The Corporation of the City of Peterborough

By-Law Number 15-090

Being a By-law to authorize the execution of a Contribution Agreement between The Corporation of the City of Peterborough, The Peterborough Baseball Association and The Peterborough Recreational Baseball Association for the Associations’ $150,000 commitment for the development of a new baseball field at Trent University

Now Therefore, The Corporation of the City of Peterborough by the Council thereof hereby enacts as follows:

That the Mayor and Clerk be authorized to execute a Contribution Agreement between The Corporation of the City of Peterborough, The Peterborough Baseball Association and The Peterborough Recreational Baseball Association for their $150,000 commitment for the Associations’ development of a new baseball field at Trent University, in the form attached hereto as Schedule “A”, and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 19th day of May, 2015.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) John Kennedy, City Clerk
Contribution agreement made in quadruplicate this 14 day of Oct, 2015.

Between:

The Corporation of the City of Peterborough
(the “City”)

and

The Peterborough Baseball Association
(“PBA”)

Recitals

A. The PBA has agreed to contribute financially to the cost of developing a baseball diamond on lands owned by Trent University (hereinafter referred to as “the University”) in the City of Peterborough;

B. The City has executed a long-term agreement with the University for the development, maintenance and operation of a sport field development project on the University’s East Bank located in the vicinity of Nassau Mills Road and Pioneer Road (“the Field Development Project”) that is composed of a rectangular sport field and a baseball diamond;

C. The PBA is duly incorporated under the laws of the Province of Ontario;

D. It is a condition of using the Facility (as defined herein) the PBA shall, commencing in the fall of 2015, pay to the City the sums contained in Article 3, 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. Construct a new baseball diamond suitable for use by the PBA at the University;
   b. Install lighting for the baseball diamond; and
   c. Complete the work contemplated by sub-article 1(a) and 1(b) on or before 30 May 2016.

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

3. As a condition of the PBA’ use of the Facility, the PBA shall:
a. On or before 1 September 2015 pay to the City the sum of Ten Thousand Dollars ($10,000.00) (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 fourteen years of 2016 to 2029, inclusive, pay to the City the annual sum of Ten Thousand Dollars ($10,000.00) (the "Annual Contribution") as a contribution to the Facility. The total sum owing to the City from the PBA by 1 November 2029 is One Hundred And Fifty Thousand Dollars ($150,000.00) (the "PBA's Contribution").

4. The City acknowledges that the contribution to be made by PBA is based on the current approved concept plan. The City agrees that the concept plan shall not be amended without the consent of the PBA, such consent to be not unreasonably withheld.

5. The City acknowledges the PBA applied to the Toronto Blue Jays' "Jays Care Foundation" (the "Foundation") under the "Field of Dreams" program for $100,000 funding for the installation of night-time lighting for the baseball diamond (the "Grant"). As of 29 June 2015, the PBA and the City understand that the PBA's application to the Foundation was conditionally successful. Provided that the PBA satisfies all the conditions of the Grant, it shall upon the receipt of the Grant forthwith transfer to the City, within Sixty (60) Days of receipt, the full value of the Grant from the Foundation. The Grant will be used by the City to off-set a portion of the $248,340 cost to purchase and install field lights for the baseball diamond.

6. The PBA covenants and warrants that it shall, over the term of this agreement, use their best efforts to seek funding and sponsorship for other project elements. Sponsorship and sponsor recognition will first be approved by the City and the University. In the event the PBA obtains funding or sponsorship income from any source, other than the Foundation, for the purpose of funding any aspect of the Field Development Project, then the PBA agrees 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. Any funding or sponsorship income from any source obtained for the Field Development Project shall firstly be put toward the PBA's Contribution and once the full amount of the PBA's Contribution has been received, thereafter any funding or sponsorship income from any source shall then be allocated by the City to developing other project elements.

7. The rights conferred under this agreement to the PBA 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 PBA 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 Grant, the Initial Contribution and, thereafter commencing in 2016, the Annual Contribution in accordance with sub-article 3(b). It is expressly agreed that payment of each Annual Contribution:

a. provides the PBA with the quiet possession of the Facility, subject to terms and conditions of this agreement, for the duration of each baseball season during those times during which the PBA has booked the baseball diamond in accordance with the City’s booking practices; and

b. in addition to 7(a), provides the PBA with quiet possession of the Facility, for the baseball season immediately following the City’s receipt of the Initial Contribution or the Annual Contribution, as the case may be.

8. Any failure to make to full and timely payment of the Initial Contribution or any Annual Contribution will permit the City to suspend, vary or terminate the PBA’s use of the baseball diamond in such manner as they City deems appropriate.

9. During each such period of quiet possession, the PBA shall have use of the Facility for the purpose of playing baseball, including regular play, practice, special training and tournament events. The PBA further agrees to:

a. Abide by specific City and University 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 PBA’s 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 2029, provided that:

a. The PBA has fulfilled its obligations to pay to the City $150,000.00 and has fulfilled all of its obligations as contained herein. Provided that the PBA is not in breach of its obligations as contained herein and has paid the Grant and $150,000.00 to the City as required by Article 3, the PBA may terminate this agreement by giving Thirty (30) Days written notice to the City Clerk; or

b. The City may, if the PBA is in default of its obligations as contained herein and such default has not been cured to the satisfaction of the City within a period of Thirty (30) Days after the City has provided written notice to the
PBA, terminate this agreement forthwith upon providing written notice of the termination but such termination does not release the PBA from its obligation to pay the full amount of money required by Article 3 to the City.

11. The PBA 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 "Trent University" as additional insureds. Such insurance policy shall be excess and primary to any insurance policy carried by the City or by the University. The PBA 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 entitle the City to terminate the agreement on ten business day's notice but such termination does not release the PBA from its obligation to pay the full amount of money required by Article 3 to the City.

12. If the PBA terminates this agreement, the City may enter into a new agreement with another baseball club or association or with any other party. The City shall not unreasonably withhold, delay or condition the PBA from assigning or transferring its interest in this agreement to another incorporated entity that promotes baseball in the City of Peterborough. 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. It is a fundamental term of this agreement that, absent a Special Occasion permit and obtaining the University's prior written consent, no alcohol shall be sold, consumed or made available within or upon the Facility or in the parking lot adjacent to the Facility. The PBA shall:

   a. strictly enforce this prohibition with its members;

   b. send annual reminders to its members about this prohibition; and

the PBA acknowledges that breaching this prohibition is just cause for the City to terminate this agreement forthwith but does not release the PBA from its obligation to pay the full amount of money required by Article 3 to the City.

14. It is a fundamental term of this agreement that no tobacco products, whether smoked, ignited, chewed, or vapourized, shall be consumed within or upon the Facility. The PBA shall:

   a. strictly enforce this prohibition with its members;
b. send annual reminders to its members about this prohibition; and

the PBA acknowledges that breaching this prohibition is just cause for the City to terminate this agreement forthwith but does not release the PBA from its obligation to pay the full amount of money required by Article 3 to the City.

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

16. This Agreement constitutes the entire agreement concerning the matters expressed herein between the City and the PBA, 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. During such times as the PBA is occupying the Facility, the PBA 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.

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

In witness whereof the City and the PBA have set their respective hands.

Signed, Sealed & Delivered

The Corporation of the City of Peterborough

Daryl Bennett, Mayor

John Kennedy, City Clerk

Peterborough Baseball Association

Name: 
Office: I have authority to bind the Baseball Club

Name: 
Office: I have authority to bind the Baseball Club