apply in writing to the Licensor sixty (60) days prior to the end of the Term for a renewal of this License upon such terms and conditions as are satisfactory to the Licensor, including the Licence Fee, but nothing herein contained shall obligate the Licensor to renew this Agreement or the License created thereby
- 2.5 The Licensee covenants and agrees that it will use the Licensed Premises in such a manner and at such times as to minimize interference with the use of the Licensed Premises by the public and the Licensor.
- 2.6 The Licensee acknowledges and agrees that it will restrict its use of the Licensed Premises, other than those areas designated as Shared Use Areas, to the track and field season, which for clarify shall be defined to commence on April 15 during each year of the Term and end on October 31 during each year of the Term.
- 2.7 The Licensee accepts the Licensed 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 Licensed Premises, whether with respect to environmental matters or otherwise, or that the Licensed 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 any and all risks relating to the physical condition of the Licensed Premises, including the surface and subsurface conditions thereof. Neither the Licensee nor any permitted occupant shall have any recourse to the City as a result of the nature or condition of the Licensed Premises, whether or not the City 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 thereof. The Licensee acknowledges and agrees that

the Licensee shall be an occupier pursuant to the *Occupiers' Liability Act* (Ontario), as amended.

- 2.8 If the Licensee remains in possession of the Licensed Premises with the consent of the City after the expiration of the Term hereby granted or earlier termination of the Agreement and without the execution and delivery of a new agreement, there will be no tacit renewal of this Agreement or renewal or extension of the Term, nor shall a licence from year to year be created but, notwithstanding any statutory provisions to the contrary, the Licensee shall be deemed a monthly Licensee at a licence fee payable monthly in advance on the first day of each month equal to the sum of 200% of the current City of Hamilton approved rate multiplied by 25 hours, and otherwise upon and subject to the same terms and conditions herein contained, excepting provisions for renewal.
- 2.9 The Licensee acknowledges that the Licensor reserves the right to suspend the Licence as it deems necessary in its sole discretion or terminate 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, security of the person, or safety of a structure, or whenever in its sole opinion the use of the Licensed 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. The Licensor shall not be responsible for any damage, loss, injury or death, however caused, or for any compensation whatsoever to the Licensee or others resulting from such suspension or termination of this Agreement.

Article 3 – Licence Fees and other monies Payable

- 3.1 The Licensee shall pay to the City a licence fee (the "Licence Fee"), without deduction, abatement or set-off calculated to reflect three hundred hours of use multiplied by the current facility user rate of \$17.11 per hour for a total amount of Five Thousand, One Hundred Thirty-three dollars (\$5,133.00) per annum plus any applicable Harmonized Sales Tax ("HST") payable at the first day of each and every year during the Term of this Agreement, or as otherwise directed by the City in writing. The Licence Fee is subject to increases based on changes in usage or changes to the approved current facility user rate.
- 3.2 Notwithstanding Article 3.1, the City agrees to accept, as credit towards part or all of the Licence Fee, payment in kind in the form equipment, purchased by the Licensee, for use at the Premises for community programs or events held at the Mohawk Sports Park. This value must be

equal to or greater than the agreed upon yearly usage multiplied by the facility user rate. The Licensee will be responsible for submitting receipts to the City for its yearly equipment purchases time at the conclusion of their season. Should equipment be purchased in excess of the listed amount there will be no carry over to the following year. Equipment purchases must be mutually agreed upon through an exchange of letters in accordance with this Agreement. At the conclusion of each year of the Term of this Agreement, both parties will review the equipment purchase minimum and may agree to amend this Article 3.2 in writing as required, subject to the final approval of the General Manager.

- 3.3 The Licensee covenants and agrees to pay to the Licensor any taxes (other than realty taxes), increased annual operating costs or other additional costs imposed on or incurred by the Licensor or the Lands as a result of the grant of this License or as a result of the use by the Licensee of the Licensed Premises. Except as otherwise expressly stated herein, the License Fee is to be completely net and carefree to the Licensor and the Licensor is not responsible during the Term for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the use of the Licensed Premises or the contents thereof or the business carried on therein, and that the Licensee shall be responsible for and shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Premises and the use thereof, without deduction, abatement or set-off.
- 3.4 The Licensee acknowledges and agrees that all payments must be in the form of a certified cheque or money order in Canadian funds made payable to the "City of Hamilton" and this shall constitute good and sufficient direction to the Licensee for so doing.
- 3.5 The Licensor shall not be responsible for all rates and charges for utilities, if any, used in connection with the Premises, save and except that the Licensee shall be responsible for and shall pay all costs, rates and charges in connection with the telephone.
- 3.6 The Licensor shall have the same rights and remedies in the event of default in payment of any additional fees and/or charges payable by the Licensee hereunder as it would have in the case of the Licensee's default in the payment of the License Fee. If the Licensee fails to pay any amount when due under this Licence, including License Fee and additional fees and/or charges, such unpaid amount shall bear interest, payable as an additional charge, at the rate equal to that established by Council from time to time and charged by the City in respect of tax arrears.

Article 4 – Licence Not a Leasehold Interest

- 4.1 No legal title or leasehold interest in the Licensed Premises or the Lands is created or vested in the Licensee by virtue of this Agreement.
- 4.2 This Agreement may not be registered against title to the Lands or the Licensed Premises.
- 4.3 Notwithstanding any other provision of this Agreement, the Licensee shall not create any lien, mortgage, charge (including by way of assignment or sublease), conditional sale agreement or other encumbrance in respect of the Lands or Licensed Premises.

Article 5 - Entry by the City

- 5.1 This Agreement is subject to the right of the City to enter into the Licensed Premises at any time to inspect the Licensed Premises. Without limiting the foregoing general right of the City to inspect or any other right of the City, the City shall be permitted to enter the Licensed Premises from time to time for the purpose of making repairs, alterations or improvements to the Licensed Premises or to remove any article or remedy any condition which in the opinion of the City would be likely to lead to cancellation of any policy of insurance on the Licensed Premises, or any part thereof, and the Licensee shall not be entitled to any compensation whatsoever for any inconvenience, nuisance or discomfort occasioned thereby. Any such entry by the City shall not be deemed to be a re-entry. Notwithstanding the foregoing, the City shall not be obligated by virtue of such right to enter the Licensed Premises or in any other way, to make any repairs, alterations or improvements to the Licensed Premises.
- 5.2 The City shall have the right to enter upon the Licensed Premises at any time to perform maintenance and repairs of the Licensed Premises to City standards, which standards may be amended by the City from time to time and in its sole discretion, or to perform any other maintenance and repair to the Licensed Premises as deemed necessary by the City from time to time.
- 5.3 Notwithstanding anything herein contained, the City shall have unrestricted access to the Licensed Premises in an emergency situation. 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 City and all reasonable costs, expenses and expenditures of the City of such emergency work shall be borne by the Licensee and payable forthwith upon written demand by the City, and the City shall have no liability to, or obligation to compensate, the Licensee for any loss or damage whatsoever resulting from such action by the City. Without limiting the generality of the foregoing, the City may suspend for

such period of time as it deems necessary in its sole discretion or terminate 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 Licensed Premises or any part or parts thereof are being carried out in an unsafe manner, and the City 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 City.

Article 6 – Representations and Warranties of the Licensee

- 6.1 The Licensee expressly acknowledges, agrees and warrants as follows:
- 6.1.1 it 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; and
 - 6.1.2 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.

Article 7 – Licensee's Covenants

- 7.1 Without limiting or restricting in any way any other responsibilities or obligations of the Licensee in this Agreement, the Licensee covenants with the City as follows:
- 7.1.1 to use the Licensed Premises in accordance with the Permitted Uses at its sole cost during the Term of this Agreement;
 - 7.1.2 to provide programs for their membership as well as community groups in hopes of growing the sport within the City of Hamilton;
 - 7.1.3 to pursue events to host at the Mohawk Sports Park facility;
 - 7.1.4 to abide, at its own expense, by all Provincial and Federal laws and regulations and all Municipal by-laws, policies and procedures, rules and regulations whatsoever affecting the use of the Licensed Premises or activities thereon, including but not limited to those provided in Schedules "B" and "F";

- 7.1.5 to have control and responsibility over the Licensed Premises during the Licensee's use and occupation of the Licensed Premises in accordance with the Licence.
- 7.1.6 to be responsible for the maintenance and associated costs relating to the Shared Use Areas;
- 7.1.7 to ensure, at its sole cost and expense, that the Shared Use Areas are maintained in a condition of good repair which includes the obligation to make repairs of a capital and non-capital nature, other than the structural repair of the roof and exterior walls for which the Licensor shall be responsible;
- 7.1.8 to keep the Shared Use Areas and any buildings, structures, erections or improvements thereon reasonably clean and free from debris, discarded or unnecessary materials, equipment or supplies, empty containers and all other unsightly or potentially dangerous rubbish;
- 7.1.9 to ensure the Licensed Premises are maintained in a safe, clean and tidy condition and free from hazards;
- 7.1.10 to report any issues that may require repair or maintenance forthwith to the City;
- 7.1.11 to immediately give written notice with complete details thereof, to the Licensor of any accident, injury or harm to any person on or using the Licensed Premises or of any damage, loss or defect in or to any part of the Licensed Premises or any damage or loss of any property of any person using the Licensed 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;
- 7.1.12 to ensure that all health and safety requirements are met and be responsible for ensuring that the Licensed Premises are secured and safeguarded at all times;
- 7.1.13 to be responsible for the security of any specialty equipment belonging to the Licensee and to ensure that all tools, equipment, supplies and materials are stored properly and in a safe and secure manner;

- 7.1.14 to ensure that all materials, equipment and supplies delivered to the Licensed Premises are neatly and safely stored or contained upon delivery and shall be so maintained until used up;
- 7.1.15 not to prepare or allow the preparation, service and/or sale of food in or at the Lands or Licensed Premises without the written consent of the City, which consent may be unreasonably withheld, and strict compliance with all applicable health and safety requirements, laws and regulations;
- 7.1.16 not to introduce or allow the introduction or use of beer or other alcoholic beverages or liquors upon the Lands or Licensed 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 Municipal Alcohol Policy of the City (described further in Schedule "B"), the *Liquor Licence Act*, R.S.O. 1990, c.L.19, the *Alcohol and Gaming Regulation and Public Protection Act*, 1996, S.O. 1996, c. 26 and the regulations thereto;
- 7.1.17 not to introduce or permit the introduction or use of illegal narcotics upon the Lands or Licensed Premises;;
- 7.1.18 to indemnify the City from any claims arising pursuant to the *Construction Lien Act*, R.S.O. 1990, c.C.30 and discharge any such liabilities in respect of the Facility and Licensed Premises and, more particularly, to promptly pay all its contractors or materialmen when due all proper accounts for work done or materials furnished under all contracts which it has entered into relating to the construction of, repairs, permitted alterations or additions to the Licensed Premises and do all things necessary in order to prevent any construction, mechanics or other liens or orders for the payment of money to be registered against the Lands or Licensed Premises, if applicable, and should any lien be made or filed to discharge same forthwith (after notice thereof is given to the City) at the Licensee's expense. If the Licensee shall fail to cause any such lien to be discharged as aforesaid, then, in addition to any other right or remedy of the City, the City may (but shall not be so obligated) discharge same by paying the amount claimed to be due into Court or directly to any such lien claimant and the amount so paid by the City and all costs and expenses (including solicitors' fees, on a substantial indemnity basis) incurred for the discharge of such lien, shall be due and payable by the Licensee to the City on demand and shall bear interest at such rate as established by Council for the City from time to time charged in respect of tax arrears.

- 7.1.19 not to construct or permit to be made or constructed, any addition, change, improvement or structural alteration to the Lands or Licensed Premises without obtaining the prior written consent of the City thereto, which may be unreasonably withheld;
- 7.1.20 not to do or permit to be done any waste or damage, disfiguration or injury to the Lands or Licensed Premises or any of the equipment, chattels, fixtures, buildings, structures, erections of improvements thereof, including not overloading the floors thereof or placing therein any safe, heavy business machine or other heavy item without first obtaining the consent of the City in writing;
- 7.1.21 not to do or omit upon the Lands or Licensed Premises or permit to be done or omitted, anything which shall be or result in a nuisance;
- 7.1.22 not to use or produce or bring or permit to be used or produced or brought on the Lands or Licensed 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 Lands or the Licensed Premises would contaminate the Lands or the Licensed Premises or any other property to which it came in contact and this provision shall not apply to prevent the Licensee from bringing vehicles and equipment, which contain gasoline and engine oil, upon the Lands and Licensed Premises provided that such vehicles are adequately protected against the escape of such substances;
- 7.1.23 to promptly pay, before delinquency, to the taxing authorities or to the Licensor, if it so directs, any taxes, rates, duties, levies and assessments and similar charges (other than realty taxes) imposed or assessed against or in respect of the operations at, occupancy of, or conduct of business in or from the Licensed Premises by the Licensee;
- 7.1.24 to ensure that any and all contractors performing or engaged to perform any capital work or repairs to the Licensed Premises are approved in writing by the City in advance of the commencing any such capital work or repairs and provide insurance naming the City as an additional insured, confirmation that the contractors are qualified to do the intended capital works or repairs and that all safety precautions, permits, laws and regulations are fully complied with at all times;
- 7.1.25 in no event is the City liable for, nor has the City any obligation with respect to, an interruption or cessation of or a failure in the supply

of any utilities, services or systems in, to or serving the Lands or Licensed Premises; and

- 7.1.26 to acknowledge the support of the City in any promotional materials that are produced for programs or events. This may include but is not limited to banners, flyers, programs for events and ceremonies.
- 7.2 The City shall have the right, but not the obligation, to enter upon the Licensed Premises at any time to perform maintenance and repairs of the Licensed Premises to City standards, which standards may be amended by the City from time to time in its sole discretion, or to perform any other maintenance and repairs of the Licensed Premises as deemed necessary by the City from time to time.
- 7.3 The Licensee agrees that it shall not make any alterations whatsoever to the Licensed Premises without the prior written approval of the Licensor. Without limiting the generality of the foregoing, the Licensee shall not paint, wallpaper, 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 Licensed Premises appropriately for the approved use, and the Licensor shall not be responsible in any way for any improvement or preparation of the Licensed Premises. The Licensee shall implement, at its sole cost and expense, all precautions, measures and safeguards as is necessary to protect the public from injury during any approved alterations of the Licensed Premises.
- 7.4 All permitted Installations, alterations, additions, partitions and fixtures (excluding the Licensee's trade fixtures, namely office furniture and office equipment which is not affixed to the Licensed Premises) in or upon the Licensed Premises are, immediately upon placement, the Licensor's property without any compensation therefore to the licensee and shall not be removed from the Licensed Premises by the Licensee at any time either during or after the Term, without the City's prior written approval.
- 7.5 The Licensor is under no obligation to repair or maintain the Licensee's installations, alterations, additions, partitions and fixtures or anything in the nature of an occupant's improvement made or installed by the Licensee.
- 7.6 The Licensor, acting reasonably, has the right at any time to require the Licensee to remove its installations, alterations, additions, partitions and fixtures or anything in the nature of an occupant's improvement made or installed by the Licensee, and the Licensee shall be required to make

- good all damage caused by the installation or removal.
- 7.7 The Licensee shall not paint, display, inscribe, place or affix any sign, picture, advertisement, notice, lettering or direction on any part of the outside or interior of the Licensed Premises without the prior written consent of the Licensor.
- 7.8 The Licensee covenants to pay all charges incurred by or on behalf of the Licensee for any services, work or materials which may be supplied, done or performed in respect of the Licensed Premises and the Licensee shall forthwith discharge any liens arising there from at any time claimed or registered against or In respect of the Lands, the Licensed Premises or any part thereof.

Article 8 – City’s Covenants

- 8.1 Without limiting or restricting in any way other responsibilities or obligations of the City in this Agreement, the City covenants with the Licensee as follows:
- 8.1.1 to permit the Licensee to use the Licensed Premises in accordance with the Permitted Uses at its sole cost during the term of this Agreement;
- 8.1.2 to provide quiet, but not exclusive, enjoyment of the Licensed Premises, other than those areas designated as Shared Use Areas, during the term of this Agreement and of the License;
- 8.1.3 to pay all realty taxes levied, charged or assessed against the Licensed Premises by municipal and provincial authorities; and
- 8.1.4 to be responsible for capital improvements to the Licensed Premises, subject to Article 9 herein and excluding any capital improvement that may be determined as having arisen as a result of the Permitted Uses contemplated herein.

Article 9 - Capital Improvements

- 9.1 For the purposes of this Agreement, "capital improvement" shall mean an addition to or an extension, enlargement, alteration, replacement or other improvement of a work of such nature or character that it is usually and properly accounted for as a capital asset, and shall include but shall not be limited to a sound system and electronic equipment for the benefit of the Licensed Premises, and "capital improvements" shall mean more than one of them. Capital improvements will also include chattels or equipment purchased by the Licensee that will be available

- on loan for the purpose of community programming beyond that of the Hamilton Olympic Club. This would include but not limited to other local track programs (e.g. Elementary schools and high schools), multi-sporting events (e.g. CANUSA and OFSAA) and other major events and community based programs and or special events requiring the use of the track facility for a limited but specific duration of time.
- 9.2 The Licensee shall make capital improvements to the Licensed Premises in an amount (exclusive of taxes) which shall equal the aggregate fees which would otherwise have been payable by the Licensee for the use of the Licensed Premises during the Term in accordance with Schedule "D". It is agreed by the parties that for purposes of calculating the value of capital improvements owing by the Licensee, the Licensee shall be credited with the value of capital improvements made by the Licensee during the two (2) year period preceding the date first above written. All capital improvements shall be made in accordance with the terms of this Agreement and shall immediately upon placement become the absolute property of the Licensor and is regarded for all purposes as part of the Licensed Premises. The Licensor, acting reasonably and in consultation with the Licensee, shall determine the specifications and scheduling of the capital improvements to be made by the Licensee over the course of the Term. The Licensee shall be responsible for maintaining the capital improvements in good condition and repair, at its sole cost and expense.
- 9.3 The Licensee will provide to the City, within thirty (30) days of completing each capital improvement, a financial cost summary disclosing the actual costs incurred by the Licensee in respect of the capital improvement together with all relevant supporting receipts and documentation. Should the actual costs incurred by the Licensee (exclusive of taxes) be less than the amount of the License Fee by the end of the Term, the Licensee shall pay the difference to the City prior to the end of the Term.

Article 10 - Insurance and Indemnification

- 10.1 For the purposes of this Section, "Licensor" or "City" 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 Licensed Premises.

- 10.2 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 City acting reasonably and prudently may from time to time require:
- 10.2.1 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 Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate. Such policies of insurance shall include, but not be limited to the following: blanket contractual liability; land and premises liability; occupier's liability, all risk tenant's legal liability, completed operations liability; products liability; owners and contractors liability; non-owned automobile liability; cross-liability and severability of interest provisions; and
 - 10.2.2 Standard owners form automobile policy including third party liability insurance and at least Two Million Dollars (\$2,000,000) inclusive limited, and accident benefits insurance, covering all licensed vehicles owned or operated by or on behalf of the Licensee's contractor;
 - 10.2.3 "All Risks" insurance on property of every description and kind owned by the Licensee, or for which the Licensee is legally liable, or which is installed by or on behalf of the Licensee within the Licensed Premises including, without limitation, equipment, trade fixtures and improvements, in an amount not less than the full replacement cost thereof from time to time;
 - 10.2.4 when applicable, broad form comprehensive boiler and machinery insurance on a blanket repair and replacement basis, with limits of accident in an amount not less than the full replacement costs of the property, with respect to all boilers and machinery owned or operated by the Licensee or by others (other than the City) on behalf of the Licensee in the Licensed Premises or relating to or serving the Licensed Premises; and
 - 10.2.5 such other forms of insurance as may be reasonably and prudently required by the City from time to time.

- 10.3 All such insurance policies and certificates shall name as an additional insured the City and anyone else with an interest in the Licensed Premises from time to time designated in writing by the City. 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 City herein and be in a form satisfactory to the City. All insurers shall be licensed to do business in Ontario, and such insurers and the insurance coverages shall be acceptable to the City acting reasonably and prudently. The Licensee shall deliver to the City certificates of insurance originally signed by authorized insurance representatives, or, if required by the City, certified copies of such policies prior to the execution of this Agreement and for all renewals 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 City. Certificate Holder will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 attn: Community Services, Recreation, Sport Development Specialist. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address. In the event that the Licensee fails to do so, then this Licence may be immediately terminated at the City'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 City and such coverage shall preclude subrogation claims against the City and any other person insured under the policy. Insurance requirements and coverage herein shall not limit, reduce, or waive any of the Licensee's obligations to indemnify the City 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.
- 10.4 The Licensee shall defend, indemnify the City and save it harmless from any and all losses 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 any occurrence in or about the Licensed 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.
- 10.5 The Licensee shall use the Licensed Premises at its sole risk, and the City shall not be liable for any loss, injury or damage caused to persons using the Licensed Premises or to any property, the responsibility for insuring against any such loss, injury or damage being that of the Licensee who

hereby waives, on behalf of itself and its insurers, any rights of subrogation against the City. In addition and without limitation, the Licensee agrees that the City, regardless of negligence or alleged negligence on the part of the City or any breach of this Agreement by the City and, notwithstanding anything else herein contained, shall not be liable for and hereby releases the City from:

- 10.5.1 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 Licensed Premises or from the water, steam or drainage pipes or plumbing works of the Licensed Premises or from any other place or quarter;
- 10.5.2 any and all claims, actions, causes of action, damages, demands for damages and other liabilities for or related to:
- 10.5.3 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 Licensed Premises;
- 10.5.4 any loss or damage to all property in or about the Licensed Premises owned by the Licensee or others;
- 10.5.5 any act or omission (including theft, malfeasance or negligence) on the part of any agent, contractor or person from time to time employed by the City to perform any maintenance or other work in or about the Licensed Premises; and
- 10.5.6 any indirect or consequential damages including, but not limited to, loss of profit.

Article 11 - Breach/Failure to Perform

- 11.1 Any of the following occurrences or acts shall constitute an event of default by the Licensee:
 - 11.1.1 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;
 - 11.1.2 the Licensee fails to perform any covenant, condition or obligation required to be performed or observed under this Agreement;
 - 11.1.3 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 Licensed Premises or any part thereof; (v) without the City'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;

11.1.4 any insurance policy is canceled or not renewed by reason of the use or occupation of the Licensed Premises or by reason of non-payment of premiums; and

11.1.5 the Licensed 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 City's written consent.

11.2 When a default on the part of the Licensee has occurred:

11.2.1 all amounts payable in respect of the Licence Fee, together with all other amounts owing by the Licensee to the City, including those payments not yet due if any, shall immediately become due and payable; and

11.2.2 the City shall have the right to terminate this Agreement, or in lieu of termination, the City shall have the right to re-enter the Licensed Premises and to retake possession of the Licensed Premises and deal with them as it may choose.

11.3 When a default has occurred and the City chooses not to terminate this Agreement, the City 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 without limitation solicitor fees) to the Licensee and to recover the costs from the Licensee, which amount shall be immediately due and payable.

11.4 No acceptance of any Licence Fee payable subsequent to any breach or default, other than non-payment of any 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 City hereunder. The City's rights under this Agreement shall not in any manner be prejudiced even if the City 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 City's rights in any way be limited or restricted by any other right or privilege that the City 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 City shall have all rights and remedies provided by

law and by this Agreement. No delay or omission by the City 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 City 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 City 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 City 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 City unless the waiver is in writing and signed by the City.

Article 12 - City's Right to Early Termination

- 12.1 Notwithstanding any other provision of this Agreement, the City shall have the right to terminate this Agreement upon thirty (30) days' written notice to the Licensee and without any compensation to the Licensee whatsoever.

Article 13 - Removal of Licensee's Property

- 13.1 Upon the expiration of the Term or earlier termination of this Agreement, the Licensee shall immediately cease activities and operations at the Licensed Premises and make whatever arrangements are necessary to leave the Licensed Premises in a clean, tidy and safe condition free from any hazards. In addition, the Licensee shall remove, only at the Licensor's request and in that event at the Licensee's own expense, all equipment, chattels, fixtures, buildings, structures, erections or improvements placed or made by the Licensee on the Licensed Premises or supplies and materials deposited on the Licensed Premises by the Licensee and shall restore the Licensed Premises to the satisfaction of the City, and upon failure to do so within ten (10) days of expiration or earlier termination as aforesaid, the City 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 Licensed 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 City 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 Licensed Premises by the City.

Article 14 – Notice

14.1 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 City at: City of Hamilton
71 Main Street West
Hamilton, ON L8P 4Y5
Attention: Office of the City Clerk
Fax: 905.546-2095

and with a copy to: City of Hamilton
Community Services Department
Recreation Division
City Centre, 77 James Street North, Suite 400
Hamilton, ON L8R 2K3
Attention: Director of Recreation
Fax: 905.546-2338

And to the Licensee at: Hamilton Olympic Club
350 East 17th Street,
Hamilton, ON L9A 4N2
Attention: Club President
Fax:

or such other address as the City or Licensee may, from time to time, advise each other by notice in writing. All notices delivered by 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 or by facsimile.

Article 15 – General Provisions

15.1 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.

- 15.2 The parties hereto agree to adhere to the Reporting Requirements as set out in the attached Schedule "E".
- 15.3 The Licensee hereto agrees to adhere to the Defined Outcomes and Performance Measures as set out in the attached Schedule "F".
- 15.4 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 City and Licensee and their respective heirs, executors, administrators, successors and permitted assigns.
- 15.5 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 Licensed Premises. Any attempt to assign, transfer or encumber any of the rights, duties or obligations in this Agreement or sublet the Licensed Premises is void.
- 15.6 The City 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 City, including but not limited to any amount owing to the City pursuant to the Licensee's indemnification of the City in this Agreement.
- 15.7 To the extent that the City 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 City 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 City 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. Without limiting the generality of the foregoing, in the event the flying of model airplanes is prohibited at the Licensed Premises for any reason, this Agreement shall

- be immediately terminated, without any compensation to the Licensee whatsoever.
- 15.8 This Agreement shall be governed by, and construed under, the laws of the Province of Ontario.
- 15.9 Time is of the essence for this Agreement and for every part hereof.
- 15.10 This Agreement shall not be construed to constitute an agency, partnership or joint venture between the parties hereto.
- 15.11 Without restricting or limiting the rights and privileges of the City 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 Licensed Premises shall constitute a breach by the Licensee.
- 15.12 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 affect 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.
- 15.13 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 authority, as the case may be, to enter into this Agreement, and has taken all action, as the case may be, necessary to make this Agreement a valid and binding obligation, enforceable in accordance with its terms.

15.14 The parties executing this Agreement on behalf of the Licensee acknowledge and agree that they have been advised by the City to obtain independent legal advice with respect to this Agreement. They also acknowledge and agree, by their signature in the space provided below, that you have been given every opportunity by the City to seek independent legal advice, and that they have chosen not to do so in accordance with their own unfettered judgement.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement by its officers duly authorized in that behalf.

HAMILTON OLYMPIC CLUB

Signed for and on behalf of the Licensee by:

Signed _____	Signed _____
Name:	Name:
Title:	Title:

Date _____	Date _____
------------	------------

CITY OF HAMILTON

Signed for and on behalf of the Licensor by:

Signed _____	Signed _____
Name: R. Bratina	Name: R. Caterini
Title: Mayor	Title: City Clerk

Date _____	Date _____
------------	------------

<p>Authorized by Item XX, Emergency & Community Services Committee Report 12-0XX adopted by Council on XX day of April, 2012</p> <p>File Number:</p>
--

SCHEDULE "A"

DESCRIPTION OF LANDS

That certain parcel of lands comprised of more or less 57.16 hectares, which is situated south of Mohawk Road East, north of Limeridge Road East, east of Upper Kenilworth Avenue and west of Mountain Brow Avenue, in the City of Hamilton and known, more particularly, as the Mohawk Sports Park.

DESCRIPTION AND SKETCH OF LICENSED PREMISES



100 m

SCHEDULE "B"
MUNICIPAL ALCOHOL POLICY

MUNICIPAL ALCOHOL POLICY ("MAP")

Where this Agreement authorizes the use and consumption of alcohol at the Licensed Premises, the following provisions shall apply.

The Licensee acknowledges and agrees that the City of Hamilton Municipal Alcohol Policy ("MAP") is incorporated into and forms part of this Agreement. The Licensee acknowledges receipt of a copy of MAP.

The Licensee shall abide by all of the requirements and obligations in MAP. The Licensee shall provide the City with a copy of its Special Occasion Permit or Caterer's Endorsement, as applicable, prior to its use of the Licensed Premises and at any other time upon request. In addition, the Licensee shall post a copy of its Special Occasion Permit or Caterer's Endorsement, as applicable, in a clearly visible and conspicuous location in the Licensed Premises.

The Applicant shall provide proof of insurance in accordance with the requirements of MAP. Where there is any inconsistency between the provisions of MAP and the provisions of this Agreement as they relate to insurance, the provisions which are more onerous shall apply and be given effect to.

In the event MAP is amended or substituted by the City, the City shall notify the Licensee of the amendment(s) or substitution, and the same shall thereafter be incorporated into and form part of this Agreement.

Without limiting any of its rights pursuant to this Agreement, MAP or otherwise at law, the City shall be entitled to terminate the Licensee's use of the Licensed Premises, where the Licensee fails to comply with any provision of MAP.

SCHEDULE “C”
DESCRIPTION OF LICENSEE AND PROGRAM

Established in 1926, the Hamilton Olympic Club is the oldest track and field club in the country. The Hamilton Olympic Club is committed to providing the best training opportunity for the City’s athletes and assists them as they pursue their goals on the local, provincial, national and international levels of competition.

The Hamilton Olympic Club is based out of the track and field facility at Mohawk Sports Park. The facility at Mohawk Sports Park is the only City owned track and field facility in the City of Hamilton. The Hamilton Olympic Club is the primary tenant of the facility but other organizations do rent the facility.

The purpose of this Agreement is to provide a licence to Hamilton Olympic Club. The City of Hamilton believes that Hamilton Olympic Club shares in the Community Services’ vision of being dedicated to building a strong and healthy community, passionate about making a difference and recognized for our excellence.

**SCHEDULE “D”
REPORTING REQUIREMENTS**

The City and the Licensee agree to meet quarterly to review the programs and operation of the track. The Licensee agrees to submit a written report outlining programs being run with statistics, equipment purchases and any facility issues that have developed and may need attention by the City of Hamilton. The written report can take the place of a face to face meeting but both parties agree to meet face to face a minimum twice per year.

Reporting Period	Reporting Dates	All reports and meetings must be submitted or completed by the last week of the last month of the reporting period.
First Quarter	January – March	
Second Quarter	April – June	
Third Quarter	July – September	
Year End	October – December	

Upon mutual agreement from both parties, extensions may be given for the submission of written reports.

**SCHEDULE “E”
DEFINED OUTCOMES AND PERFORMANCE MEASURES**

Defined outcomes are:

- Increasing opportunities for participation in track and field in the City of Hamilton;
- Increasing capacity of sport organizations and clubs by leveraging the expertise of the Licensee’s volunteers and the use of their equipment;
- Providing safe and positive sport environments through the Licensee’s adherence to City policies; and
- Enhancing accountability for the use of City recreational facilities.

As part of this Agreement in Year 1 of the Term, the Licensee will provide the City with data related to the following:

- Number of bids submitted for hosting of events at Mohawk Sports Park track and field facility;
- Description and number of programs and partners assisted through volunteer hours provided by Licensee as part of Agreement, or by equipment purchased;
- Number of participants who participated in programs assisted through volunteer hours provided by Licensee as part of Agreement, or by equipment purchased;

Data obtained in Year 1 will be used to establish quantifiable performance measures in Years 2 and 3 of the Agreement.

SCHEDULE "F"
CITY POLICIES

In accordance with this Agreement the following policies need to be reviewed with the Licensee regarding their operations at the Licensed Premises. The full policy will be handed over in hard copy and electronic form by the City at the time the Agreement is approved and signed by both parties.

The City agrees to send out via email and letter mail any amendments to or additional policies that may relate to the agreement.

City of Hamilton Policies

Zero Tolerance

Lightning Policy

Tobacco Free Policy

Rain Out Policy

Cancellation Policy