THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 12-158

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT WITH THE KINSMEN MINOR FOOTBALL LEAGUE INC. AND THE PETERBOROUGH WOLVERINES FOOTBALL CLUB FOR A FINANCIAL CONTRIBUTION TO THE THOMAS A. STEWART SECONDARY SCHOOL FIELD DEVELOPMENT PROJECT

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and the Kinsmen Minor Football League Inc. and the Peterborough Wolverines Football Club for a financial contribution to the Thomas A. Stewart Secondary School Field Development Project, in the form attached hereby as Schedule “A”, and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 13th day of November, 2012.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) John Kennedy, City Clerk
COST SHARING AGREEMENT made in quadruplicate this ____ day of ________ 2012.

B E T W E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH
(the “City”)

and

THE KINSMEN MINOR FOOTBALL LEAGUE INC.
(“KMFL”)

and

THE PETERBOROUGH WOLVERINES FOOTBALL CLUB
(“PWFC”)
(collectively, KMFL and PWFC shall be referred to as the “Clubs”)

WHEREAS the City and the Clubs have agreed to undertake mutually beneficial cost-sharing and facility-sharing arrangements related to the development an artificial sport field suitable for use as a football field on lands owned by the Kawartha Pine Ridge District School Board (hereinafter referred to as “the Board”) in the City of Peterborough;

AND WHEREAS the City has executed a long-term agreement the Board concerning a field rehabilitation project at Thomas A. Stewart Secondary School (the Field Rehabilitation Project”);

AND WHEREAS provided the parties hereto fulfill their obligations as contained herein and the Clubs obtain funding from the Ontario Trillium Foundation, then the Field Rehabilitation Project shall be developed with night-time sport field lighting;

AND WHEREAS the KMFL has represented and warranted to the City that the Kinsmen Minor Football League Inc. is duly incorporated under the laws of the Province of Ontario;

AND WHEREAS the PWFC has represented and warranted to the City that the Peterborough Wolverines Football Club is diligently pursuing incorporation under the laws of the Province of Ontario;

AND WHEREAS as a condition of using the Facility (as defined herein) the Clubs shall, commencing in the fall of 2013, pay to the City the sums contained in Article 4, on or before the dates contained therein;

NOW THE PARTIES AGREE AS FOLLOWS:

1. The City shall perform, or cause to be performed, such work as is necessary to:
   a. Replace the Board’s existing natural turf field and construct a new artificial turf sport field suitable for use as a football field at Thomas A. Stewart Secondary School;
b. Install lighting for the artificial turf sport field; and

c. Complete the Facility on or before 30 November 2013.

2. The parties hereto acknowledge and agree that the facilities and amenities described in sub-article 1(a) and 1(b) above shall hereinafter be referred to as “the Facility”.

3. Clubs acknowledge and agree that they are jointly and severally liable for each other’s obligations as set out herein.

4. As a condition of the Clubs’ use of the Facility for a ten (10) year period, the Clubs shall:

   a. On or before 1 October 2013 pay to the City the sum of TWENTY FIVE THOUSAND DOLLARS ($25,000.00) (the “Initial Contribution”) as a contribution toward the City completing the work set out in sub-article 1(b) above; and

   b. Thereafter, on or before 1 November in each of the nine years of 2014 to 2022, inclusive, pay to the City the annual sum of FIVE THOUSAND DOLLARS ($5,000.00) (the “Annual Contribution”)

   as a contribution to the Facility. The total sum owing to the City from the Clubs by 1 November 2023 is SEVENTY THOUSAND DOLLARS ($70,000.00).

5. The City recognizes the Club’s intent to make application to the Ontario Trillium Foundation (“Trillium”) for funding for the installation of night-time lighting for the sport field. In the event the Clubs’ Trillium application is successful, then the Field Rehabilitation Project shall include night-time sport field lighting, and the Clubs will forthwith transfer to the City, within SIXTY (60) DAYS, the full value of the Grant from Trillium on or before January 1, 2014, in consideration of the estimated $217,800 cost of the field lights.

6. The Clubs covenant and warrant that they shall, over the term of this agreement, use their best efforts to seek sponsorship for other project elements. In the event the Clubs obtain funding or sponsorship income from any source, other than Trillium, for the purpose of funding any aspect of the Field Rehabilitation Project, then the Clubs agree to forthwith transfer the full value of that funding or sponsorship income to the City. In no event shall such transfer take longer than SIXTY (60) DAYS to complete.
7. The rights conferred under this agreement to the Clubs do not confer any rights of ownership over the Facility, the lands upon which the Facility is located or any lands appurtenant thereto to the Club or to the night-time lighting. Furthermore, the right of quiet possession as set out herein is dependent upon the City’s receipt of the Initial Contribution and, thereafter commencing in 2014, the Annual Contribution in accordance with Article 4. It is expressly agreed that payment of each Annual Contribution only provides the Clubs with the quiet possession of the Facility, subject to terms and conditions of this agreement, for the duration of each football season immediately following the City’s receipt of the Initial Contribution or the Annual Contribution, as the case may be.

8. The Clubs shall, as between themselves, determine which party is paying what portion of the Initial Contribution and of each Annual Contribution. While the City may offer its services to facilitate agreement between the Clubs and other football associations regarding payment, the Clubs agree that no dispute between them shall delay or reduce the City’s receipt of any payment required by Article 4.

9. During the term of this agreement, and subject to the terms contained herein, the Clubs shall enjoy the quiet possession of the Facility during the periods of time the Facility has been booked by either of the Clubs in accordance with the City’s booking practices. During each such period of quiet possession, the Clubs, as the case may be, shall have the full and exclusive use of the Facility for the purpose of football, including regular play, practice and special football events. The Clubs further agree to:
   
a. Abide by specific City and Board policies, as amended from time-to-time, concerning the use of the Facility and general City policies concerning the use of its recreational properties; and

b. Subject to the Clubs’ use, and the aforementioned City policies, reasonably permit the use of the Facility, by other recreational users, as scheduled by the City.

10. This agreement shall commence on the date it is executed by the City, and shall continue in full force and effect until 30 November 2022, provided that:

a. The Clubs may, provided they have fulfilled their obligation to pay to the City $70,000.00 and have fulfilled all of their obligations as contained herein, terminate this agreement by giving THRTY (30) DAYS written notice to the City Clerk; or
b. The City may, provided one of KMFC or PWFC is in default of its obligations as contained herein, and further provided that such default has not been rectified to the satisfaction of the City by either KMFC or PWFC, within a period of THIRTY (30) DAYS after the City has provided written notice to the defaulting party, terminate this agreement forthwith upon providing written notice of the termination.

11. Each Club shall obtain and maintain general liability insurance in the amount of FIVE MILLION DOLLARS per occurrence. Such insurance policy shall name “The Corporation of the City of Peterborough” and “The Kawartha Pine Ridge District School Board” as additional insureds. Such insurance policy shall be excess and primary to any insurance policy carried by the City or by the Board. Each of the Clubs shall provide proof of such insurance to the City no later than 30 March in each year. Failure to provide proof of insurance, acceptable to the Director of Community Services, acting reasonably, shall be treated as a fundamental breach of this agreement and, notwithstanding Article 8, entitle the City to terminate the agreement with the defaulting party on ten business day’s notice.

12. In the event the one or both of the Clubs terminate this agreement, the City may enter into a new agreement with the remaining Club or with any other party. The City shall not unreasonably withhold, delay or condition the Clubs from assigning its interest in this agreement to the other Club. Notwithstanding the foregoing, the City retains the right to reasonably condition and/or delay its approval to such assignment and such assignment shall not become effective until the City’s approval has been obtained.

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

14. Neither Club shall transfer or assign any of its rights or obligations under this agreement to any third party without the prior written consent of the City, which may be reasonably conditioned, withheld, delayed or denied.

15. This Agreement constitutes the entire agreement concerning the matters expressed herein between the City and the Club, 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.

16. Each of the Clubs is hereby deemed to be an “occupier” of the Facility for the purposes of the Occupiers Liability Act during its period of occupancy of the Facility as permitted by the City.
17. The word “Clubs” or “Club” shall, as the context requires, refer to both or just one of KMFC or PWFC.

18. This agreement shall enure to the benefit of Clubs and to their respective successors, assigns, officers and directors.

IN WITNESS WHEREOF the City and the Clubs have set their respective hands.

SIGNED, SEALED AND DELIVERED  

THE CORPORATION OF THE CITY OF PETERBOROUGH

Brian Horton, CAO

John Kennedy, City Clerk

KINSMEN MINOR FOOTBALL CLUB

Name:  
Office:  
I/We have authority to bind the Football Club

Name:  
Office:  
I/We have authority to bind the Football Club

PETERBOROUGH WOLVERINES FOOTBALL CLUB

Name:  
Office:  
I/We have authority to bind the Football Club

Name:  
Office:  
I/We have authority to bind the Football Club