



LICENCE AGREEMENT

THIS LICENCE AGREEMENT is made in quadruplicate and effective as of the (hereinafter the “Agreement”).

BETWEEN:

THE CORPORATION OF THE CITY OF BRANTFORD
(hereinafter referred to as the “Licensor”)

- and -

CANADIAN WARPLANE HERITAGE MUSEUM
(hereinafter referred to as the “Licensee”)

WHEREAS the Licensor is the registered owner of certain lands and premises located in the City of Brantford upon which the Brantford Municipal Airport (the “Airport”) is located, legally described in Schedule “A” attached hereto (the “Licensor’s Lands”);

AND WHEREAS the Licensor has agreed to licence a portion of the Airport to Licensee, as shown on Schedule “B” attached hereto (hereinafter the “Licensed Premises”);

AND WHEREAS the Licensee wishes to host an air show (the “Air Show”) to take place on August 29, 2018 at the Licensed Premises;

AND WHEREAS the Licensor wishes to provide support to the Licensee in hosting the Air Show in the form of in-kind services up to a maximum of \$21,500.00;

AND WHEREAS the Licensor has an agreement with the Brantford Flying Club Ltd. for Airside Management Services for the Airport (the “Airside Management Services Agreement”);

NOW THEREFORE in consideration of the premises and mutual covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1.0 GRANT OF LICENCE

1.1 Subject to the provisions of this Agreement, the Licensor hereby grants to the Licensee a non-exclusive license to use and occupy the Licensed Premises for the purposes of hosting an Air Show from August 26, 2019 to August 30, 2019.

2.0 TERM

2.1 The Term of this Agreement will commence on the day it has been executed by both parties and be fully terminated on the 30th day of August, 2019 (the “Term”).

3.0 TERMINATION

3.1 This Agreement shall terminate as follows:

- (a) at the expiry of the Term;
- (b) in the event that either party shall have breached or be in default of any of its obligations set forth in this Agreement, and such breach or default has not been completely cured or remedied within five (5) days from receipt of written notice of such breach or default as delivered by the non-defaulting party, thereafter this Agreement shall be deemed to be terminated.

3.2 Early Termination:

Notwithstanding anything herein contained, the Licensor may terminate this Agreement if the Licensor requires exclusive use of the Airport for an emergency. In such instances, the Licensor will use best efforts to provide as much notice as possible to the Licensee.

4.0 ACCESS TO THE AIRPORT

4.1 During the Term herein, the Licensee, including its employees and authorized agents, shall have access to and use of the Airport two days prior to the Airshow for set up. The Licensee shall coordinate access with the Brantford Flying Club.

5.0 LICENSE FEE

5.1 The Licensee shall pay to the Licensor, without abatement or set-off of any kind, a license fee of \$2.00, plus applicable HST and any other taxes (the "License Fee").

6.0 "AS IS – WHERE IS" BASIS

6.1 The Licensee hereby acknowledges and agrees that the Licensed Premises and all infrastructure equipment are being provided to the Licensee on an "as is-where is" basis and that the Licensor shall not be responsible to the Licensee for the adequacy, conditions or suitability of the Licensed Premises. The Licensee has satisfied itself as to the adequacy, condition and suitability of the Licensed Premises for the use intended by the Licensee.

7.0 IN-KIND SERVICES

7.1 The Licensor agrees to provide the Licensee with in-kind services up to a maximum of Twenty-One Thousand Five Hundred Dollars (\$21,500.00) in accordance with Schedule "C". Any costs over and above \$21,500 shall be invoiced to the Licensee.

8.0 USE OF THE LICENSED PREMISES

8.1 The Licensed Premises shall be used as follows:

- (a) for the purpose of setting up for the Air Show
- (b) for the purpose of setting up onsite parking
- (c) for the purpose of conducting the Air Show

9.0 RIGHT TO ENTER

9.1 Nothing in this Agreement affects the ability of the Licensor to enter the Licensed Premises at any time during the Term in order to carry out any repairs or maintenance deemed necessary by the Licensor.

10.0 OBLIGATIONS OF THE LICENSEE

10.1 The Licensee shall have full responsibility for all of the following matters:

- (a) Employing best efforts to ensure that the interior of the Licensed Premises are kept tidy at all times;
- (b) Repairing and maintaining at its own expense any damage to the Licensed Premises and to all fixtures and improvements to be erected or constructed thereon by the Licensee, except for damage occasioned by the direct or indirect acts or omissions of the Licensor and its servants, agents, representatives, contractors, invitees or of any other entity for whom the Licensor is responsible;
- (c) Not to commit or permit any excess loading within the Licensed Premises;
- (d) To comply with all regulations or directives issued by the Licensor from time to time;
- (e) To create a traffic control plan to regulate access to and exiting from the Licensed Premises;
- (f) Not to cause or permit any nuisance in or about the Licensed Premises;
- (g) To comply with all regulations of Transport Canada as they relate to the Air Show;
- (h) To make all efforts to ensure public safety at all times;
- (i) To take all safety precautions necessary to conduct the Air Show such as hiring a sufficient number of experienced security staff and ensuring the presence of emergency personnel on-site; and
- (j) To comply with all applicable laws, regulations, by-laws and policies as they relate to the Air Show.

11.0 FIXTURES AND EQUIPMENT

The Licensee shall not erect or construct upon the Licensed Premises any permanent fixtures, structures or other improvements, other than movable equipment which the Licensee deems necessary or desirable for its use of same, unless it shall have first received the written consent of the Licensor, which consent may not be arbitrarily withheld. Provided however, that all such fixtures and equipment shall conform with applicable municipal by-laws and other applicable laws. On the expiry of the Agreement, any fixtures installed by the Licensee shall be removed by the Licensee at its own cost and the Licensee shall restore the Licensed Premises to the general condition they were in at the commencement of this Agreement.

12.0 INSURANCE

- 12.1 The Licensee shall, at its own expense, obtain and maintain Commercial General Liability Insurance for third party bodily injury, personal injury, and property damage, to an inclusive limit of not less than five million dollars (\$5,000,000) per occurrence. This policy is to add The Corporation of the City of Brantford as additional insured to the policy.
- 12.2 The Licensee shall provide evidence of Aviation General Liability insurance with respect to any owned or non-owned aircraft directly in connection with the Air Show having an inclusive limit of not less than fifteen million dollars (\$15,000,000) per occurrence, or such greater amount as the Licensor may from time to time request. This policy shall contain an Airmeet Liability Endorsement in the amount of \$15,000,000 with The Corporation of the City of Brantford will be added as additional insured to this policy.
- 12.3 It shall be the sole responsibility of the Licensee to determine what additional insurance coverage, if any, is necessary and advisable for its own protection and/or to fulfill its obligations under this agreement. Any such additional insurance shall be obtained and maintained at the sole cost of the Licensee and the Licensor shall be added as additional insured or loss payee where applicable.

13.0 INDEMNIFICATION

The Licensee shall indemnify and save the Licensor harmless, including the Licensor's elected officials, officers, employees, agents and contractors, from and against any loss, cost and expense incurred by the Licensor because of any demand, action or claim brought against the Licensor as a result of any loss of or damage to property, personal injury or death, or any other losses or damages, both direct or indirect, including such other costs and expenses, howsoever and whatsoever incurred, suffered or sustained by the Licensee by its use of the Licensed Premises, or by anyone else permitted on the Licensed Premises by the Licensee or by anyone for whom in law the Licensee is responsible, including any losses or damages which have been caused or contributed to by any negligence, breach of the *Occupiers' Liability Act* or breach of statutory duty on the part of the Licensor or on the part of anyone for whom the Licensor is in law responsible, by their presence upon the Licensed Premises, the condition or state of repair of the Licensed Premises and the breach of any of the provisions of this Agreement by the Licensor, excluding any gross negligence on the part of the Licensor, its employees, agents, contractors or invitees, which causes or contributes to any such injury, damage or loss.

14.0 LOSS OR DAMAGE

The Licensor shall not be liable for death or injury or damage to property of the Licensee or of others located in the Licensed Premises, nor for the loss of or damage to any property of the Licensee or of others by theft or otherwise from any cause whatsoever, save and except for any gross negligence on the part of the Licensor, its employees, agents, contractors or invitees, which causes or contributes to any such injury, damage or loss.

15.0 SIGNAGE

On receiving the prior written consent of the Licensor, the Licensee may affix or display signs within the Licensed Premises provided they are not permanently affixed and do not materially interfere with any activities of the Licensor.

16.0 FORCE MAJEURE

Notwithstanding anything to the contrary contained in this Agreement, if either party hereto is delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes, labour troubles, inability to procure services or materials, power failure, riots, civil unrest, insurrection, sabotage, invasion, rebellion, military or usurped power, war or acts of war, acts of God or any other reason whether of a like nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such term, covenant or act shall be excused for the period of the delay and the party so delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay.

17.0 COMPLIANCE WITH LAWS

During the term of this Agreement, the Licensee shall comply with all law, statutes, by-laws, rules, regulations and other requirements of any competent government authority with jurisdiction over the Licensed Premises.

18.0 WAIVER

Any condoning, excusing or overlooking by either party of any default, breach or non-observance with respect to any covenant, proviso or condition herein contained shall not operate as a waiver of the Licensor's or Licensee's rights hereunder in respect of any further or subsequent default, breach or non-observance of any covenant, proviso or condition.

19.0 DELIVER UP POSSESSION

At the expiration of this Agreement, the Licensee shall peaceably and quietly yield up and deliver up possession of the Licensed Premises to the Licensor. The Licensee shall remove all of its equipment and fixtures and ensure any items brought onto the Licensed Premises are a result of the Airshow are removed within five (5) days after termination of this Agreement and shall repair any damages resulting from such removal.

20.0 NOTICES

Any demand, notice or communication to be provided hereunder shall be in writing and may be given by personal delivery, by prepaid first class mail or by fax transmission, addressed to the respective parties as follows:

To The Licensor: **The Corporation of the City of Brantford**

Attention: Sandy Jackson
Telephone: 519 759 4150 ext. 5204
Facsimile: 519 751 4757

To The Licensee: **Canadian Warplane Heritage Museum**

Attention: David G. Rohrer
Tel: 905 679 4183
Email: ceo@warplane.com

or to such other address or fax number as any party may from time to time notify the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been received by the party to which it is addressed on the day of actual delivery thereof. If given by fax transmission, on the same day as the date of faxing provided that a fax transmission report is generated and retained. In the case of a demand, notice or communication addressed to more than one party, on the day upon which actual delivery thereof has been completed to all such parties. Any notice sent by prepaid first class mail as aforesaid shall be deemed to have been delivered on the fifth (5th) business day (excluding Saturdays, Sundays and Statutory Holidays) following the date of mailing thereof provided that postal services have not been interrupted, in which case notice shall only be given by personal delivery or fax transmission as aforesaid. It is agreed that any notice to be given by the Licensor may be by the Manager of Realty Services or by its Legal Counsel, and need not be under the corporate seal of the Licensor and any such notice, so signed, shall be conclusively deemed to express the will and corporate act of the Licensor as therein contained and no further evidence thereof or of any by-law or resolution need be given.

21.0 TIME OF THE ESSENCE

Time shall be deemed to be of the essence with respect to all time limits mentioned in this Agreement.

22.0 SEVERABILITY

If any provision of this Agreement or the application thereof to any circumstances shall be held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions of this Agreement or the application thereof to other circumstances shall not be affected thereby and shall remain valid and enforceable to the fullest extent permitted by law.

23.0 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and shall be treated in all respects as an Ontario contract.

24.0 ASSIGNMENT AND SUBLICENSING

- (a) This Agreement shall not be assigned by the Licensee without the prior written consent of the Licensor, which consent may be unreasonably withheld or delayed.
- (b) The Licensee shall not sublicense any portion of the Licensed Premises without the prior written consent of the Licensor, which consent may be unreasonably withheld or delayed.

25.0 NOTICE OF LICENSE

The Licensee acknowledges that a copy of this Agreement and/or a document providing notice of this Agreement, whether in electronic format or not, shall not be registered by the Licensee against title to the Airport.

26.0 ADDITIONAL CONSIDERATIONS

The parties shall sign such further or other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence. Do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

27.0 ENTIRE AGREEMENT

This Agreement, including any Schedules attached hereto, shall constitute the entire agreement between the parties concerning the transaction contemplated hereby. This Agreement shall not be modified or amended except by written agreement executed and dated by both parties.

28.0 SUCCESSORS

All rights and liabilities herein granted to or imposed on the respective parties hereto extend to and bind the successors and assigns of the Licensor and the heirs, executors, administrators and permitted successors and assigns of the Licensee, as the case may be.

29.0 HEADINGS FOR CONVENIENCE ONLY

The division of this Agreement into Articles and sections is for convenience only and shall not affect the interpretation or construction of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their authorized signing officers who have either asserted their authority to execute this Agreement or affixed their appropriate corporate seal and have hereunto set their hands and seals.

THE CORPORATION OF THE CITY OF BRANTFORD

Name: Sandy Jackson
Title: General Manager, Community Programs, Parks and Recreation

I/We have authority to bind the Corporation

CANADIAN WARPLANE HERITAGE MUSEUM

Per: _____

Name: David G. Rohrer
Title: CEO, Canadian Warplane Heritage Museum

I/We have authority to bind the Corporation

SCHEDULE "A"

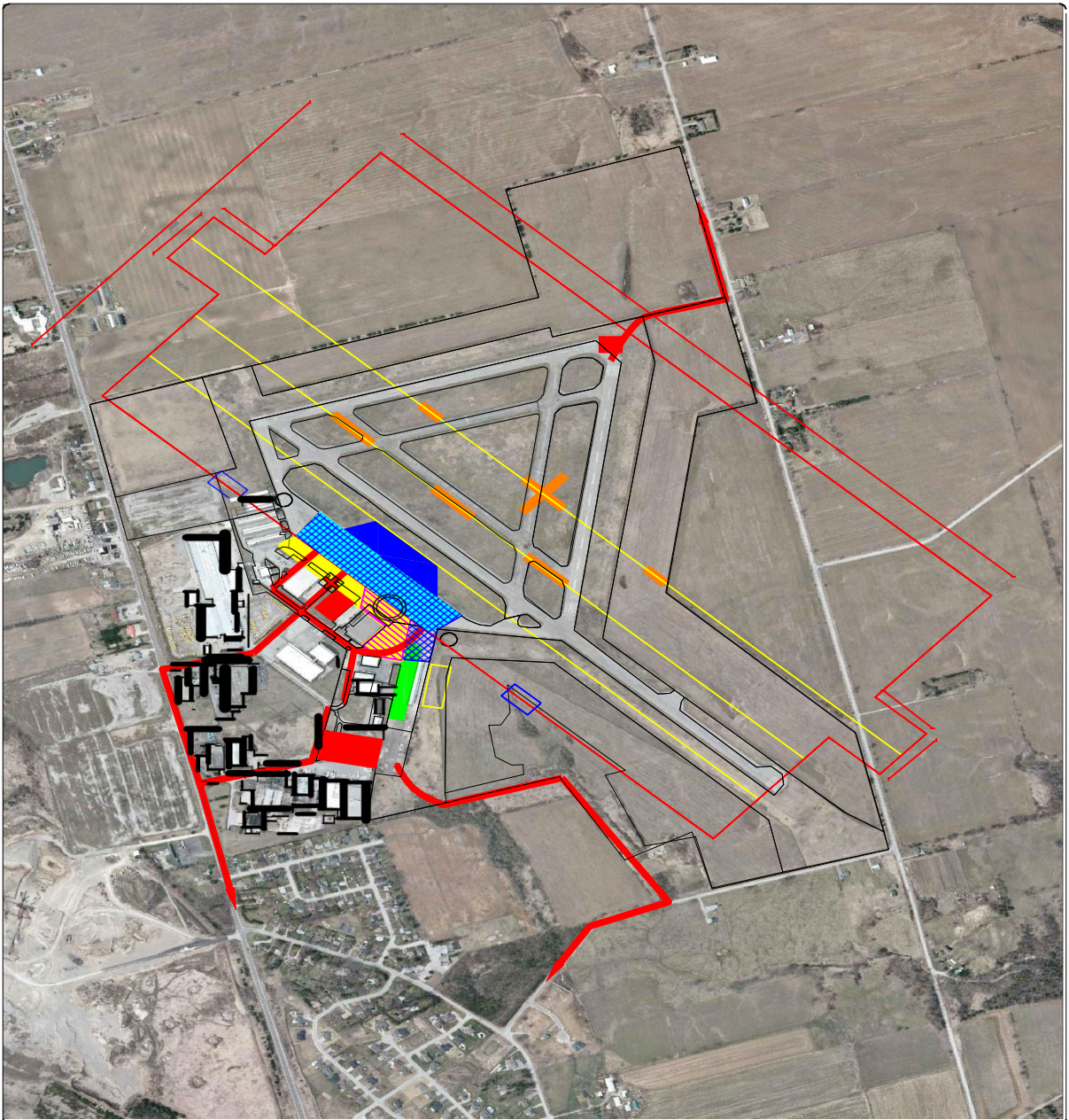
Legal Description of City's Lands

32070-0132 (LT)

PT LT 13-17 CON 4 BRANTFORD AS IN A115612 EXCEPT A7135 & PTS 1 TO 6 2R7909; S/T A149410, A183741, A183742, A210401, A293465, A293466; TOGETHER WITH AN EASEMENT OVER PTS 1, 2 & 3 2R7533 AS IN BC233787; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 1, 2, 3, 4, 5, 6 & 7, 2R7690 AS IN BC254654; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18, 2R7690 AS IN BC254655; COUNTY OF BRANT

SCHEDULE "B"

Sketch of the Licensed Premises



	<p>THIS DRAWING IS NOT TO BE USED AS A BASIS FOR ANY MEASUREMENTS AND ARE TO BE VERIFIED BY A CONTRACTOR. DRAWING IS TO BE USED FOR PROPOSED SITE PLAN LAYOUT ONLY.</p>	
AIR SHOW SITE PLAN	110 AVATION AVE BRANTFORD ON. N5T 5L7	
SITE PLAN	KL	
NIS		

SCHEDULE "C"

In-Kind Services

Brantford Police Services – Traffic Detail and Security	\$4,000.00
Brantford Fire Department – On site service	\$11,500.00
Brantford Transit – Free Transit Bus Shuttle	\$500.00
Parks and Recreation – Event Services	\$0
Brant County Ambulance – On site service	\$5500.00
	\$21,500