

# MEMORANDUM OF UNDERSTANDING

(hereinafter referred to as the “**MOU**”)

**BETWEEN**

**OTTAWA SOUTH UNITED SOCCER ASSOCIATION**

(hereinafter referred to as the “**OSU**”)

PARTY OF THE FIRST PART

**AND**

**CITY OF OTTAWA**

(hereinafter referred to as the “**City**”)

PARTY OF THE SECOND PART

**WHEREAS:**

- A. The City is the owner of the property having the municipal address of 5650 Mitch Owens Road, commonly known as George Nelms Park and having a legal description as described in Schedule “A” attached hereto (the “**Lands**”); and
- B. The Lands function as a sports field park and facility having six (6) regulation sized soccer fields with ancillary circulation spaces, supporting infrastructure and a dedicated parking area; and
- C. The OSU and City entered into a Site Plan Agreement dated November 8, 2006 to address the approvals of certain matters expressed and relating to the planning and development of the Lands, specifically addressing traffic movements in relation to the proposed expanded use of the Lands pursuant to the City’s *Site Plan Control By-law No. 2014-256* as amended from time to time, and in accordance with Section 41 of the *Planning Act, R.S.O. 1990*, as amended; and,
- D. City Council on July 14, 2010 approved in principle, the OSU Major Capital Community Partnership project for the design and construction of a fieldhouse (the “**Fieldhouse**”) on a portion of the Lands (the “**Project**”); and
- E. The OSU and City entered into a Sports Field Agreement (the “**Agreement**”) dated October 7, 2010, and amended on April 20, 2016 for the use and operating of the Lands; and,
- F. The Agreement recognizes OSU’s contribution to the improvements on the Lands, which to date stands to be approximately \$2M since 2010 and OSU’s commitment to maintain the designated soccer fields; and,

- G. The City recognizes that OSU organizes recreational and competitive soccer league and soccer sport participation that services the broader southern geographic regions of the City; and,
- H. The following conditions broadly set forth the roles and responsibilities of each party as they relate to the Project;

**NOW THEREFORE**, in consideration of the memorandum hereinafter expressed, the Parties agree as follows:

### **1. The Project**

- a. The Project is described as the proposed construction of a new Fieldhouse building and supporting infrastructure as detailed and described in the series of plans provided in Schedule “B” attached hereto (collectively, the “**Plan**”).
- b. Although at a preliminary design stage, the Fieldhouse will be comprised of dedicated OSU space, change rooms, fitness room, washrooms, storage and other ancillary spaces.
- c. The Fieldhouse will be comprised of an area of approximately 548.12 square metres / 5,900 square feet.
- d. OSU will assume responsibility to design, build, own, operate and maintain the Fieldhouse.
- e. OSU will be solely responsible for furniture, fixtures and equipment for the Fieldhouse;
- f. OSU will be solely responsible for all maintenance, operating and lifecycle costs for the Fieldhouse.
- g. OSU will be responsible for winter maintenance activities for use of the fieldhouse, including any required snow plowing and snow removal.
- h. OSU will be responsible to pay a monthly land market value rental fee to the City for use of the Lands.

### **2. The Fieldhouse**

OSU will incorporate public exterior access to a universal AODA compliant washroom facility within the design of the Fieldhouse that shall remain open and available for general public use during prime hours of sports field(s) and park facility bookings on the Lands, in accordance with the City’s *Parks and Facilities By-law No.*

2004-276, as amended from time to time, or agreed upon hours of operation. Access and use of the Fieldhouse are further detailed in Article 4 herein.

### 3. Project Phases and Costs

- (a) Subject to obtaining the necessary Council and/or delegated authority approvals, and if the Parties agree that the Project is deemed feasible, the parties will advance to negotiating further agreements.
- (b) OSU agrees to undertake an open and transparent development process, in consultation with the City, for the design and construction of the Fieldhouse, including obtaining all planning approvals, permits, hiring of consultants and contractors, and facilitate any public consultation requirements deemed necessary.

### 4. Further Agreements

- (a) The Parties agree, through reasonable commercial efforts and in good faith, to negotiate a Land Lease Agreement (the “**Lease**”) for the Project.
- (b) The Lease will include the following:
  - i. A term of 25 years and an option to renew to be negotiated;
  - ii. Provisions for use of the Fieldhouse by OSU;
  - iii. Provisions for use of the Fieldhouse by the City of Ottawa; that shall not restrict OSU’s quiet enjoyment;
  - iv. OSU will be required to pay a monthly land lease rental fee to be determined at a market value rate;
  - v. OSU understands and agrees that pursuant to *By-Law No. 2020-362* as amended from time to time, OSU will be required to pay a standard Corporate Real Estate Office administration fee upon signing the Lease and at the time of signing any renewal and/or amendment of the Lease. For 2021, the lease agreement administration fee is \$1,126 plus HST. Said fee is subject to annual increases;
  - vi. OSU will be solely responsible for all operation, maintenance, repair and lifecycle costs of the building and its components;
  - vii. OSU will establish and maintain a lifecycle account, with an initial opening balance of 1% of construction cost, and agrees to fund annually 1% of the total construction cost, including any appropriate construction value indexing,

- and OSU acknowledges that the City may require evidence of such lifecycle account;
- viii. OSU will establish and maintain a general maintenance account which will be used to address operation and maintenance items with a threshold less than \$15,000 in value, for the term of the Lease, and OSU acknowledges that the City may require evidence of such maintenance account;
  - ix. OSU will provide and maintain comprehensive general liability insurance, in accordance with City requirements, for the term of the Lease;
  - x. While OSU is required to lease the land of a certain number of parking spaces for zoning purposes, all parking spaces will remain as public parking spaces;
  - xi. OSU shall be solely responsible for all property taxes, fees and assessments associated with the Leased Lands during construction, and for the term of the Lease;
  - xii. The City and OSU will each be required to obtain independent appraisals of the Lands for the purpose of negotiating the market value rate of the rental fee. Terms of reference for each appraisal will be based on an area of 3,700 square metres that includes parking, septic bed, outdoor space and Fieldhouse areas as shown on Schedule B2 attached hereto. Each appraisal will also be based on the applicable Parks and Open Space zoning and broken down to per square metre dollar value;
  - xiii. Scheduling or time of day usage of common areas and other shared spaces;
  - xiv. All site and identification signage shall comply with city standards for accessibility and be bilingual;
  - xv. Any sponsorship, advertising or third party signage proposed by OSU must comply with applicable City standards and requirements. All such signage requires City approval; and,
  - xvi. In the event the Lease is not renewed, OSU will surrender the building and the lifecycle renewal fund to the City, unless the City requests OSU to reinstate the Lands to their original condition, such reinstatement shall be at the sole expense of OSU.

## **5. Municipal and Governmental Approvals**

- (a) OSU shall be responsible for obtaining building permits, all necessary planning and heritage approvals, including zoning amendments, consents and approvals for the Project, including prior approval from OSU's Trustees. This MOU shall not be binding upon the City's Planning Authority for any required approvals.
- (b) The City's participation in the Project is conditional on receiving Council approval of the Project and key business terms of any Lease Agreements. Council approval is required prior to the City entering into any binding agreements with OSU for the Project.

## **6. Confidentiality and Costs**

The Parties agree and/or acknowledge as follows:

- (a) That the City is subject to the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O., 1990, c.M.56*, as amended ("MFIPPA") with respect to information under its custody and control. Accordingly, all documents and information provided to the City by OSU pursuant to this MOU may be available to the public unless OSU requests that it be treated as confidential. OSU acknowledges that all information provided to the City is subject to MFIPPA and may be released under MFIPPA, notwithstanding OSU's request to keep the information confidential. OSU acknowledges that the City is not liable to OSU for any loss, injury, or damages suffered by OSU as a result of the City's obligations to abide by MFIPPA.
- (b) To cooperate regarding all public statements or announcements that either party may wish to make about the Project, their negotiations and agreements. Neither party shall make any public release without the prior written consent of the other.
- (c) Each party shall bear its own costs for the preparation of their negotiations and settlement of all agreements between them.

## **7. Non-Binding**

This MOU is intended as an expression of interest and outlines some of the basic terms under which the OSU and the City may negotiate written definitive agreement(s), settled on terms acceptable to the City and approved by City Council or the assigned delegated authority. No binding agreement or obligation arises unless and until such approvals are obtained and definitive written agreements are executed by the OSU and the City.

## **Parties' Representatives**

For the purposes of this MOU, the contact persons for each of the parties, including for communications and notices are the following:

For OSU:

Name / Title: Jim Lianos / General Manager

Tel.: 613-266-1224

E-mail: [osugm@osu.ca](mailto:osugm@osu.ca)

For City of Ottawa:

Kevin Wherry, Manager, Parks and Facilities Planning

Tel.: 613-580-2424

E-mail: [Kevin.Wherry@ottawa.ca](mailto:Kevin.Wherry@ottawa.ca)

## **8. Termination**

Either party may withdraw from this MOU by giving to the other fifteen (15) days prior notice in writing, acting in good faith, and at the expiration of the said notice period, all agreement flowing from this MOU shall be terminated. Any obligation undertaken prior to termination of the MOU shall remain in full force and effect, and any accounts to be settled or sums to be paid, shall be settled and paid unless the parties expressly agree otherwise in writing.

## **9. Absence of Enforceable Agreement**

The Parties acknowledge and agree that this MOU is not a binding and enforceable agreement and shall not give rise to any obligations on the part of either party but sets out the basis for negotiations. Once final and definitive agreements as mentioned in Paragraph 4 of this MOU are prepared and have been duly executed by the parties, it is intended that such definitive agreements shall supersede this MOU.

## **10. Counterparts**

This MOU may be signed in counterparts, either with the original signature or electronic/digital signature, and the signed copies may be sent by facsimile, digital or electronic transmission. The signed copy that is transmitted to the other party shall be considered binding as the original signature. Each counterpart shall be deemed an original and together constitute one and the same Agreement.

#### **11. Schedules**

It is agreed by and between the parties that any schedules referred to herein, which are annexed hereto, shall form part of this MOU.

#### **12. Governing Law**

This MOU shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario. All actions or applications brought before the courts relating to this letter must be commenced in the City of Ottawa.

The undersigned hereby accepts the foregoing as our understanding and agreement regarding the Project.

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DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2021

**Ottawa South United Soccer**

Per: \_\_\_\_\_

Name: Bill Michalopoulos

Title: President, Ottawa South United Soccer Association

Per: \_\_\_\_\_

Name: Stephen Campbell, Treasurer, Ottawa South United Soccer Association

Title:

*We have full authority to bind the Corporation*

**City of Ottawa**

Per: \_\_\_\_\_

Name: Dan Chenier

Title: General Manager, Recreation, Cultural, and Facility Services

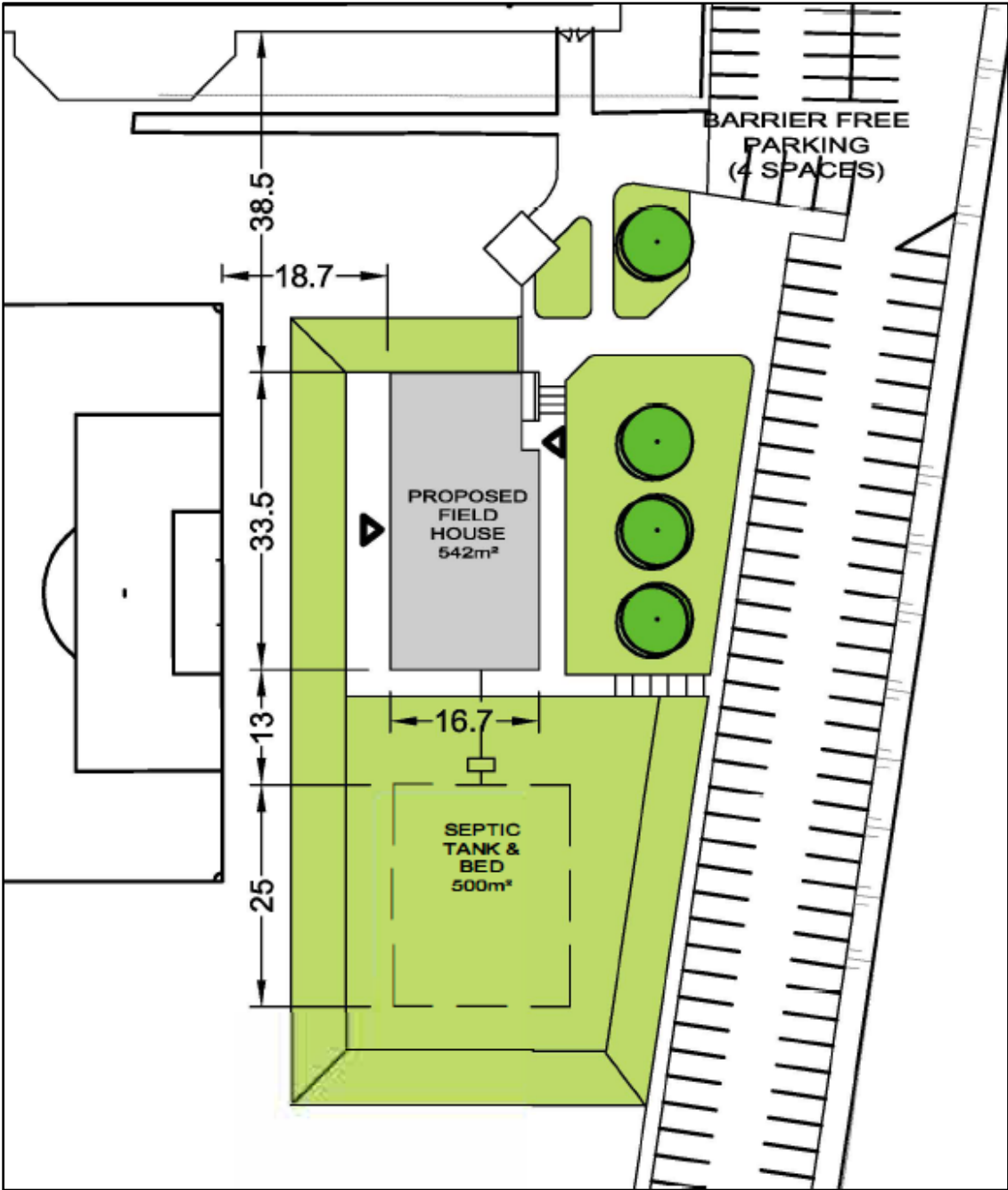
*I have full authority to bind the Corporation*

**SCHEDULE "A"**

OSGOODE CON 1 N PT LOT 1 RP;4R20514 PARTS 1 TO 3; PIN 043170643



**SCHEDULE 'B2'**



*Shaded Areas = Approximately 3,700 square meters*