THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 12-040

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND JOHN GEORGE ASSOCIATES INC. FOR PRIME CONSULTANT SERVICES FOR A NEW ARTIFICIAL SPORT FIELD COMPLEX

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 John George Associates Inc. for Prime Consultant Services for a new artificial sport field complex, 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 12th day of March, 2012.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) John Kennedy, Deputy Clerk
SCHEDULE “A”

DRAFT AGREEMENT

THIS AGREEMENT made this 12th day of the March, 2012

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH
(referred to as the “City”)

- and –

JOHN GEORGE ASSOCIATES INC.
(referred to as the “Consultant”)

WHEREAS the City requested proposals from interested proponents for Prime Consulting services for a new artificial sport field complex, in the City of Peterborough, as set out in Request for Proposals P-03-11, which is attached as Appendix A, (referred to as the “Project”);

AND WHEREAS the Consultant submitted a proposal dated January 26, 2012, for Prime Consultant, which is attached as Appendix B, (referred to as the “Proposal”); and which the City wishes to accept;

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED AND THE PROVISION OF OTHER GOOD AND VALUABLE CONSIDERATION (THE RECEIPT AND ADEQUACY OF WHICH IS ACKNOWLEDGED), THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

1.00 DEFINITIONS

1.01 City – means the Corporation of the City of Peterborough;

1.02 College – means Sir Sandford Fleming College;

1.03 Contractor or General Contractor – is a person or entity entering into an agreement with the client to provide labour, materials and equipment for the execution of any part of the Work.

1.04 Construction Budget or Preliminary Construction Budget – means the client’s combined estimate of the construction cost, construction contingencies, and HST.

1.05 Construction Cost - means the contract price(s) of all project elements designed or specified by, or on behalf of, or as a result of, the coordination by the Consultant, including cash allowances, building permit fees, changes, construction management fees or other fees for the coordination and procurement of construction services, and all applicable taxes, including the full amount of value-added taxes, whether recoverable or not.

1.06 Disbursements -- are reimbursable expenses that include actual expenditures incurred by the Consultant and sub-consultants working on the Project and directly related to the project. Disbursements may include transportation, communication, mailing, reproduction, renderings, models, mock-ups, fees, permit fees, lodging and food. Disbursements do not include alcohol or entertainment expenses.

1.07 Sub-consultants – is a person or entity entering into an agreement with the Prime Consultant to provide design and review services for the execution of some part of the Work.
Prime Consultant – is a person or entity who assembles and coordinates a team of other sub-consultants who provide services that include, but are not limited to, architectural services, structural, mechanical, electrical and civil engineering services, and landscape design and other required services for the project, on behalf of the client. The City enters into a contract with Prime Consultant. For simplicity, the Prime Consultant will be referred to as the “Consultant” in this agreement.

“Work” or “Project” means the Artificial Sport Field Complex at Fleming College.

SCOPE OF CONSULTANT SERVICES TO BE PROVIDED

The Consultant agrees to perform the services with respect to the Project, in accordance with Request for Proposal Call P-03-11. In the event of a conflict or inconsistency between the provisions of the Consultant Proposal submission and Request for Proposals P-03-11, the provisions of the Request for Proposal Call P-03-11 shall prevail.

All Services performed by the Consultant shall be undertaken in accordance with recognized requirements and practice and with the degree of care, skill and diligence normally provided in the performance of services for similar projects to that contemplated by this Agreement.

Unless otherwise expressly specified in this Agreement, the Consultant agrees to supply, at its sole cost and expense, all staff, equipment, accommodations and technical assistance necessary to perform the services to be furnished under this Agreement and assume all overhead expenses in connection therewith, to the reasonable satisfaction of the City.

The consultants and sub-consultants forming part of the Consultant’s team, shall not be changed by the Consultant without the City’s prior written approval. The Consultant shall oversee and lead all sub-consultants and the City will not supervise any member of the Consultant’s team.

CONSULTANT RESPONSIBILITIES

The Consultant shall design the Project within the parameters of the City’s requirements and the construction budget.

The Consultant will prepare Site Plan Application and ensure the design meets the needs of the Site Plan Approval process. No additional fees will be paid for re-design due to recommendations from the Site Plan review process.

The Consultant shall prepare all plans and specifications and issue a tender in accordance with P-03-11.

All reproductions (i.e., plans, sketches, drawings, graphic representations, specifications and other documents, etc.) shall be included in the fee, including the printing of fifteen (15) sets of the tender documents.

The Consultant shall supply a set of reproducible “For Construction” drawings and specifications, which shall be reproduced by the General Contractor, as required.

Should the lowest bona fide tender bid exceed the construction budget, the City shall, at the City’s sole discretion, direct the Consultant in one of the following ways:

1. Give written approval of an increase in the construction budget
2. Authorize a new RFP or renegotiation of the Proposal
3. Cooperate with the Consultant in revising the Project Scope or quality as necessary to reduce the Construction Cost,
If the City chooses to proceed with 2.01.2, or 2.01.3, the Consultant, at no additional fee, shall modify the Construction Documents or provide other services necessary to reduce the construction Cost to within 0% of the latest approved Construction Budget.

3.07 Any expense, other than those identified above shall only be reimbursed if approved in advance by the City.

3.08 The Consultant commits to undertaking General Review of the Work which will mean visits by the Consultant and sub-consultants to the Work site at intervals appropriate to the stage of construction considered necessary to determine the progress and quality of the Work and to determine that the Work is in conformity with the construction contract documents, including review of any defects or deficiencies prior to the end of the period of one year following the date of substantial performance of the work, all in compliance with the requirements of the Ontario Building Code, as amended and its Regulations, and to report, in writing, to the client, contractor and chief building official.

3.09 The Consultant agrees to respond to enquiries for information from the City and the General Contractor within five (5) business days. This includes but is not limited to responses to contemplated change notices, change orders, invoices, requests for information, revision notices and response.

3.10 The Consultant agrees to secure and provide the City with two sets of as-built drawings and a complete set of electronic record drawings and specifications in a form and format acceptable to the City.

4.00 COMPENSATION AND FEES

4.01 The City shall pay to the Consultant compensation for services rendered and disbursements, up to a maximum of $350,000, exclusive of HST.

4.02 Payments shall be made to the Consultant by the City, to the limits established in Section 4.01 of this Agreement, in accordance with invoices from the Consultant (which invoices may be submitted at a frequency not greater than once every thirty (30) days) detailing work time and expenses incurred.

4.03 Disbursements will be reimbursed at cost plus an administrative charge of 10%. Disbursements will be reimbursed to an upset limit of $23,000 for the Work.

4.04 Contract administration fees will be reimbursed according to the monthly percentage of construction completion of the work.

4.05 Terms of payment of any such invoice that is approved by the City shall be net thirty (30) days from the date of approval.

4.06 Despite Section 4.01 above, the Parties may agree on the performance of extra work by the Consultant. Any such extras must be priced in advance and approved in writing by the City and, failing such approval, no payment shall be made in respect of same. Approved work shall be invoiced according to the Fixed Fee schedule contained in Appendix C of P-03-11.

4.07 Additional work required by the Consultant as a result of an error or omission on behalf of the Consultant or his team will be included within the contract price agreed to in section 4.01 and no additional fees will be paid by the City.

5.00 REMEDIES FOR NON-PERFORMANCE BY CONSULTANT

5.01 In the event that the Consultant fails to perform any obligations hereunder, the City shall be entitled to exercise any one or more of the following remedies:

(a) The City may withhold any payment due hereunder until the Consultant has remedied its failure;
(b) The City shall be entitled, in the event that the Consultant does not remedy its default within seven (7) consecutive days of a request that it do so from the City, be entitled to engage other contractors to compete the work of the Consultant and to deduct the cost of obtaining such other contractors from any amounts owing to the Consultant hereunder;

(c) The City may terminate this Agreement in the event that the Consultant does not remedy its default within seven (7) consecutive days of a request that it do so from the City in writing; and

(d) The City may exercise any other right available to it in law or equity.

Unless the City expressly agrees to the contrary, any failure of the City to exercise any of the foregoing remedies, or the granting of any extension or indulgence, shall not be prejudicial to the right of the City to subsequently obtain such remedies.

6.00 TERMINATION OF AGREEMENT BY CITY WITHOUT CAUSE

6.01 The City shall be entitled to terminate this Agreement at any time without cause, and in the event of such termination the remuneration payable to the Consultant shall be determined by calculating the proportion of services completed and applying that proportion to the fees payable hereunder for the services.

7.00 CO-OPERATION FROM CITY

7.01 The City will instruct the Consultant fully as to the City’s requirements and make available all relevant information the Consultant requires. The Consultant will be entitled to rely upon the accuracy and completeness of all such information furnished by the City.

7.02 The City shall give due consideration to all drawings, plans, reports, proposals and other information provided by the Consultant, and shall make decisions which the Consultant requires the City to make in connection with the Project, within a reasonable time.

7.03 The City shall designate Mary Gallop, the City’s Manager of Facilities and Special Projects, as the City’s representative to have authority to transmit instructions to, and receive information from, the Consultant and advise the Consultant in advance if the representation is to change.

7.04 The City will notify the Consultant immediately, whenever the City or the City’s representative becomes aware of a deficiency in the services provided.

8.00 CONFIDENTIAL INFORMATION

8.01 It is the responsibility of each Party to identify to the other Party all of the confidential information that is connected with the Project. Confidential information acquired in the course of the Project shall not be used or divulged by either Party, or their employees, consultants, sub consultants or agents, without the prior written approval of the other Party, or as may be required by law.

9.00 OWNERSHIP OF DOCUMENTS ARISING FROM SERVICES PROVIDED

9.01 The copyright in all plans, drawings, reports, specifications and other documents (hereinafter collectively referred to as “documents”) prepared, collected or provided by the Consultant pursuant to this Agreement shall be the property of the City.

9.02 The Consultant shall have a non-exclusive, royalty-free licence to use the documents for purposes of publication relating to the project and to promote the Consultant’s involvement in the Project upon the written request of the City’s designate identified in Section 7.03.
9.03 The Consultant shall deliver to the City all documents in hard copy and in an electronic format, suitable to the City, immediately upon completion or abandonment of the Project and/or upon the termination of this agreement.

10.00 INDEMNIFICATION AND WARRANTY

10.01 The Consultant shall always indemnify and save harmless the City and Sir Sandford Fleming College from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever, whether direct or indirect, which the City, its agents, servants or officers, may suffer as a result of the errors, omissions or negligence of the Consultant in the performance of its services, in regards to the Project or the Agreement, including any charges arising as a result of any health and safety violation on the part of the Consultant.

10.02 The Consultant grants to the City full power and authority to settle any action, suit, claim or demand on such terms as the City may deem advisable and covenants and agrees to pay the City on demand all monies paid by the City pursuant to any such settlement, together with the reasonable costs of the City or their solicitor in defending or settling any such action, suit or demand.

11.00 INSURANCE

11.01 The Consultant shall maintain, and keep in force insurance and provide Certificate(s) of Insurance as identified in Item 5.6 of P-03-11

12.00 MFIPPA

12.01 This Agreement and all schedules and attachments are subject to the Municipal Freedom of Information and Protection of Privacy Act (referred to as MFIPPA). Any information collected by the City pursuant to this Agreement is subject to the rights and safeguards provided for in the MFIPPA.

13.00 NOTICES

13.01 Any notice required to be given pursuant to this Agreement may be Served or given by prepaid registered mail, by personal mail, email or by service by facsimile transmission at the following addresses:

To the Consultant at:
John George Associates Inc.
327 Pine Cove Road
Burlington, ON L7N 1W4
Attention: John George, Prime Consultant
Facsimile Number: 905-632-0537
Email: jga@cogeco.ca

To the City at:
500 George Street North
Peterborough, Ontario K9J 3R9
Attention: Mary Gallop, Manager of Facilities and Special Projects
Facsimile Number: 705.876.4615
Email: mgallop@peterbrough.ca

14.00 COMPLETE AGREEMENT

14.01 This Agreement and the appendices attached, constitutes the complete and exclusive statement of the Agreement between the Parties which supersedes all other communications between the Parties relating to the subject matter of this Agreement.
15.00 LAW GOVERNING THE AGREEMENT

15.01 This Agreement shall be governed by the law of the Province of Ontario.

16.00 RELATIONSHIP OF THE PARTIES

16.01 Nothing in this Agreement shall be construed to place the Parties in the relationship of partners, joint venturers, principal/agent, or employer/employee. The Consultant also acknowledges that it has no authority to bind the City to any obligation of any nature or any kind, in law or equity.

17.00 SUCCESSORS AND ASSIGNMENT

17.01 This Agreement shall enure to the benefit of and be binding upon the Parties, and their executors, administrators, successors and assigns.

17.02 Neither party shall assign this agreement without the consent in writing of the other.

18.00 AMENDMENTS

18.01 This Agreement may be amended by the City and any amendments to this Agreement shall be in writing and signed by the Parties.

19.00 APPENDICES

19.01 The parties acknowledge and agree that they have reviewed and understand the following Appendices, whether attached hereto or not, and that they form part and parcel of this agreement:

.1 City Request for Proposals P-03-11 – Prime Consultant Services for a New Artificial Sport Field Complex in Peterborough, Ontario

.2 Consultant Submission to P-03-11 from John George Associates

IN WITNESS WHEREOF the Parties have set their respective hands and seals.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE CITY OF PETERBOROUGH

in the presence of:

Darryl Bennett, Mayor

Nancy Wright-Laking, Clerk

JOHN GEORGE ASSOCIATES INC

Name: ____________________________

Office: ____________________________

I/We have the authority to bind the Corporation