

June 27, 2019

Town of Fort Frances  
320 Portage Avenue  
Fort Frances, ON P9A 3P9

**Attention: Travis Rob, P.Eng.**  
**Manager, Operations and Facilities**

**Re: Town of Fort Frances**  
**Design Works for 2019/2020**  
**Reconstruction & Widening of Kings Highway from Pit Road 1 to Oakwood Road**

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Hatch Ltd. is pleased to provide you with a proposal for design services for the proposed widening and servicing construction for the King's Highway (Highway 11/17) between Pit Road 1 and Oakwood Road, located in Fort Frances, Ontario. An overall map of the proposed roadway reconstruction area is shown below.



**Figure 1:**  
**Overall Map of Proposed Roadway Reconstruction Area**

## **PROJECT UNDERSTANDING**

It is our understanding that the Town of Fort Frances is proposing to widen a section of Kings Highway between Pit Road 1 and Oakwood Road from a (2) two lane roadway to a four (4) roadway, approximately 800m in length. The roadway reconstruction will also include:

- Installation of water services where required;
- Extension of the existing storm sewer system from Pit Road 1 to Oakwood Road;
- Concrete curb and gutter;
- New Superpave asphalt surface.

## **SCOPE OF WORK**

The following scope of work plan has been developed based on our understanding of the project requirements:

1. ***Project Initiation and Review of Background Information*** – we will discuss the project in detail and obtain all relevant background information, including any available as-built information from the Town.
2. ***Topographic Survey*** – we will carry out a detailed topographic survey using digital survey equipment referenced to geodetic datum and UTM coordinates. The survey will cover the entire width of the right-of-way and extend along intersecting streets and entrances for at least 75m and 30m along regular entrances.
3. ***Geotechnical Investigation*** – will be carried out by EXP. We propose to advance twelve (12) boreholes (BH's) along/through King's Highway. The BH's will be advanced to the lesser of about 5m below ground surface or refusal, and will be spaced out approximately 75m apart and staggered on the north and south sides of the road near/at the edge of asphalt (depending on the buried service locations). The final geotechnical report will provide recommendations on site preparation, excavation and dewatering, bedding/backfill requirements and pavement design.
4. ***Detailed Design*** – based on the information obtained above, we will complete a preliminary design of the proposed new roadway for review by the Town. The preliminary design will include a Class "C" construction cost estimate. Upon receipt of the Town's approval of the preliminary design, we will proceed with the detailed design for the new roadway. We will also complete the required Environmental Compliance Approval (ECA) for the proposed new storm sewer.
5. ***Environmental Compliance Approval*** – we will prepare and complete the necessary Ministry of Environment approvals for the proposed new storm sewer. Any permits fees required, will be the responsibility of the Town and are not included in our fee proposal.

## ESTIMATED FEE

Our estimated fee to complete the above work is as follows:

TASK	TOTAL
Project Startup/Review of Background Information	\$3,300
Geotechnical Investigation	\$20,700
Topographic Survey	\$21,250
Detailed Design (Drawings & Specifications)	\$16,800
Environmental Compliance Approval	\$1,800
<b>TOTAL FEE</b>	<b>\$63,850</b>

Our fee does not include the cost of any Municipal Class Environmental Assessment that may be required based on the nature of the proposed reconstruction. We can determine early on during the preliminary design stage, the appropriate Schedule of the project and provide you with an additional quote to complete the work (if necessary).

We appreciate the opportunity to make this submission and look forward to working with you and your team on the project. The accompanying General Terms and Conditions will form the basis for our agreement. Your signature on this letter will be acceptable as our permission to start work.

Yours very truly,

**HATCH LTD**



Joseph De Luca, P. Eng.  
Senior Project Engineer



David Gibbs, C.Tech.  
Associate/Office Manager

Encl.

Accepted By: Travis Rob

Authorized Signature:  Date: June 27, 2019

On Behalf of Town of Fort Frances.

**CLAUSE 1 AGREEMENT**

1.1 Unless a written agreement is entered into, Client's acceptance of a proposal, whether written or oral (the "*Proposal*"), from Hatch Corporation ("or *Consultant*") or a request by Client for some or all of the services included in the Proposal, constitutes a binding contract between Client and Consultant (the "*Agreement*"). The Agreement incorporates and is subject to these Terms and Conditions and the terms and conditions included in the Proposal, including the description of the services to be provided by Consultant (the "*Services*"). If there is any conflict between the Proposal and these Terms and Conditions, the Terms and Conditions will govern. Any terms appearing on any orders or other documents produced by or on behalf of Client are excluded.

**CLAUSE 2 CONSULTANT SERVICES AND RESPONSIBILITIES**

2.1 Consultant will (a) perform the Services with due care, skill and diligence in accordance with the standard of care normally exercised by professionals providing similar services under similar circumstances, and (b) re-perform any Services that fail to comply with this standard of care if Client gives Consultant notice of such failure within 12 months of performance of such Services. Consultant may subcontract the performance of any of the Services to an affiliate.

2.2 Consultant is not liable or responsible for (a) the work or products of any third party contractors or suppliers engaged by or on behalf of Client, including any means, methods, sequences, control, procedures or techniques used by construction contractors, (b) any goods, equipment or materials procured on behalf of Client, provided that Consultant will use reasonable efforts to obtain appropriate warranties from the suppliers of such goods, equipment or materials for Client's benefit, or (c) the safety and security at any Client premises or the project site, provided that Consultant will comply with all relevant laws and those site requirements relating to safety and security that have been notified to Consultant.

**CLAUSE 3 CLIENT RESPONSIBILITIES**

3.1 Client will (a) make available to Consultant all information, documents and assistance necessary or reasonably requested by Consultant in order to enable it to perform the Services in a timely manner, (b) make decisions, provide approvals and obtain all necessary authorisations, licences and permits required in order to permit the timely performance of the Services, (c) notify Consultant if it becomes aware of any matter that may change the scope, timing, order or complexity of the Services, and (d) act reasonably and in good faith in all respects in connection with the Agreement.

**CLAUSE 4 INVOICING, PAYMENT AND TAXES**

4.1 Unless otherwise provided in the Proposal, (a) Services (including any additional services provided at the request of Client or pursuant to Clause 4.4) and all costs incurred by Consultant in connection with the Services, will be charged to Client in accordance with Consultant's schedule of rates, (b) amounts invoiced to Client by Consultant are due and payable within the period stated in Consultant's schedule of rates or, if not so stated, within 30 days of receipt of invoice by Client, and (c) interest will be paid on past due amounts at the rate stated in Consultant's schedule of rates or, if not so stated, at the prime rate quoted by Consultant's main bank in the Jurisdiction plus 3%.

4.2 Consultant's rates are exclusive of all taxes, duties, royalties, levies and other governmental or regulatory charges, other than taxes on payroll and Consultant's net income. If any such taxes, duties, royalties, levies or charges are levied on or applicable to amounts payable to Consultant, they will be borne by Client and (a) if Consultant is required to pay any such taxes, duties, royalties, levies or charges, the amount of such payments will be reimbursed to Consultant by Client, and (b) if they are required to be withheld or deducted from amounts payable to Consultant, the amounts payable will be grossed up so that Consultant receives the entire amount that is due pursuant to the terms of the Agreement.

4.3 If Client disputes any portion of an invoice, it will pay those amounts that are not in dispute and notify Consultant in writing of the reasons for the dispute within 10 days of receiving the invoice. Failure to notify Consultant of the dispute within the required time will be deemed as acceptance of the invoice. If it is determined that any amounts in dispute should have been paid at the time it was invoiced, then Client will promptly pay such amount, together with interest at the rate set out in Clause 4.1.

4.4 If, (a) Consultant is required to perform Services in circumstances other than those expressly or reasonably assumed and normally pertaining to services of a similar nature (b) Consultant incurs costs arising or resulting in whole or in part from any site conditions existing on or after the date of the Agreement, (c) there is a change in the scope, timing, order or complexity of the Services or claims filed by Clients subcontractors, (d) there is a force majeure event which impacts Consultant, or (e) additional costs are incurred as a result of a change in any laws, regulations or rules or the interpretation thereof then any resulting costs will be borne by Client and Consultant will be entitled to such amendments to the Agreement that are fair and reasonable.

**CLAUSE 5 LIMITATION OF LIABILITY**

5.1 To the maximum extent permitted by law and notwithstanding and superseding anything to the contrary in the Agreement:

- (a) subject to Clause 5.2, the aggregate liability of Consultant arising out of the performance or non-performance of the Services or otherwise in connection with the Agreement is limited to the sum of (i) the amount of the professional fees paid to Consultant pursuant to the Agreement up to \$100,000 and (ii) 10%

of such fees paid in excess of \$100,000, provided that in no event will Consultant's aggregate liability exceed \$1,000,000;

- (b) in no event will Consultant be liable to Client or its directors, officers, employees, agents, contractors, subcontractors, parent or affiliated corporations, vendors or materialmen for any claim, action, proceeding, loss, damage or cost that (i) in any manner relates to a loss of revenue, profits, opportunity or production, loss or denial of use of any equipment or facility, increased expense of construction, operation or maintenance, economic loss, loss of goodwill or reputation, delay, business interruption or the cost of repair to or replacement of equipment, facilities or goods and related third party services, (ii) in any manner can be construed as indirect, incidental, special, punitive or consequential losses or damages, or (iii) is not a direct result of a material breach by Consultant of the Agreement; and

- (c) Consultant does not guarantee any specific outcomes or results, including fit for purpose, project costs or quantities or the ability of any process, technology, equipment or facility to meet specific performance specifications.

5.2 Consultant's liability for claims or losses covered by the insurance policies referred to in Clauses 7.1(b) and (c) shall not be subject to Clause 5.1 and shall instead be limited to the proceeds of the types and specific amounts of insurance up to the amounts specified in Clause 7.1.

5.3 All statutory, express or implied warranties (including those in any relevant trade practices or sale of goods laws relating to the quality or fitness for purpose of the Services or any goods, equipment or materials supplied by Consultant in connection with the Services) are excluded or limited to the maximum extent permitted by law.

5.4 Any action or claim against Consultant in connection with the Agreement or the performance or non-performance of Services, whether in contract, tort, equity, statute or otherwise, must be made within 12 months of the date of the performance or non-performance of the relevant Services.

5.5 Client indemnifies, defends and holds harmless Consultant for any claims, actions, proceedings, liabilities, losses, damages or costs: (a) it suffers or incurs in connection with the Services and which result other than from a material breach of the Agreement by Consultant or (b) that result from any material breach of the Agreement by Client (c) that result from the site conditions existing prior to or after the date of the Agreement.

**CLAUSE 6 USE AND OWNERSHIP OF INFORMATION**

6.1 Each party retains title to all intellectual property (including all patents, trademarks, copyright, trade secrets and know how) owned or possessed by it or any of its affiliates and used by it in fulfilling its obligations under the Agreement, including any modifications or improvements made thereto ("*Background IP*"). All new and original intellectual property created by Consultant during the course of performing the Services ("*Project IP*") is the property of Consultant. Consultant grants Client a non-exclusive, non-transferable and, unless otherwise agreed, royalty-free license to use (a) any Consultant Background IP used in the performance of the Services but only to the extent required to use any deliverables provided by Consultant for the purpose for which they have been provided (excluding any software source code), and (b) Project IP for any purpose whatsoever.

6.2 Upon receipt of full payment for the related Services and subject to Clause 6.1, all reports, drawings and other deliverables provided to Client by Consultant will become the property of Client.

6.3 Any information or deliverable provided by Consultant to Client in connection with the Services are provided solely for Client's own use and for the specific purpose for which the Services were engaged. In no case will any such information or deliverable be used in connection with any public or private stock, bond or other financial offering, any investment decision, the sale of securities or any other financing transaction or otherwise be made available to the public generally. Consultant makes no warranty or representation and assumes no liability in respect of and Client shall bear all losses or damages resulting from (a) the wrongful or unauthorised use of information or deliverable by Client or third parties, and (b) the accuracy or completeness of information based on data gathered from Client or provided by third parties on behalf of or at the instruction of Client (and Consultant is able to rely on such information without verification in the performance of the Services).

6.4 Each party will keep confidential all Confidential Information disclosed to it by the other party; provided that (a) Consultant is able to disclose Client's Confidential Information to those persons who need to know such information for purposes that relate to the performance of the Services, (b) Client is able to disclose Consultant's Confidential Information to the extent required in connection with the purpose for which the information was disclosed, and (c) either party is able to disclose Confidential Information required to be disclosed by law, provided that the receiving party immediately notified the disclosing party of the requirement to disclose and took all reasonable steps to lawfully resist or narrow the requirement to disclose the Confidential Information. Except as specifically provided herein, neither party will acquire any right, title or interest in or to the Confidential Information of the other party.

6.5 "*Confidential Information*" means any information in any form disclosed by or on behalf of one party to the other party at any time before or after the execution of the Agreement in connection with the Services; excluding only information which (a) was at the time of disclosure or thereafter became part of the public domain through no act

or omission of the receiving party, (b) became available to the receiving party from a third party who did not acquire such confidential information under an obligation of confidentiality either directly or indirectly to the disclosing party, or (c) was known to the receiving party at the time of disclosure by the disclosing party and such knowledge can be demonstrated by written records that were in existence at the time of disclosure.

#### CLAUSE 7 INSURANCE

7.1 Consultant will have in effect for the duration of the Services the following insurance (a) workers compensation, in accordance with statutory requirements, (b) comprehensive general (or public) liability (\$5,000,000 per occurrence/aggregate); (c) automobile liability (\$5,000,000 per occurrence/aggregate), and (d) professional indemnity (E&O) liability (\$1,000,000 per claim/aggregate on a claim made basis).

7.2 During the period in which the Services are being performed, Client will, at its own expense, maintain insurance to limits which are normal and customary in the circumstances. Client, on behalf of itself and its insurers, waives all rights of subrogation against Consultant for, and releases Consultant from any liability for damage to Client's property howsoever caused to the extent that Client is compensated for such damage under an insurance policy.

#### CLAUSE 8 TERMINATION AND SUSPENSION

8.1 Client may suspend the Services or terminate the Agreement for its convenience on 30 days prior written notice to Consultant; provided that, if the aggregate duration of all suspensions under the Agreement exceeds 60 days, Consultant will have the right to terminate the Agreement.

8.2 Either party may terminate the Agreement immediately if anything happens to the other party that reasonably indicates that there is a significant risk that the other party is or will become unable to pay its debts generally as they come due.

8.3 Either party is entitled to terminate the Agreement on 30 days prior written notice to the other party in the event that the other party is in substantial default under the Agreement and such default has not been corrected or reasonably commenced to be corrected within 15 days following notice of such default. Consultant may, by providing 5 days prior notice to Client, suspend Services if Client is in breach of Clauses 3 or 4.

8.4 In the case of any suspension or termination of the Agreement, Client will pay Consultant for all Services provided and costs incurred up to the effective date of suspension or termination. In the event of any suspension or termination pursuant to Clause 8.1 or any suspension or termination by Consultant pursuant to Clauses 8.2 or 8.3, Client will also pay Consultant for any Services provided or costs incurred that are necessary or incidental to suspension or termination, including demobilization costs.

#### CLAUSE 9 NON-SOLICITATION

9.1 Client will not, during the term of the Agreement or for 12 months thereafter, either directly or indirectly on its own behalf or jointly with or on behalf of any other person, solicit, engage or employ any employee or independent contractor of the Consultant (or any of its affiliates) that has been involved in the provision of Services or with whom the Client has otherwise had contact in connection with the Agreement.

#### CLAUSE 10 DEFINITIONS AND INTERPRETATION

10.1 Reference to (a) "affiliate" means with respect to a party, one or more entities that control, are controlled by, or are under common control with, the party, (b) "costs" means any and all costs and expenses, including reasonable legal fees, (c) "force majeure" means acts of God, strikes, lockout, other industrial action, war or civil disturbance, terrorism, unusually inclement weather, storm, flood, earthquake, lightning, fire, explosion, nuclear or radioactive contamination, epidemics or pandemics, governmental action or inaction, change in law, extraordinary market conditions affecting the availability of labour, late or inadequate execution of work or supply of goods by third parties and any other event beyond the reasonable control of the affected party, (d) "Consultant's schedule of rates" means Consultant's standard hourly rates and reimbursable charges as notified by Consultant from time to time, provided that any changes to the schedule of rates will be communicated to Client before they take effect and will not occur more than once every six months, (e) "liability" includes any and all liability whatsoever, whether arising under the law of contract, tort (including negligence), equity, statute or otherwise, whether arising in connection with the performance or non-performance of the Services or otherwise in connection with the Agreement and whether to Client or other persons, and "liable" has a corresponding meaning, (f) "site conditions" means any conditions in, on, under or around the project site that affect the project or the performance of Services, including any plant and subsurface conditions and any hazardous, radioactive, special, toxic, residual or regulated substances, waste or materials, (g) "Jurisdiction" means the Province of Canada where Consultant's office providing the Services is located or if the Services are being provided in multiple offices, then the laws of Ontario, Canada, and (h) "\$" means the currency of Canada unless specified otherwise.

10.2 Headings are for convenience only and will not be taken into account in interpretation and words importing the singular include the plural and vice versa. If any provision of the Agreement is held to be void, illegal or unenforceable, then: (a) it is severed and the rest of the Agreement remains in force, and (b) the parties will replace the provision with one that is in accordance with applicable law and as close as possible to the parties' original intent. Any rules of contract interpretation

that result in the Agreement being construed contrary to the interests of Consultant do not apply in the interpretation of the Agreement.

#### CLAUSE 11 GENERAL

11.1 The Agreement will be governed by and construed in accordance with the laws of the Jurisdiction, without giving effect to conflict of law considerations. All disputes will be submitted to senior management for discussion. If the parties are unable to resolve a dispute through such discussions, either party may submit the dispute to arbitration. The arbitration will be held in English and at the location of Consultant's contracting office. The arbitration panel will consist of one arbitrator. Any arbitration award will be final and binding on the parties without any right of appeal. Each party will bear the costs of arbitration. No legal proceedings may be commenced by either party in connection with the Agreement or the Services other than in accordance with this Clause 11.1; provided that either party may apply to a court of competent jurisdiction for interlocutory relief during the course of such proceedings or to enforce any order or award obtained in accordance with this Clause 11.1.

11.2 The Agreement represents the entire agreement between the parties regarding the subject matter hereof and supersedes all prior representations, understandings or agreements, whether written or oral and whether express or implied; provided that, if the parties have previously entered into a confidentiality (or similar) agreement regarding the subject matter hereof, such agreement will survive and Clauses 6.4 and 6.5 will be of no force and effect. Amendments to the Agreement are effective only if executed in writing by authorized representatives of both parties.

11.3 Neither party may assign (other than to its affiliate) the Agreement or any interest therein, in whole or part, without the prior consent of the other party. The Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

11.4 Neither party will be considered to be in breach of its obligations under the Agreement, except obligations to make payment, to the extent that performance is prevented or delayed by force majeure. Each party will use best efforts to overcome any force majeure as soon as possible.

11.5 The limitations and exclusions on liability expressed in this Agreement will apply even in the case of the fault, negligence or strict liability of the party who is the beneficiary of the clause, and will extend to the officers, directors, employees, agents, representatives, subconsultants and affiliates of such party.

11.6 Any notice, consent or other communication given hereunder will only be deemed to have been given if it is in English, in writing and is sent to the recipient's authorized representative at the usual business address of the recipient by (a) registered mail, (b) fax, (c) e-mail (but only when receipt is confirmed in writing by reply e-mail or otherwise) or (d) personal delivery for which a receipt is obtained. Notice given by fax, personal delivery or e-mail will be deemed to have been given on the business day following delivery. Notice given by mail will be deemed to have been given on the fifth business day after mailing.

11.7 No waiver by either party of any breach of the Agreement will be binding unless made in writing and any such waiver will extend only to the specific breach waived and not to any future breach.

11.8 Consultant is an independent contractor in performing the Services. Nothing in the Agreement will create or will be construed so as to create the relationship of principal and agent between Client and Consultant.

11.9 Client and Consultant shall strictly comply with all applicable laws and regulations prohibiting illegal activity of any kind, shall act in an ethical manner with all professional levels of integrity and shall not engage in any acts of corruption, bribery or do anything to improperly influence decision makers.

11.10 Electronic files provided to Client are for reference only and Consultant makes no warranties as to the correctness of information contained in the same after transmittal to Client and nothing therein shall serve to modify Clauses 2 and 5 respectively. In the event of a conflict between electronic files and non-electronic documents, the non-electronic documents shall control and Consultant retains all ownership rights in the electronic files per the terms of this document.

11.11 The provisions of Clauses 1, 2.2, 4, 5, 6, 8, 8.4, 9, 10 and 11 survive the termination of the Agreement.