

**THIS AGREEMENT in quadruplicate effective this 1st day of May 2013**

**B E T W E E N:**

**THE SIR SANDFORD FLEMING  
COLLEGE OF APPLIED ARTS AND TECHNOLOGY  
(the "College")**

**and**

**THE CORPORATION OF THE CITY OF PETERBOROUGH  
(the "City")**

**WHEREAS** the development of a new artificial sport field complex (the "Complex") is consistent with the College's Master Plan for its Brealey Drive campus;

**AND WHEREAS** the parties desire to enter into this agreement setting out certain terms and conditions under which the Complex will be built and thereafter operate;

**AND WHEREAS** the City will contribute \$270,000 from the Peterborough Youth Soccer Club (the "PYSC") towards the development of the Complex;

**AND WHEREAS** the City and College, minus the PYSC contribution and minus any other cost being paid for by one party as set out in this agreement, have agreed to share equally the costs of designing, building and maintaining the Complex;

**AND WHEREAS** the College has agreed to provide the land for the Complex at no cost to the City;

**AND WHEREAS** the City and the College pledge themselves to co-operate with each other during the term of this agreement.

**AND WHEREAS** the City shall be responsible for, and shall manage, all tendering, proposals, pre-qualifications and contracting according to the City's policies, by-laws, regulations and procedures relating to the development and completion of the Complex.

**AND WHEREAS** the Sir Sandford Fleming College Student Administrative Council (Peterborough Campus) has agreed to reimburse to the College the College's share of the Shared Capital Costs as set out in Article 4.00 of this Agreement.

**NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:**

**1.00 DEFINITIONS**

**1.01 City-College Liaison Committee** – means a committee composed of people appointed by the City and College in accordance with each party's usual practice;

**1.02 City Field** – means a lighted, artificial turf, rectangular sport field reserved, in first instance, for use by City User Groups, subject to sub-Article 6.03

- 1.03 City User Group** – means any person, local sport association, or School Board who has (1) booked the use of the City or College Field through the City’s Recreation Division and (2) paid the requisite fee for its use of the City Field or the College Field, if the College is not using the College Field;
- 1.04 College Field** – means a lighted, artificial turf, rectangular sport field, in first instance, for use by the College;
- 1.05 Complex**– means a new artificial sport field complex built with reference to the John George Associates concept design attached hereto as Schedule A, on the Brealey Drive campus of the Sir Sandford Fleming College of Applied Arts and Technology (“SSFC”) including but not limited to: (1) the City Field and the College Field each outfitted with athletic lights; (2) a field-house building with change rooms, washrooms, meeting space, storage space, and vending niche; (3) spectator seating; (4) a site that is suitable for the for the temporary establishment for a press box area; (5) field scoreboard(s); (6) field fencing; (7) Parking Lot F expansion, in accordance with the tender specifications; and (8) other site development such as way-finding signage, lighting and pathways as the parties hereto may agree.
- 1.06 Management Committee** –means the City’s Director of Community Services and the College’s Associate Vice-President, Student Services or their designates.
- 1.07 Prime Consultant** – means the person who assembles and coordinates a team of other consultants who provide services that include, but are not limited to, architectural services, structural, mechanical, electrical landscaping and civil engineering services, and other required services for the Complex, on behalf of the City and the College.
- 1.08 Project Development and Construction Steering Committee** – means the Committee established to oversee design and construction of the Complex that will have equal representation of staff from the City and the College.
- 1.09 School Board** – means, as the context requires, either the Kawartha Pine Ridge District School Board or the Peterborough, Victoria, Northumberland and Clarington District Catholic School Board
- 1.10 Special Event** – means any event approved by the Management Committee.

**2.00 THE CITY’S CAPITAL COSTS**

- 2.01** The City shall have the sole responsibility in the development of the Complex to pay for:
- a. All required property surveys;
  - b. Pre-construction geo-technical work on the site of the Complex;
  - c. Phase 1 Archeological Assessment, if none exist for this property;
  - d. The administrative costs associated with issuing all competitive bid documents for the Complex;

- e. A building permit;
- f. Applicable Development Charges and Parks Levy Charges; and
- g. Project management services provided by the City's Manager of Facilities and Special Projects;

### **3.00 THE COLLEGE'S CAPITAL AND OPERATIONAL COSTS**

- 3.01** The College shall have the sole responsibility to pay for any and all costs, including engineering costs, associated with development a storm water management Master Plan for the Kawartha Trades and Technology Centre (KTTC) and the Complex;
- 3.02** The College shall have the sole responsibility to pay for the following operational costs:
  - a. The operation and maintenance of any vending services; and
  - b. The snow clearing costs for Parking Lot F and the replacement of parking control device(s) as required.

### **4.00 SHARED CAPITAL COSTS**

#### **Development and Construction**

- 4.01** The City will provide \$270,000 from the PYSC to the Development and Construction costs and the balance of the costs, except for those costs that the City and College agree to be solely responsible for, will be shared equally between the City and the College and include:
  - a. The fees and costs of the Prime Consultant and other sub-consultants for: (i) preparing the design drawings and tender specifications to the satisfaction of the parties; (ii) contract administration; and (iii) warranty period supervision for the Complex;
  - b. Construction testing and inspection costs;
  - c. The fees and costs for design and construction of that portion of the Complex's stormwater management system that drains the sport fields to the north side of the College driveway;
  - d. The capital construction costs of the Complex, excluding any cost specifically identified as being the sole responsibility of the City or the College;
  - e. Any legal fees associated with resolving a dispute concerning the construction or development of the Complex; and
  - f. Such other costs reasonably attributed to the Complex or as the parties may agree in writing to share equally.

#### **4.02 Storm Water Management Pond:**

- a. A storm water management pond is required to service both the Kawartha Trades and Technology Centre (the "KTTC") and the Complex. The College will be solely responsible for the physical construction of the pond at a location south of the College's main driveway as well as the connection from the pond to the north side of the College driveway. The costs will be divided as follows:
  - i. 50% of the cost of the construction of a storm water management pond shall be financed out of the budget for the KTTC;
  - ii. The College shall be 100% responsible for the costs associated with connecting the KTTC to the storm water management pond;
  - iii. The City shall fund its 25% of the cost of constructing the storm water management pond out of the budget for the Complex; and
  - iv. The College shall fund the remaining 25% of the cost of constructing the storm water management pond from the budget for the Complex;
  - v. 50% of the cost of the connection from the pond to the north side of the College's main driveway will be financed from the Complex's budget split equally between the College and the City.
- b. The College will invoice the City for the share of the storm water management pond costs that are attributable to the Complex. The City will deduct 50% of the costs for the storm water management pond that are attributable to the Complex from the next invoice the City issues to the College for the College's share of the cost to develop the Complex.

**4.03** For those Development and Construction costs that are a shared cost, the City will, in first instance, pay those shared costs and then invoice the College for its 50% share. The College, upon being invoiced by the City, shall within 60 days of such invoice, pay to the City its share of the development and construction costs. The City shall use its best efforts to invoice the College on or before 31 December and 31 March in each year design and construction takes place, for shared costs assumed during that year.

**4.04** The City and the College shall use reasonable diligence and dispatch to agree on the form and content of: (i) the design of the Complex; and (ii) the form and content of the construction tender.

**4.05** The College and the City shall each satisfy the other that their respective decision making bodies have approved the design of the Complex prior to the execution of a construction tender.

**4.06** During the design and construction of the Complex, the following process shall govern the process of administering Change Orders:

- a. For Change Orders that are within the approved budget, the City's Administrative Staff Committee will approve increases to the contract(s) upon the recommendation of the Project Development and Construction Steering Committee;
- b. If the Change Order is for a dollar value beyond the approval limit of the City's Administrative Staff Committee or the approved budget of \$2.9 million for each of

the City and the College, each party shall seek direction from that party's governing body or supervising personnel in accordance with its own practices and policies,

#### **5.00 MANAGEMENT OF THE COMPLEX**

- 5.01** The Complex shall be managed by a person appointed by the College.
- 5.02** The College shall inform the City who it has designated to manage the Complex.
- 5.03** The Complex shall be managed and maintained by the College in accordance with this agreement to the satisfaction of the City and the College. If there is a dispute concerning the standard to which the Complex is being maintained, that dispute shall be referred to the Management Committee for resolution.
- 5.04** The parties agree that changes to the Complex, including the installation of signage that recognizes the entities that have made financial contributions to the costs of developing the Complex shall be reviewed and agreed upon by the City and the College through the Management Committee.

#### **6.00 OPERATIONAL MATTERS**

The following articles shall be interpreted and implemented in such a way as to permit each party to have the use of one field at all times, except as set out in Article 6.03. The parties acknowledge that the field which it is permitted to use may change at the end of each scheduled time period. The parties also acknowledge that there may be times when one party has the scheduled use of both fields at one time, provided that the other party has not scheduled its use to the other field for that same time period. Because the two fields are not of equal size, the parties acknowledge that the design and line markings on each field shall be a guiding principle in determining the equitable allocation of each field.

##### **Priority for Using Each Field**

- 6.01** The City and the College will schedule their use of one field on or before the 1<sup>st</sup> of April annually. When creating their annual schedules, each party shall give due consideration to (1) the field requirements of the sport being scheduled (2) whether the sport is part of a special event recognized by the Management Committee and (3) to such other matters as the Management Committee may in its discretion agree to consider. If there is a conflict in the schedule, or if a party has obtained an Ontario College Athletic Association or Ontario Federation of School Athletic Associations event, or another event that could not, with foresight, have been scheduled before April 1<sup>st</sup>, then the parties shall use their best efforts to resolve such dispute.
- 6.02** The City shall have the first right of use concerning the City Field. This first right of use permits a City User Group to use the City Field upon the payment of the required fee. In the event no City User Group has been booked to use the City Field, the College shall have the right to book the City Field for its use upon payment of the required fee.
- 6.03** The City recognizes that the College desires to expand its use of intramural sports on the City Field during the hours of 4:00 PM to 6:00 PM Monday through Friday. The City

shall permit first right of refusal to the College, for bookings received on or before April 1<sup>st</sup>, use of the City field during the hours of 4:00 PM to 6:00 PM during the period commencing on the Tuesday following Labour Day up to but not including 1 May in each year of the Term upon the payment of the required fee.

- 6.04** The College shall have the first right of use concerning the College Field. This first right of use permits the College to use the College Field at no cost. In the event no College user has been booked to use the College Field, the City shall have the right to book the College Field for use by a City User Group upon payment of the required fee.
- 6.05** The Management Committee shall determine whether a sporting event that will draw teams from across Ontario, Canada or the world, shall have priority over any other event booked by the City, the College a City User Group on either or both the City Field and the College Field.
- 6.06** The City and the College agree that each party will be responsible for all costs associated with managing the events of their own organization.

#### **The Field-house**

- 6.07** The City and College will share use of the field-house including change rooms, storage, washrooms and multipurpose space. Special Events shall have first priority of use concerning the field-house.
- 6.08** The PYSC and the Sir Sandford Fleming Student Administrative Council (SAC) will have access to the multipurpose space within the Field-house for its activities at no charge. In addition, at 90% completion of the Complex, the College and the City, after consultation with the PYSC and SAC, will determine a mutually agreeable way to recognize the PYSC's and SAC's contribution to the project.
- 6.09** In the absence of a Special Event, a user of the City Field or College Field shall be able to book the use of the facilities contained in the field-house during the time of their booking. In the absence of a game being playing on either the City Field or the College Field, a user who has booked the City Field or the College Field for a practices may book the use of the facilities in the field house during the time of their booking. Any other use will be given the lowest priority unless the parties agree otherwise.

#### **The Operating Budget**

- 6.10** The City and the College agree that the Operating Budget for the Complex shall be developed by the Management Committee for consideration by City Council and by the Board of Governors for the College during the City's budget process for the calendar year. If, in any year, the Management Committee, City Council or the Board of Governors cannot agree on the size of the Operating Budget, or on any particular line allocation within the Operating Budget, the prior year's Operating Budget shall be used, with the amount of that Operating Budget or the specific line allocation (as the case may be) shall be altered only by the amount of the percentage change in the Consumer Price Index, All Items Ontario for the previous year.
- 6.11** If a dispute concerning the size of the Operating Budget for the Complex remains outstanding for 120 days, then either party may, in accordance with this agreement, refer the dispute to arbitration.

### **Administering Bookings**

**6.12** The City shall administer all bookings for the Complex. The College will not permit the College Field to be used by a City User Group without the approval of the Management Committee. The City will collect the user fee from each City User Group in accordance with Clause 6.02 and 6.04. The City shall establish a license within its facility booking system in order to (1) ensure co-ordination of events and prevent conflicts and (2) permit the College's Athletic Director to view bookings.

### **User Fees and Revenue Sharing**

**6.13** On or before April 1<sup>st</sup> in each year, for the following calendar year, the Management Committee shall annually determine the user fees that will be charged for the facilities contained within the Complex.

**6.14** The City will collect the user fees established in accordance with Article 6.13.

**6.15** The City and College shall equally share the revenues generated from the user fee identified in Article 6.13 for bookings to use the Complex.

### **Operational Responsibilities and Reconciliation of Operational Expenses**

**6.16** The College shall be responsible for the day-to-day operation and maintenance of the Complex to the satisfaction of the parties, including:

- a. Providing supervision during all operational hours;
- b. Having the lights operational for all users;
- c. Providing security devices and security services at the College's discretion;
- d. Cleaning and maintaining the grounds and facilities;
- e. Landscaping and grounds keeping;
- f. Performing such inspections as are necessary to maintain any and all warranties; and
- g. Purchasing and supervising any contracted services, including but not limited to cleaning services, security services, security monitoring services, garbage collections, parking lot maintenance, and maintenance of way-finding lights and athletic field lights.

All costs described in Article 6.16 are to be shared equally between the parties.

**6.17** Each party shall prepare a reconciliation statement of all shared costs on or before 31 March and 31 December in each year of the Term. Any sums owing from one party to the other shall be paid by the debtor party to the other within 45 calendar days of the date of each reconciliation statement.

**6.18** The City shall have the sole responsibility to pay for:

- a. Administering a facility booking system for the Complex and providing a license to the College to permit the College's Athletic Coordinator to view bookings remotely; and
- b. All costs associated with managing a significant City event.
- c. All costs associated with additional security for an event offered by the City or a City User Group.

### **Insurance and Indemnity**

**6.19.** The College shall obtain "All Risk" Property and Boiler and Machinery insurance which shall be written on a full replacement cost basis including sewer back up, flood and earthquake covering all property owned by the College or for which the College is legally liable including but not limited to leasehold improvements, chattels, furniture, office equipment and the artificial turf. Coverage shall not contain a co-insurance clause.

**6.19.1** Comprehensive Boiler & Machinery insurance which shall be written in an amount equal to one hundred (100%) percent of the full replacement cost of all insurable objects owned by the College or for which the College is legally liable. Coverage shall include but not limited to water damage and, hazardous substances.

**6.19.2** The cost of obtaining the type of such insurance shall be shared equally by the parties each party and the insurance deductible will be determined jointly.

**6.19.3** Each of the College and the City has obtained and shall maintain general liability insurance during the entire term of this Agreement. Each party's general liability insurance shall provide coverage for general liability exposures on an occurrence basis for third party bodily injury, personal injury and property damage and blanket contractual liability, and this coverage shall protect each party and its employees from all claims, demands, actions, causes of action that may be taken or made against them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever that may arise through any act or omission or both including negligent acts or omissions of the party or any employee or employees of a party. This coverage is to include the following:

- i. The College and the City shall add each other as an additional insured with respect to liability arising in the course of performance of their obligations under, or otherwise in connection with, this Agreement;
- ii. A cross-liability severability of insured clause;
- iii. Employers liability coverage; and
- iv. If applicable, non-owned automobile coverage with blanket contractual coverage for hired automobile.

**6.19.4** Each party shall bear the cost of obtaining its own general liability insurance in such amount as its insurer may reasonably suggest or require, but in no event shall the policy limit for general liability be less than FIVE MILLION DOLLARS



per occurrence. Commencing in 2015, the amount of the policy limit for general liability shall be reviewed annually by the parties.

**6.19.5** Each party agrees to protect, indemnify, keep indemnified and save harmless the other party and its officers, servants and agents from and against all claims, demands, costs, actions, causes of action, expenses, legal fees whatsoever which may be taken or made against them or any of them incurred or become payable by them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever arising out of or in consequence of any act, neglect or omission of a party or any employee(s) or subcontractors of a party in connection with the performance of this Agreement except for the negligence or willful misconduct of either party to this Agreement.

**6.20** The College's general liability insurance shall be primary for the College's events and the City's general liability insurance shall be primary for the City's events.

#### **Capital Repairs**

**6.21** Each of the City and the College contribute equally to a capital reserve fund, managed by the College, for the Complex. Commencing in 2014, each party shall contribute a minimum of \$10,000.00 on or before 15 December in each year thereafter for the remainder of the term. Any surplus in the capital reserve fund shall be divided equally between the parties at the end of the Term.

**6.22** The fund created under Article 6.21 shall be used to finance foreseeable capital repairs and improvements to the Complex. The Management Committee will meet periodically, but no less than once annually, to discuss and prioritize a list of capital repairs and improvements and to determine the amount of the next year's contribution to the capital reserve fund.

**6.23** Depending on the cost of a capital repair, it is possible that prior to undertaking a capital repair that final approval will need to be obtained from both the Board of Governors the College and from City Council.

**6.24** The parties acknowledge that the costs of capital repairs and improvements will be shared equally. Failing agreement by the parties on cost sharing, the parties shall share the cost equally, permit the capital repair or improvement to take place and upon completion may refer the cost sharing dispute to mediation and failing a mediated settlement to arbitration.

#### **Parking**

**6.25** The College shall use its best efforts to ensure that Parking Lot F is available for the City or, a City User Group in relation to its occupancy of the City Field and/or the College Field, as the case may be.

**6.26** There shall be no charge for parking in Parking Lot F after 6:00 PM on each week-day and all day on week-ends during the time periods that the Complex is being used by the City or a City User Group.

**6.27** During any Special Event that takes place, at any time of day, between 1 May and 30 November, there shall be no charge for parking in Parking Lot F.

- 6.28** The College shall have the responsibility to regulate and enforce its parking regulations within Parking Lot F, subject to any restrictions that the parties have agreed to herein.
- 6.29** If there is a security cost to regulate parking in Parking Lot F for a City User Group or School Board between 8:00 a.m. and 6:00 p.m., the College shall provide reasonable notice in advance and charge this cost back to the City.
- 6.30** The City and College agree that future operating and capital improvements to Parking Lot F following completion of the Complex, including sweeping, line painting, and asphalt resurfacing, will be cost shared 33% to the City and 67% to the College for the duration of this agreement. The City will not be responsible for costs of performing snow removal, sanding/salting and/or replacing the parking control device(s), which shall be the College's sole expense.

## **7.00 VENDING AND MOBILE FOOD SERVICES**

- 7.01** Vending services are part of the College's food service agreement for the College Campus. Vending machines, if any, shall be operated and maintained by the College or its food service operator at its sole risk and expense. The College shall retain all revenue generated from these vending services.
- 7.02** When the City or a City User Group is occupying the City Field and/or the College Field for a Special Event, the College will grant the City authorization to permit the operation of City Licensed mobile food service vendor(s) within the Complex and/or within Parking Lot F, provided such mobile food services does not create a nuisance to the College's quiet possession of its other land or buildings.

## **8.00 THE MANAGEMENT COMMITTEE**

- 8.01** The members of the Management Committee shall report to their respective supervisors.
- 8.02** The Management Committee, after consulting with SAC, will make recommendations, from time to time, to the College and the City concerning the operation of the Complex and the development and usage of the Complex by the parties and by the community, including, but not limited to, commercial opportunities, the potential for development of joint programming and other matters addressed in this Agreement.
- 8.03** The Management Committee shall meet at least twice per year in each year of the Term, once on or before 1 March and once before 15 December.
- 8.04** Any recommendation made by the Management Committee shall be referred by each party to its respective appropriate decision making body for timely consideration.
- 8.05** In the event the Management Committee cannot agree on any topic, such dispute shall be referred to the City-College Liaison Committee for a final and binding decision.
- 8.06** Notwithstanding Article 8.05, a dispute concerning scheduling shall be finally determined by either the City or the College according to year in which the scheduling conflict occurs. Commencing in 2014, and every other year thereafter, the College

representative on the Management Committee shall have the final decision regarding any scheduling conflict. Commencing in 2015, and every other year thereafter, the City representative on the Management Committee shall have the final decision regarding any scheduling conflict.

## **9.00 NAMING RIGHTS**

**9.01** The College shall have the sole and unfettered right to name the Complex and to retain any income received from its decision to grant naming rights to a third party.

## **10.00 ADVERTISING**

**10.01** The College shall have the right and responsibility to collect and retain all advertising revenue generated within the Complex. The sale of advertising space and promotional opportunities shall be the College's sole preserve, save and except that the City shall have the right to display temporary signage for up to 10 special events each year for the duration of the said event. Any revenue derived from the City's temporary signage, shall be collected and retained by the City.

**10.02** The location of the City's temporary signage within the Complex shall be reasonably determined by the College on a case-by-case basis.

## **11.00 THE TERM**

**11.01** The Term of this Agreement shall be fifty (50) years commencing on the date it is executed by the City.

**11.02** Notwithstanding the initial fifty (50) year term, the parties may amend any term or condition contained herein upon mutual agreement approved in writing. The intent of Article 11.02 is not to provide either party with an opportunity or mechanism to fundamentally re-negotiate the agreement or to shorten the Term, but rather to ensure that the agreement continues to accurately reflect the actual working relationship between the parties concerning the maintenance and operation of the Complex.

**11.03** The Management Committee shall review this agreement firstly in 2015 and thereafter every five (5) years to determine if either party wishes to make a recommendation to its governing body concerning possible amendments to be approved in writing, including extending the term, to this agreement.

## **12.00 DISPUTE RESOLUTION**

**12.01** Either party may submit a dispute arising from the operation or interpretation of this Agreement to arbitration and such arbitration shall be held in Peterborough, Ontario and shall be conducted in accordance with the *Arbitration Act* (Ontario) except that the arbitration shall be conducted by either (a) an arbitrator selected by agreement of both Parties or (b) if the Parties are unable to agree on the choice of an arbitrator within 15 Business Days, by an arbitrator appointed by a Justice of the Ontario Superior Court of

Justice. The decision of the arbitrator shall be final and binding upon the Parties and the expense of the arbitration shall be shared equally by the parties unless the arbitrator determines that one party has acted unreasonably, in which case the expense of the arbitration shall be determined by the arbitrator. The parties agree not to appeal or otherwise contest any decision by the arbitrator concerning the allocation of the costs, fees or expenses related to the arbitration.

### **13.00 FUTURE MARKETING OPPORTUNITIES**

**13.01** In each year of the term of this agreement, the College and the City agree to use their best efforts to market the Complex as a destination for sporting events. The Management Committee shall annually report to their respective parties concerning its progress in developing, obtaining and retaining significant sporting events which utilize the Complex.

### **14.00 TIME IS OF THE ESSENCE**

**14.01** In relation to all obligations contained herein, time shall be of the essence.

### **15.00 ASSIGNMENT**

**15.01** Neither party may assign this agreement, or change the operations of this agreement, in whole or in part, without the written consent of the other.

### **16.00 WHOLE AGREEMENT**

**16.01** This Agreement constitutes the entire agreement between the City and the College, and there is no representation, warranty, collateral agreement or condition affecting this Agreement other than as expressed herein in writing. Furthermore, the parties agree that the Recitals and schedules attached hereto form part of this Agreement.

### **17.00 INTERPRETATION**

**17.01** In this agreement, the singular shall also mean the plural and vice versa.

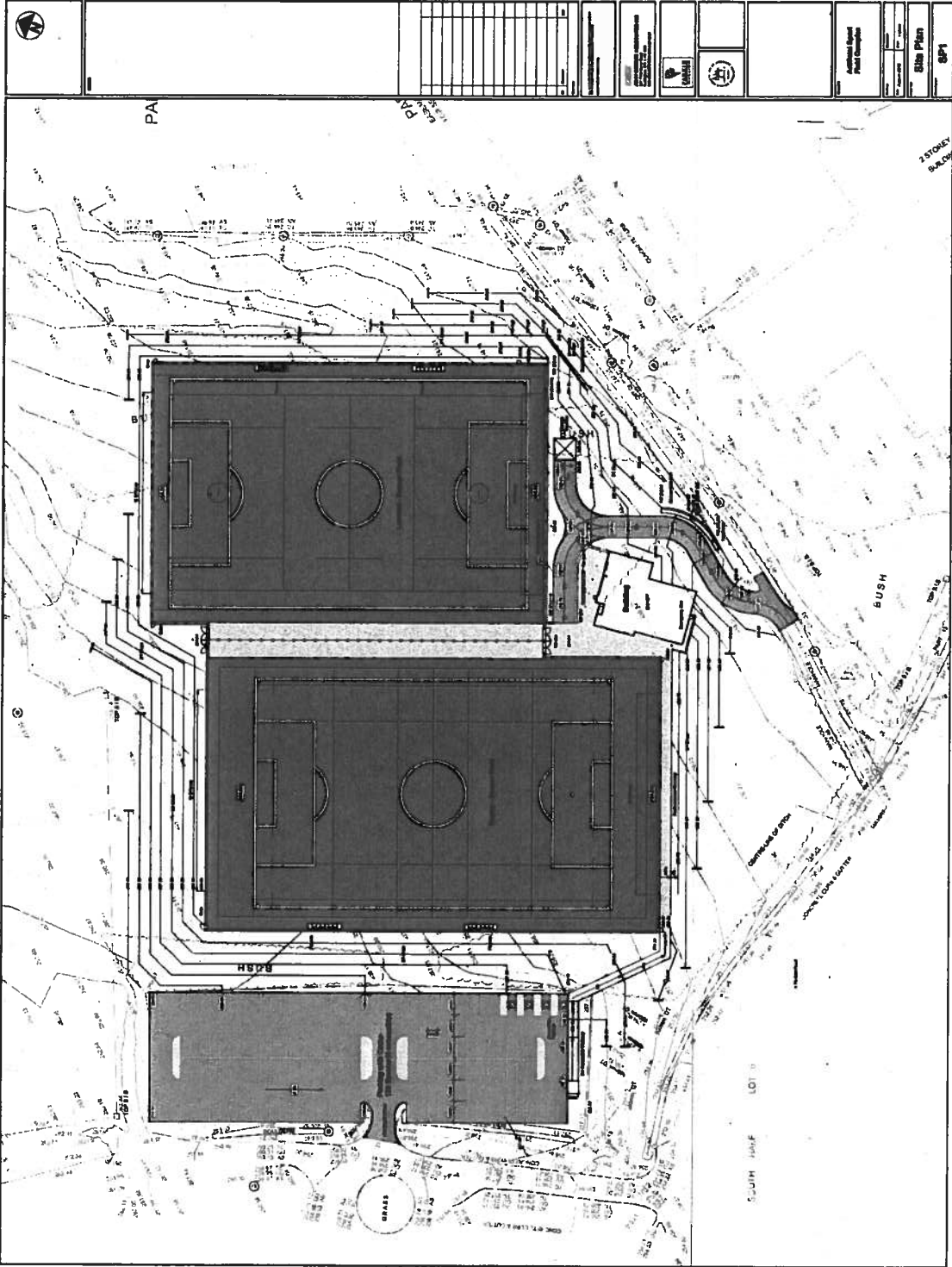
### **18.00 AGREEMENT BINDING**

**18.01** This agreement shall be binding upon the parties hereto and their respective successors and assigns.

**THE NEXT ARTICLE IS ARTICLE 19.00**



# Schedule "A" John George Associates - Concept Plan



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