

## **FIELDS AGREEMENT**

THIS AGREEMENT made as of the      day of March, 2014

B E T W E E N:

### **THE CORPORATION OF THE CITY OF MARKHAM**

Hereinafter called the "**City**"

OF THE FIRST PART

- and -

### **THE YORK REGION DISTRICT SCHOOL BOARD**

Hereinafter called the "**Board**"

OF THE SECOND PART

**WHEREAS** the Board is the owner of various schools and their associated athletic fields;

**AND WHEREAS** the City and the Board (hereinafter each a "**Party**" and collectively the "**Parties**") wish to enter into an agreement regarding the use of the athletic fields by the City for the purpose of issuing permits to the public for the use of the athletic fields and the maintenance of these athletic fields by the Parties;

**NOW THEREFORE** in consideration of the mutual agreements set forth herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **1. DEFINITIONS**

In this Agreement, the following terms shall have the following meanings:

- (a) "**Board Maintenance Standards**" means those maintenance standards set out in Schedule "A" to this Agreement;
- (b) "**Improvement**" means any service, structure, equipment or facility;
- (c) "**Manager of Facility Services**" means the person from time to time occupying the office of Manager of Facility Services for the Board or such successor office as the case may be;
- (d) "**Non-School Days**" means those days in the months of September to June which are weekends or holidays and all days in July and August on which the schools owned by the Board with which the Permitted Fields are associated are closed for school purposes;
- (e) "**Preventive Maintenance**" means the routine grass-cutting, fertilizing, aeration, overseeding and topdressing required to keep a grass field vigorously growing;
- (f) "**Permitted Field(s)**" means those athletic fields owned by the Board and listed in Schedule "B" to this Agreement;
- (g) "**School Days**" means those days in the months of September to June which are not weekends or holidays on which the schools owned by the Board with which the Permitted Fields are associated are open for use for school purposes;
- (h) "**Term**" means the period commencing May 1<sup>st</sup>, 2014 and expiring November 30<sup>th</sup>, 2014, inclusive.

- (i) May 10<sup>th</sup>, 2014 to June 30<sup>th</sup>, 2014 between 6:00 p.m. and 9:00 p.m. on School Days and between 8:00 a.m. and 9:00 p.m. on Non-School Days;
  - (ii) July 1<sup>st</sup>, 2014 to August 31<sup>st</sup> 2014 between 8:00 a.m. and 9:00 p.m.;
  - (iii) September 1<sup>st</sup>, 2014 to October 3<sup>rd</sup>, 2014 between 6:00 p.m. and 9:00 p.m. on School Days and between 8:00 a.m. and 9:00 p.m. on Non-School Days.
- (b) The City shall ensure each field is rested for two days per week which are not required to be consecutive days.
  - (c) Prior to commencing to use any Permitted Field, the City shall provide the Board with copies of all use permits issued by the City in order to provide the Board with the opportunity to monitor the load on the Permitted Field.
  - (c) The Board reserves the right to require the City to cancel any permit issued for any Permitted Field due to adverse weather conditions. If the City fails to cancel the permit pursuant to the Board's direction, the City shall be responsible for the cost of repairing any resulting damage to the Permitted Field.
  - (d) The Board maintains its unrestricted right to use the Permitted Fields on School Days between the hours of 6:00 a.m. and 6:00 p.m.
  - (e) The City shall not install any Improvement upon any Permitted Fields (or other lands and premises owned by the Board) without the express written permission of the Board. The City acknowledges and agrees that in the event that the Board shall permit the installation of any Improvement the City shall be solely responsible for all costs thereof, including, but not limited to, costs associated with the installation and removal of the Improvement.

### **3. PREVENTATIVE MAINTENANCE OF THE PERMITTED FIELDS**

- (a) During the Term, the City shall conduct Preventative Maintenance on each Permitted Field in accordance with the Board's Maintenance Standards.
- (b) The City and Board will inspect the Permitted Fields during the Term:
  - (i) prior to the commencement of the use of the Permitted Fields by the City pursuant to Section 2(a) of this Agreement; and
  - (ii) subsequent to the completion of the use of the Permitted Fields by the City pursuant to Section 2(a) of this Agreement;
 to determine the Preventative Maintenance required to be performed.
- (c) When undertaking fertilizing by application of chemical and/or organic substances, the City shall provide two (2) business days prior written notice to the respective school(s).
- (d) Notwithstanding anything herein to the contrary, the City acknowledges and agrees that if the Board, in its sole discretion but acting reasonably, determines that the use of any Permitted Field by the City has resulted in a higher level of wear and tear than that which is reasonably expected when compared to similar facilities owned by the Board, and concludes that any Permitted Field requires Preventative Maintenance earlier than is specified in Schedule "A", then following reasonable written notice to the City, the Permitted Field shall be removed from Schedule "B", repaired and rested. Notwithstanding the foregoing, the City shall have the option to remediate the Permitted Field at the City's expense and thereby preserve its privilege to continue use of the Permitted Field without interruption.

#### 4. TERMINATION

The City shall have the right to terminate this Agreement in respect of any or all Permitted Fields at any time upon thirty (30) days written notice to the Board and either Schedule "B" shall be deemed to be amended accordingly or this Agreement shall be at an end as the case may be. In the event of such termination, the City shall turn the Permitted Field back to the Board in the same condition as the Permitted Field was in immediately prior to May 10, 2014.

#### 5. OBLIGATIONS TO INDEMNIFY AND INSURE

- (a) The City shall indemnify and hold harmless the Board and its employees, representatives and agents from and against any and all liability, loss, harm, claims demands, actions or suits whatsoever made against the Board arising out of or connected with the City's use, or the issue of permits by the City for the use, of any Permitted Field, save and except to the extent that any such liability, loss, harm, claims, demands, actions or suits occur as a result of the negligence or willful misconduct of the Board or its employees, agents, subcontractors and licensees.
- (b) The Board shall indemnify and hold harmless the City and its employees, representatives and agents from and against any and all liability, loss, harm, claims demands, actions or suits whatsoever made against the City arising out of or connected with the Board's ownership and/or use of any Permitted Field, save and except to the extent that any such liability, loss, harm, claims, demands, actions or suits occur as a result of the negligence or willful misconduct of the City or its employees, agents, subcontractors and licensees.
- (c) The City shall throughout the Term, at its sole cost and expense, take out and keep in full force and effect commercial general liability insurance with limits of not less than five million dollars (\$5,000,000) per occurrence that protects the City, from all claims, demands, actions, suits or causes of action of any kind that may be taken or made against the City, its employees, representatives and/or agents, for any loss of or damage to property, and personal injury, including bodily injury or death, that may arise with respect to the City's use, or the issue of permits by the City for the use, of any Permitted Field as set out in this Agreement. The policy shall name the Board as an additional insured and include contractual liability, non-owned automobile liability, products and completed operations coverage, employees as additional insured's, as well as a cross-liability and severability of interests clause, and shall be endorsed to provide the Board with not less than thirty (30) days notice in writing in advance of any cancellation. Upon execution of this Agreement, the City shall provide the Board with a certificate of insurance evidencing the required coverage.
- (d) The Board shall throughout the Term, at its sole cost and expense, take out and keep in full force and effect commercial general liability insurance with limits of not less than five million dollars (\$5,000,000) per occurrence that protects the Board, from all claims, demands actions, suits or causes of action of any kind that may be taken or made against the Board, its employees, representatives and/or agents, for any loss of or damage to property, and personal injury, including bodily injury or death, that may arise with respect to the Board's ownership and/or use of the Permitted Fields. The policy shall name the City as an additional insured and include contractual liability, non-owned automobile liability, products and completed operations coverage, employees as additional insured's, as well as a cross-liability and severability of interests clause, and shall be endorsed to provide the City with not less than thirty (30) days notice in writing in advance of any cancellation. Upon execution of this Agreement, the Board shall provide the City with a certificate of insurance evidencing the required coverage in the form described in Schedule "C".

#### 6. GENERAL

- (c) The City and the Board confirm that the terms and provisions of this Agreement are intended to apply to the Permitted Fields only, and shall not be construed so as to create, either expressly or by implication, any agreement governing the use of any other fields or lands in which either the Board or the City may have an interest.
- (d) All of the provisions of this Agreement are to be construed as covenants and agreements as though the words importing the covenants and agreements were used in each separate paragraph hereof. Should any provision of this Agreement be illegal or not enforceable, it shall be considered separate and severable from the Agreement and the remaining provisions of the Agreement shall remain in force and be binding upon the Parties hereto as though the provisions had never been included.
- (e) Neither Party hereto shall assign any of its rights hereunder without the prior written permission of the other Party hereto and such permission may be unreasonably withheld.
- (f) This Agreement and the recitals to it constitute the complete and exclusive statement of the Agreement between the Parties, which supersedes all proposals, oral or written, and all other communications or representations between the Parties, relating to the subject matter of this Agreement.
- (g) This Agreement may be changed only by a written amendment signed and sealed by authorized representatives of the Parties.
- (h) Words importing the masculine gender shall include the feminine and neuter, and words importing the feminine gender shall include the masculine and neuter, as the case may be, and the singular shall include the plural where the meaning or context so requires.
- (i) This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.
- (j) This Agreement may be executed by facsimile, and in any number of counterparts, and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- (k) The schedules of this Agreement are part of it and consist of:
  - Schedule "A" – Board Maintenance Standards
  - Schedule "B" – Permitted Fields
  - Schedule "C" – Certificate of Insurance

**7. NOTICE:**

Any notice to be given pursuant to this Agreement shall, unless otherwise specified in the Agreement, be delivered or sent by registered letter or facsimile transmission to the Board and City as follows:

**Board:**

York Region District School Board  
 60 Wellington St West  
 Box 40  
 Aurora, Ontario  
 L4G 3H2  
 Telephone: (905) 727-0022 ex. 2025  
 Facsimile: (905) 727-1931  
 Attention: Norma Hick, Assistant Manager, Administrative Services

**City:**

or to such other address as the Parties may respectively from time to time advise in writing, and any such notice, if mailed, shall be conclusively deemed to be received by the other Party five (5) business days after the date of mailing thereof, or upon receipt of transmission of a facsimile, unless such facsimile is transmitted after 4:30 p.m., in which case, it shall be deemed to have been received on the next business day.

#### 8. DISPUTE RESOLUTION

- (a) The Parties agree that, during the performance of their respective obligations under the agreement herein, each of them will make good faith efforts to resolve disputes by negotiation. If the dispute has not been resolved within sixty (60) days of a Party's written request for negotiation, either Party may initiate mediation as provided for hereafter.
- (b) Any dispute may be referred by any Party to structured mediation, provided the other Party consents, with the assistance of a mediator who will be chosen by mutual agreement of the Parties.
- (c) Failing settlement of such dispute by mediation within thirty (30) days after the mediator has been appointed or the refusal of any or all of the Parties to consent to the structured mediation in 8(b) above, the dispute may be referred to and finally resolved by the Courts.

**IN WITNESS WHEREOF** the Parties have hereunto affixed their corporate seals, duly attested by the hands of their proper signing officers in that behalf.

**SIGNED, SEALED AND DELIVERED**  
in the presence of

)  
) **THE CORPORATION OF THE**  
) **CITY OF MARKHAM**  
)  
)  
)  
) \_\_\_\_\_  
) Mayor  
)  
) \_\_\_\_\_  
)  
) Clerk  
) We have authority to bind the corporation.  
)  
)  
)  
) **THE YORK REGION DISTRICT**  
) **SCHOOL BOARD**  
)  
)  
)  
)  
) \_\_\_\_\_  
) Name: Jeff Fair  
) Title: Manager of Administrative Services

## SCHEDULE "A"

## BOARD MAINTENANCE STANDARDS

Description	Comments	Month					
		May	Jun	Jul	Aug	Sep	Oct
Grass Cutting	Grass may not be cut less than 1 inch cut on average.	*	*	*	*	*	*
Aerating	Use of core type aerator, break up and redistribute cores (two directions)	*				*	
Fertilizing	Apply 4:2:2 or 5:1:2 @ 12 kg N/ha (0.25 lbs/1000 sq ft) in each direction. At least ½ the nitrogen should be in slow release.	*					*
Overseeding	Use premium sports turf mixture	*					*
Topdressing	Drag mat in two directions. Seed mixture depends on existing soil, drainage, and use.	*					*
Field Lining	Done in spring and maintained throughout season	*	*	*	*	*	*

Grass Cutting:

To be cut on a two week schedule as a minimum.

Aerating:

The field is to be aerated once in May and once in September.

Fertilizing:

Apply the fertilizer in accordance with the above recommendations once in May and October.

Over seeding:

The field will be seeded once in May and again in October

Top Dressing:

The field will be top dressed once in May and again in October, as required in high traffic areas, typically goal mouths and center field.

Field Lining:

The field lining will be maintained throughout the season.

~~2013~~ <sup>2014</sup> SCHEDULE "B"  
2013 PERMITTED FIELDS

School	Day of Week	Hours of Use	Two Rest Days	Primary User Group
✓ Thornhill S.S. Soccer A	Monday - Thursday Sunday	6:30 - 8:30pm 8:00am - 8:30pm	Friday/Saturday	Thornhill Soccer Club
✓ Thornhill S.S. Soccer B	Monday - Thursday Sunday	6:30 - 8:30pm 8:00am - 8:30pm	Friday/Saturday	Thornhill Soccer Club
✓ Bur Oak S.S.	Monday - Friday	6:30 - 8:30pm	Saturday/Sunday	Markham Soccer Club
✓ Markville S.S.	Monday - Thursday Sunday	6:30 - 8:30pm 8:00am - 8:30pm	Friday/Saturday	Markham Soccer Club
✓ Middlefield C.I.	Monday - Thursday Sunday	6:30 - 8:30pm 8:00am - 8:30pm	Friday/Saturday	Markham Soccer Club
✓ Unionville H.S. Soccer East	Monday - Friday	6:30 - 8:30pm	Saturday/Sunday	Unionville Milliken Soccer Club
✓ Unionville H.S. Soccer West	Monday - Thursday Sunday	6:30 - 8:30pm 8:00am - 8:30pm	Friday/Saturday	Unionville Milliken Soccer Club
✓ Thornlea S.S.	Monday - Thursday Saturday	6:30 - 8:30pm 8:00am - 8:30pm	Friday/Sunday	Thornhill Soccer Club
✓ Thornlea S.S. Mini Soccer	Monday - Thursday Saturday	6:30 - 8:30pm 8:00am - 8:30pm	Friday/Sunday	Thornhill Soccer Club
✓ Baythorn P.S. Ball Diamond	Monday - Thursday Sunday	6:30 - 8:30pm 8:00am - 8:30pm	Friday/Saturday	Thornhill Baseball Club
✓ Wilcay P.S.	Monday - Thursday Sunday	6:30 - 8:30pm 8:00am - 8:30pm	Friday/Saturday	BMW/IBM Commerce Valley Softball
✓ Unionville P.S.	Monday - Friday	6:30 - 8:30pm	Saturday/Sunday	Unionville Minor Softball
✓ William Berczy P.S.	Monday - Friday	6:30 - 8:30pm	Saturday/Sunday	Unionville Minor Softball
✓ Parkview P.S.	Monday - Friday	6:30 - 8:30pm	Saturday/Sunday	Unionville Minor Softball
✓ Pierre Elliot Trudeau Soccer	Monday - Friday	6:30 - 8:30pm	Saturday/Sunday	Unionville Milliken Soccer Club
✓ Bill Crothers Natural soccer	Monday - Friday	6:30 - 8:30pm	Saturday/Sunday	Unionville Milliken Soccer Club
✓ Milliken Mills H.S.	Mon/Tues/Thur/Fri Saturday/Sunday	6:30 - 11:00pm 8:00am - 11:00am	Wednesday/Friday	Unionville Milliken Soccer Club
✓ Markham District	Mon - Fri Sat / Sun.	6:30 - 8:30am 8pm - 8:30pm	Sat / Sun.	Mkham Soccer Club.