

LICENCE TO USE

DRAFT AGREEMENT

AUDITORIUM NEIGHBOURHOOD ASSOCIATION (hereinafter the "ANA")

-and-

THE CORPORATION OF THE CITY OF KITCHENER (hereinafter the "City")

WHEREAS the City is the owner of the property and building located at or near 311 East Avenue in the City of Kitchener, formerly known as "Hydro Substation 7" (hereinafter the "Substation");

AND WHEREAS the ANA is a recognized City neighbourhood association and wishes to have use of the Substation as set out herein;

AND WHEREAS Council for the City, at its regular meeting April 22, 2002 passed a resolution permitting the use of the Substation subject to the terms hereof;

NOW THEREFORE in consideration of the covenants and terms contained herein and other such good and valuable consideration, the receipt of which is acknowledged and admitted, the parties agree as follows:

1. GRANT

- (a) The City hereby grants to the ANA an exclusive licence to use the Substation, subject to and in accordance with the terms and conditions set forth in this Agreement.
- (b) Continuing use is conditional upon ANA receiving the necessary grant funding from the Kitchener-Waterloo Community Foundation and/or such other funding or other arrangements that can satisfy the maintenance obligations set out herein as is acceptable to the City's General Manager of Community Services.

2. TERM

The term of this Agreement shall commence on the ___ day of _____, 2002 and shall continue in full force and effect up to and including _____ day of _____ unless sooner terminated in accordance with the terms and conditions of this Agreement. Thereafter, this Agreement shall be automatically renewed on a yearly basis subject to the same terms set out herein, unless otherwise terminated pursuant to this Agreement by law.

3. CONDITIONS OF USE AND RESPONSIBILITIES OF THE ANA

The ANA agrees:

- (a) it shall use the Substation only as set out in its "Proposal to the City of Kitchener" (attached as Schedule "A"), Phase 1 and be responsible for any such operating costs associated thereto;
- (b) when and if it desires to use the Substation as set out in Phase 2 and/or Phase 3 pursuant to its "Proposal to the City of Kitchener", or otherwise, it shall be

contingent upon negotiating an amendment to this Agreement and prior Council approval;

- (c) to not erect, install, display, inscribe, paint or affix any sign, lettering or advertising medium to, upon or at the Substation save and except the message board set out in "Proposal to the City of Kitchener" (attached as Schedule "A"), Phase 1, directional, instructional signage and the signs already in place (and as replaced by the City) that recognize the ANA and its contributions. The City reserves the right to require the relocation or removal of signage objectionable in form, location or content to the City in its sole discretion;
- (d) it shall:
 - (i) arrange for volunteers to paint the Substation with costs for the paint and materials coming out of funding to be arranged by the ANA;
 - (ii) develop a flower bed outside and near the signage on the Substation and plant and maintain the flower bed with perennials or other such plantings acceptable to the City's Community Service Department; and,
 - (iii) maintain the windows to the Substation using qualified contractors when they need replacement and/or maintenance.
- (e) save and except as provided herein, to not make or permit to be made any alterations or changes to building, the landscape and/or vegetation at or near the Substation without the prior written approval of the City;
- (f) to keep the City informed at all times with respect to all matters pertaining to the Substation and surrounding grounds, its state of repair, use, operation, maintenance issues and this Agreement;
- (g) to not represent itself to have any relationship with the City other than that of a licensee pursuant to this Agreement and recognized Neighbourhood Association and further to not take on credit or on account any goods or services in the name of the City;
- (h) to be responsible for, at its expense, all keys, rekeying, locks and any other security devices and equipment reasonably required to maintain the Substation in a secure manner (all keying/rekeying of locks must be coordinated with the City's Facilities Management);
- (i) to permit the City and its agents to enter on to the lands and premises of the Substation at any time and from time to time (including ensuring the City has master keys for all locks and other security devices) and such entry shall not be considered an interference with the permission of the City granted to the ANA under this Agreement; and,
- (j) to provide the City with and keep current three (3) members who will respond to any emergencies.

4. INSPECTION, REPAIRS AND MAINTENANCE

- (a) The City may inspect any part of the lands, premises and facilities of the Substation at any time and from time to time.
- (b) If upon such inspection the City determines that repairs or maintenance work is required that is the responsibility of the ANA pursuant to this Agreement, the City will advise the ANA of such required work and the ANA shall carry out such required work within five (5) days of such advice or such other extended time frame as notified by the City. Despite the foregoing, the City may, if it deems necessary, carry out or cause to have carried out the required work and the

ANA shall forthwith reimburse the City for the cost of such work including the City's own labour and materials.

- (c) Subject to Section 3, the City shall be responsible for the maintenance of the structure (except windows), at its costs, subject to any damage (reasonable wear and tear excepted) caused by the ANA or one of its agents or invitees.
- (d) The City shall be responsible for all garbage pick up from the site. Although it is understood that the ANA will make all reasonable efforts to keep the Substation and surrounding area clean.
- (e) The City shall, during the winter months, attempt to keep open and snow plow the parking lot area from time to time upon reasonable request of the ANA. However, it is agreed that the City shall not be responsible for keeping the parking lot ploughed and opened continuously.
- (f) The City shall be responsible for the continued maintenance of the turf and park area around the building.

5. **SPONSORSHIP, SPECIAL EVENTS**

Any sponsorship or special event pertaining to, operated at, or in connection with the Substation shall be subject to the prior mutual agreement of the City and the ANA, in writing if so requested.

6. **ALCOHOL AND LIQUOR LICENCES**

The ANA shall not permit alcoholic beverages to be consumed, offered for consumption or brought on to the lands and premises of the Substation without the prior written approval of the City, which approval may set out certain terms and conditions. If such approval is granted by the City, the ANA shall be responsible for obtaining at its expense all required approvals, licences and fulfilling all requirements in connection with the issuance of a liquor licence pertaining to any part of the Substation building or lands, and the ANA shall indemnify, defend and hold harmless the City from any liability, claim, demand, cost or expense whatsoever arising directly or indirectly as a result of any matter relating to liquor licensing, alcohol and the Substation.

7. **INSURANCE AND INDEMNITY**

- (a) The ANA hereby indemnifies and undertakes to defend and hold the City harmless from any and all actions, causes of action, claims, demands, costs (including legal costs on a solicitor-client basis), expenses, losses, damages or liability that may arise directly or indirectly as a result of the use and operation of the Substation by the ANA or any acts, omissions or negligence of the ANA, its employees, agents, volunteers, workers or contractors that is **not** covered by the insurance provided under section 7(b).
- (b) The ANA is under the City's liability insurance policy for Neighbourhood Associations and will be so covered provided it continues to be a recognized Neighbourhood Association, complies with the City's requirements and guidelines for Neighbourhood Associations, as created, directed and/or amended from time to time, and subject to the terms and limits of the insurance policy.
- (c) Nevertheless, the ANA shall be responsible for obtaining its own insurance for the contents it keeps, places or stores in the Substation.

8. **NO LIABILITY FOR DAMAGE TO PROPERTY AND PERSONS**

Subject to the insurance coverage provided in Section 7(b):

- (a) The City shall not be liable for damage to, loss or theft of any of the ANA's property or equipment on or at the Substation; and
- (b) The City shall not be liable to the ANA for any damages, costs, expenses, or losses, howsoever caused, arising directly or indirectly in connection with the Substation and the licence granted by this Agreement.

9. EVENTS OF DEFAULT AND TERMINATION UPON DEFAULT

For the purposes of this Agreement, the happening of any one or more of the following events shall be considered a default of this Agreement and the City may, at its option, terminate this Agreement on 15 days written notice:

- (i) The ANA does or permits to be done anything that constitutes a nuisance;
- (ii) The ANA fails to fulfill any of its obligations under this Agreement and, within seven business days of being notified by the City of such failure, fails to rectify the default to the satisfaction of the City or such default re-occurs within one year of the first default; or
- (iii) The ANA becomes bankrupt, insolvent or makes an assignment for the benefit of creditors, dissolves, ceases to actively carry on as a Neighbourhood Association and/or ceases to be recognized as a Neighbourhood Association.

10. TERMINATION WITH NOTICE

At any time during the term of this Agreement the City or the ANA may terminate this Agreement, with no further obligation of one party to the other save and except as provided in Section 11 hereof, upon one party providing the other party with six (6) months' prior written notice of its intention to terminate this Agreement.

11. TERMINATION OBLIGATIONS

Forthwith upon the termination of this Agreement, whether by expiry of its term, notice by the City or otherwise, the ANA shall:

- (a) subject to lottery/gaming regulations, surrender the Substation in a good state of repair including all the premises, facilities, equipment, buildings and structures and all alterations, additions, improvements, equipment and fixtures including replacements thereof at the Substation, whether paid for in whole or in part by the ANA, shall become the property of the City at no expense or cost to it; and
- (b) return all keys pertaining to the Substation and facilities to the City.

12. COMPLIANCE WITH LAWS

- (a) The ANA shall, at its expense, comply with all applicable laws, by-laws, City policies and regulations, as enacted, passed and amended from time to time, pertaining to the Substation, its use and operation.
- (b) The ANA shall, at its expense, obtain and maintain in force all required licences, permits, and certificates that may be required for or in connection with the use and operation of the Substation and any facilities thereon.

13. **NO ASSIGNMENT, NO SUB-LICENCE**

This Agreement and the obligations and rights of the parties under it shall bind and enure to the benefit of the parties and their respective heirs, executors, administrators and successors. Neither this Agreement and the rights granted to the ANA nor any part thereof shall be assignable by the ANA unless the ANA has obtained prior written approval from the City for such assignment, which approval may be withheld by the City in its sole discretion.

14. **NON-WAIVER**

Failure of the City to exercise any right, power, or authority given hereunder, or to insist upon the strict compliance with the terms and conditions hereof by the ANA shall not constitute a waiver of terms and conditions of this Agreement with respect to any other or subsequent breach thereof or default hereunder, nor a waiver by the City of its rights at any time thereafter to require strict compliance with all terms and conditions hereof.

15. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, whether oral or written. No supplement, modification, amendment or waiver of this Agreement shall be binding unless executed in writing by both parties.

16. **SEVERABILITY**

The ANA and the City acknowledge and agree that if any covenant, obligation, agreement, term or condition of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation, agreement, term or condition of persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation, agreement, term and condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

17. **NOTICE**

All correspondence, notices, consents, approvals, and authorizations given or made pursuant to this Agreement are to be set forth in writing and delivered personally or by regular or registered mail;

(a) in the case of the City to:

The Corporation of the City of Kitchener
200 King Street West
P.O. Box 1118
Kitchener, ON
N2G 4G7
Attention: General Manager of Community Services Department

(b) in the case of The ANA to:

The ANA
249 Simeon Street
Kitchener, Ontario
N2H 1T2
Attention: President, Dave Bradshaw

The ANA shall immediately advise the City in writing of the election of a new president and the address therefore, which shall then be the new address/person for notice.

