THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 13-105

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND THE PETERBOROUGH YOUTH SOCCER CLUB WITH RESPECT TO A FINANCIAL COMMITMENT OF $500,000 TOWARDS THE CONSTRUCTION OF A NEW ARTIFICIAL SPORTS FIELD COMPLEX AT THE FLEMING COLLEGE BREALEY DRIVE CAMPUS

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 Peterborough Youth Soccer Club with respect to a financial commitment of $500,000 towards the construction of a new artificial sports field complex at the Fleming College Brealey Drive Campus 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 6th day of August, 2013.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) Natalie Garnett, Deputy Clerk
COST SHARING AGREEMENT made in quadruplicate this ___ day of_________ 2013.

B E T W E E N:

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

and

PETERBOROUGH YOUTH SOCCER CLUB
(the “Club”)

WHEREAS the City and the Club have agreed to undertake mutually beneficial cost-sharing and facility-sharing arrangements related to the development of certain soccer pitches in the City of Peterborough;

AND WHEREAS the City has executed a long-term agreement with Sir Sandford Fleming College (“the College”) concerning the development of two artificial turf sport fields with sport field lighting and a fieldhouse;

AND WHEREAS the Club has represented and warranted to the City that it is duly incorporated under the laws of the Province of Ontario;

AND WHEREAS the Club shall, over an eleven year period, pay to the City the sums contained in Article 3 as a condition to being able to use the Facility (as defined herein) in each year of the Term commencing in the Fall of 2013;

AND WHEREAS the City, upon the execution of this agreement shall provide $300,000 (the “Interest Free Loan”) of the $500,000 that the Club has warranted that it shall provide toward the construction of the Facility;

AND WHEREAS the Club has warranted that it shall repay the Interest Free Loan by paying 10 consecutive Annual Contributions as required by Article 3(b);

NOW THE PARTIES AGREE AS FOLLOWS:

1. The City shall perform, or cause to be performed, such work as is necessary to:
   a. Construct two artificial turf sport fields suitable for soccer;
   b. Install adequate lighting;
   c. Construct a building containing washrooms and change rooms;
   d. Construct a storage facility, containing one bunker for use by the Club;
   e. Determine on site, at 90% completion of the Facility, after consulting with the College and the Club, a mutually agreeable way to recognize the Club’s contribution. Without limiting the potential manner in which such a contribution
may be recognized, the parties agree that an example of the manner in which the Club’s contribution would be recognized would be a recognition display case dedicated to the history and accomplishments of the Club; and

f. Establish, display and maintain on the centre circle of one of the two fields in the Facility the logo of the Club.

2. The parties hereto acknowledge and agree that the facilities and amenities described in Article 1 above shall hereinafter be referred to as “the Facility”.

3. As a condition of the Club’s use of the Facility, during an initial eleven year period the Club shall:

a. On or before 1 October 2013 pay to the City the sum of TWO HUNDRED THOUSAND DOLLARS ($200,000.00) (the “Initial Contribution”);

b. Thereafter, on or before 1 November in each of the ten years from 2014 to 2023, inclusive, repay to the City the annual sum of THIRTY THOUSAND, DOLLARS ($30,000.00) (the “Annual Contribution”) which represents payment of the interest free loan, subject to the terms of Article 9; and

c. Pay the applicable user fee for field use. A user fee table representing 2013 and 2014 rates is included as Appendix A of this document. Notwithstanding anything to the contrary contained herein, the City, in conjunction with the College, agrees that any increases to such user fees shall be consistent with any increases to user fees for similar artificial turf fields owned or operated by the City.

The total sum to be repaid to the City by 1 November 2023 is FIVE HUNDRED THOUSAND DOLLARS ($500,000.00).

4. The rights conferred under this agreement to the Club 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. 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 3 and Article 9. It is expressly agreed that payment of the Initial Contribution or the Annual Contribution, as the case may be, only provides the Club with the quiet possession of the Facility, subject to terms and conditions of this agreement, for the soccer season immediately following the City’s receipt of the Initial Contribution or the Annual Contribution, as the case may be.
5. The Facility includes two artificial sport fields with lighting and a fieldhouse. During the term of this agreement, the Club may rent the whole Facility or one field in accordance with their needs, and subject to the rights of the College and the terms contained herein.

6. The Club shall book the Facility or one field, as the case may be, in accordance with the City's booking practices and timelines. Notwithstanding anything to the contrary contained herein, the parties agree that the Club shall have (i) the first right of community access to the Facility from Monday to Thursday between May 1st. and August 31st in each calendar year and (ii) the first right to access to one field at the Facility for the weekend following Labour Day in each calendar year. During each such period of use, the Club shall have the full and exclusive use of the Facility or one field, as the case may be, for the purpose of soccer, including regular play, practice and special soccer events.

7. The City agrees that it shall provide the Club with the same user fee for such September usage as it provides the Club for its May to August usage.

8. The Club agrees to:

   a. Abide by specific and reasonable City policies, as amended from time-to-time, concerning the use of the Facility and general City policies concerning the use of its recreational properties;

   b. Pay such user fees as may be established by the City from time-to-time;

   c. Subject to the Club's use, and the aforementioned City policies, reasonably permit the use of the Facility, by other recreational users, as scheduled by the City.

9. The parties hereto agree that the City shall charge and administer user fees to all users of the fields, including the Club, with the exception of Sir Sandford Fleming College when the College uses its own field (the “Excluded User”). The purpose of the user fee is to collect revenues from all users, except the Excluded User on its own field, to help pay for the operating costs of the Facility. However, between the years 2014 until 2023, 25% of all user fees for the fields will be set aside to pay all or part of the Club’s Annual Contribution. In each year of the term, the City will reconcile the user fees on or before October 30 and provide a statement to the Club on the value of the user fees collected during the playing season. A total of 25% of the revenues derived will be used to pay all or part of the annual requirements of the Interest Free Loan until 2023. In 2024, or at such earlier time as the Club has repaid the Interest Free Loan, 25% of the user fees will no longer be applied by the City to the retirement of the said loan.
10. Notwithstanding anything to the contrary, in the event the Club is financially incapable of making its Annual Contribution payment in any particular year, the Club and the City agree to meet forthwith and enter into good faith negotiations to agree to different payment terms to repay the Interest Free Loan. The Club agrees that as part of such negotiations, it shall provide the City with access to its financial statements and records, for such period of time as the City may reasonably request, to verify the Club’s financial status and its payment limitations.

11. This agreement shall commence on the date it is executed by the City, and shall continue in full force and effect until 1 November 2023, provided that:

   a. The Club may, provided it has fulfilled its obligation to pay to the City $500,000 and its other obligations as contained herein, terminate this agreement by giving written notice to the City Clerk THIRTY (30) DAYS prior to 1 December. If the Club provides such notice, the termination shall be effective as of 1 December in that year; or

   b. The City may, provided the Club is in default of its obligations as contained herein, and further provided that such default has not been rectified by the Club within a period of NINETY (90) DAYS after the City has provided written notice of such default, and further provided that in the event such default relates to a failure of the Club to pay its Annual Contribution, the City has complied with its obligations under Section 10 hereof, terminate this agreement forthwith upon providing ten days' written notice of the termination.

12. The Club shall obtain and maintain general liability insurance in an amount not less than two Million Dollars per occurrence, or other such sum which is reasonably determined between the parties. Such insurance policy shall name “The Corporation of the City of Peterborough” and “The Sir Sandford Fleming College of Applied Arts And Technology” as additional insured’s. Such insurance policy shall be excess and primary to any insurance policy carried by the City or by Fleming College. The Club shall provide proof of such insurance to the City and no later than 30 March in each year. Failure to provide proof of insurance within 10 business days of the City’s written request, acceptable to the City Solicitor, acting reasonably, shall be treated as a fundamental breach of this agreement and entitle the City to terminate the agreement with the defaulting party on an additional ten business days’ notice.

13. Following the conclusion of the term of the agreement and upon the Club repaying the Interest Free Loan in full, it rights as set out in Articles 6, 7, and 8 shall remain in effect upon payment of the applicable user fee(s).
14. Prior to the conclusion of the term of the agreement, the City agrees to meet with the Club to discuss which of the Club's rights, in addition to Articles 6, 7, and 8, may survive the termination of this agreement.

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

16. The Club shall not transfer or assign any of their 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.

17. 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.

18. The Club is hereby deemed to be an “occupier” of the Facility for the purposes of the Occupiers Liability Act.

-THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK-
19. This agreement shall enure to the benefit of Club and to their respective successors, assigns, officers and directors.

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

SIGNED, SEALED AND DELIVERED

THE CORPORATION
OF THE CITY OF
PETERBOROUGH

Daryl Bennett, Mayor

John Kennedy, City Clerk

PETERBOROUGH YOUTH
SOCCER CLUB

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

Name: ________________________
Office: ________________________
I/We have authority to bind the Soccer Club
# Appendix A: 2013-2014 User Fee Charges

## Fleming College Sport Facility

### User Fee Information for 2013

<table>
<thead>
<tr>
<th>Department</th>
<th>Community Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division</td>
<td>Recreation</td>
</tr>
<tr>
<td>Activity</td>
<td>Outdoor Sport Field Permitting</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>User Fee Name and Description</th>
<th>Unit Basis (Time/ participant etc)</th>
<th>Current Rate Presently in Effect</th>
<th>HST Y or N</th>
<th>Date of Rate Change for 2013 (if applicable)</th>
<th>Proposed Rate as per 2013 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Artificial Sport Fields (1-9 Bookings) - April 1 - June 1</td>
<td>per hour per field</td>
<td>N/A</td>
<td>Y</td>
<td>1-Jan-13</td>
<td>$85.00</td>
</tr>
<tr>
<td>2 Artificial Sport Fields (10+ bookings) - April 1- June 1</td>
<td>per hour per field</td>
<td>N/A</td>
<td>Y</td>
<td>1-Jan-13</td>
<td>$60.00</td>
</tr>
<tr>
<td>3 Artificial Sport Fields (1-9 Bookings) - June 2 - Aug 31</td>
<td>per hour per field</td>
<td>N/A</td>
<td>Y</td>
<td>1-Jan-13</td>
<td>$65.00</td>
</tr>
<tr>
<td>4 Artificial Sport Fields (10-19 bookings) - June 2 - Aug 31</td>
<td>per hour per field</td>
<td>N/A</td>
<td>Y</td>
<td>1-Jan-13</td>
<td>$55.00</td>
</tr>
<tr>
<td>5 Artificial Sport Fields (20+ bookings) - June 2 - Aug 31</td>
<td>per hour per field</td>
<td>N/A</td>
<td>Y</td>
<td>1-Jan-13</td>
<td>$45.00</td>
</tr>
<tr>
<td>6 Artificial Sport Fields (1-9 Bookings) - Sept 1 - Mar 31</td>
<td>per hour per field</td>
<td>N/A</td>
<td>Y</td>
<td>1-Jan-13</td>
<td>$85.00</td>
</tr>
<tr>
<td>7 Artificial Sport Fields (10+ bookings) - Sept 1 - Mar 31</td>
<td>per hour per field</td>
<td>N/A</td>
<td>Y</td>
<td>1-Jan-13</td>
<td>$60.00</td>
</tr>
<tr>
<td>9 Artificial Sport Field Light Fees</td>
<td>per hr/field</td>
<td>N/A</td>
<td>Y</td>
<td>1-Jan-13</td>
<td>$20.00</td>
</tr>
</tbody>
</table>
# Fleming College Sport Facility
## User Fee Information for 2014

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<tr>
<th>Department</th>
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<td>Fleming College Sport Facility</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1  Artificial Sport Fields (under 10 Bookings in a Season)</td>
<td>per hour per field</td>
<td>N/A</td>
<td>Y</td>
<td>1-Jan-14</td>
<td>$80.00</td>
<td></td>
</tr>
<tr>
<td>2  Artificial Sport Fields (10+ bookings in a Season)</td>
<td>per hour per field</td>
<td>N/A</td>
<td>Y</td>
<td>1-Jan-14</td>
<td>$60.00</td>
<td></td>
</tr>
<tr>
<td>9  Artificial Sport Field Light Fees</td>
<td>per hr/field</td>
<td>N/A</td>
<td>Y</td>
<td>1-Jan-14</td>
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