

ENGINEERING SERVICES AGREEMENT

dated as of the 16 day of September 2019.

by and between:

TOWN OF FORT FRANCES
hereinafter called the "Client".

and:

KONTZAMANIS GRAUMANN SMITH MACMILLAN INC.,
carrying on business as **KGS Group**
hereinafter called "KGS Group".

AGREEMENT

The Client and KGS Group agree as follows:

A1 THE SERVICES

A1.1 KGS Group will provide the Services (as defined in Schedule "A") in connection with the Project (as defined in Schedule "A"). A short description of the Project is as follows:

19-000-1327 - RFP 19 of 09 - Town of Fort Frances - HVAC Designs

A2 AGREEMENT AND AMENDMENTS

A2.1 This Agreement constitutes the entire agreement between the Client and KGS Group relating to the Project and the Services and supersedes and invalidates all prior representations, arrangements, negotiations, understandings and agreements between them, whether written or oral, respecting the Project and the Services. No other terms, conditions or warranties, whether express or implied, form a part of this Agreement.

A2.2 If the Client issues or has issued a purchase order relating to the Services, any terms and conditions on the purchase order do not apply to this Agreement.

A2.3 This Agreement may be amended only by a written document signed by both the Client and KGS Group. Any such document may be executed in counterpart form.

A3 AGREEMENT DOCUMENTS

A3.1 The documents listed below form part of and are incorporated into this Agreement. In the event of any inconsistency or conflict between those documents, the order of priority in resolving such conflict or inconsistency will be as follows:

- (a) Engineering Services Agreement;
- (b) Schedule "B" – General Terms and Conditions; and
- (c) Schedule "A" – Scope of Services.

A4 COMPENSATION AND PAYMENT TERMS

A4.1 The Client will compensate KGS Group as set forth in Schedule "A".

A4.2 Unless otherwise stated in Schedule "A", KGS Group will issue monthly invoices to the Client. Invoices are due and payable within 30 days of receipt.

A4.3 The Client will be charged interest at the rate of 1.5% per month (18% per year) on all past-due accounts. Payments will first be credited to interest and then to principal.

IN WITNESS WHEREOF the parties have executed this Agreement by the hands of their duly authorized representatives.

Kontzamanis Graumann Smith MacMillan Inc.
(o/a KGS Group)

Per:

Signature

Bryan Skrabek, M.Sc., P.Eng.

Print Name

Regional Manager

Title

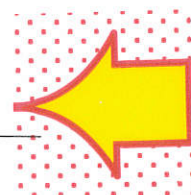
Town of Fort Frances

Per:

Signature

Print Name

Title



SCHEDULE "A"

SCOPE OF SERVICES

Please see the attached KGS Group Proposal 19-000-1327_R1 and RFP 19 of 09 - Town of Fort Frances - HVAC Designs dated September, 2019.

SCHEDULE B – GENERAL TERMS AND CONDITIONS

GC1. DEFINITIONS

GC1.1 "Agreement" or "this Agreement" means this Engineering Services Agreement between KGS Group and the Client, including all of the documents identified in **A-3 - AGREEMENT DOCUMENTS** and any amendments thereto.

GC1.2 "Engineering Documents" means drawings, plans, models, designs, specifications, reports, photographs, computer software (if such computer software is proprietary to KGS Group), surveys, calculations and other data which are used in connection with the Project, and which were prepared by or on behalf of KGS Group and are instruments of service for the execution of the Work.

GC1.3 "Project" means the total endeavour contemplated in this Agreement of which the Services or the Work may be the whole or a part.

GC1.4 "Services" means those services that are identified in Schedule "A".

GC1.5 "Third Party Documents" means any shop drawings, as-built drawings, record drawings, other drawings, designs, reports or any other documents provided by the Client or third parties;

GC1.6 "Work" means any construction and/or related work performed by contractors, subcontractors or suppliers in connection with the Project.

GC2. TERM

GC2.1 This Agreement is effective as of the earlier of: (i) the date herein; or (ii) the date the Services are first performed by KGS Group and will continue in effect until KGS Group completes the Services, unless this Agreement is terminated earlier in accordance with the provisions hereof.

GC2.2 The provisions at **A4** (Compensation and Payment Terms), **GC5** (Ownership and Use of Documents and Intellectual Property) and **GC8** (Limitation of Liability) will survive the termination or expiry of this Agreement for any cause.

GC3. OBLIGATIONS OF KGS GROUP

GC3.1 KGS Group will provide the Services with that degree of care, skill and diligence normally provided by engineers in the performance of comparable services in respect of projects of a similar nature to that contemplated by this Agreement.

GC3.2 KGS Group will not be responsible for:

- (a) the performance, acts or omissions of any contractors, subcontractors or suppliers;
- (b) nor control, direct or supervise, the construction methods, means, techniques, sequences or procedures of contractors, subcontractors or suppliers; and
- (c) safety precautions, programs, policies or procedures required in connection with the Work or for site safety at any location where Work is being performed.

GC3.3 KGS Group is entitled to rely upon the accuracy and completeness of records, information, data and specifications furnished by:

- (a) government authorities and public utilities; and
- (b) manufacturers and suppliers of equipment, material or supplies.

GC3.4 KGS Group will not be responsible for the failure of any manufactured product or any manufactured or factory assembled system of components to perform in accordance with the manufacturer's specifications, product literature or written documentation.

GC3.5 Unless otherwise specifically stated in Schedule "A", KGS Group will not make any on-site reviews.

GC3.6 If on-site reviews are specifically included in Schedule "A", KGS Group will attend the location where Work is being performed at such intervals as KGS Group considers to be appropriate or as otherwise specifically set out in Schedule "A". The presence of KGS Group's personnel at any location where Work is being performed is for the purpose of providing to the Client a greater degree of confidence that the Work will conform generally to any construction contracts or documents and that the integrity of the design concept as reflected in any construction contracts or documents has been implemented and preserved by the contractor(s) performing the Work. Only Work which KGS Group has reviewed during construction will be considered to have been assessed. Should KGS Group comment on parts of the Work which it has not reviewed during construction, KGS Group's comments must be construed as being assumptions only and must not be relied upon by the Client.

GC3.7 In soils, foundation, groundwater and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the cost and/or schedule of the Project. Those conditions and/or the effect those conditions may have on the cost and/or schedule of the Project are not the responsibility of KGS Group.

GC3.8 Any estimates or opinions regarding probable construction costs or construction schedule provided by KGS Group represent KGS Group's professional judgment in light of its experience and the knowledge and information available to it at the time of preparation. KGS Group has no control over prices for construction labour, equipment or materials or bidding procedures, time or quality of performance of contractors, suppliers and manufacturers and other market or economic factors that may materially affect construction costs or schedule. Therefore, KGS Group does not make any representations, warranties or guarantees whatsoever, whether express or implied, with respect to such estimates or opinions, or their variance from actual construction costs or schedule, and accepts no responsibility for any loss or damage arising therefrom. If the Client wishes to secure an estimate or opinion regarding probable construction costs or schedule upon which it can rely, the Client is at liberty to retain a qualified quantity surveyor or an independent expert.

KGS Group Schedule B - General Terms and Conditions

GC3.9 Third Party Documents will be reviewed by KGS Group only for the limited purpose of checking for general conformance with the information given and design concept expressed in any construction contracts or documents. KGS Group's review of Third Party Documents is not for the purpose of:

- (a) determining the feasibility or constructability of the information detailed within the Third Party Documents; or
- (b) verifying the accuracy or completeness of:
 - i. details such as dimensions and quantities; or
 - ii. instructions for installation or performance of equipment or systems;

and KGS Group will not be liable to the Client or any other party with respect to any inaccuracy or omission in any Third Party Documents.

GC3.10 Unless otherwise specifically stated in Schedule "A", KGS Group is not responsible for the identification, reporting, analysis, evaluation, presence, handling, removal or disposal of asbestos or other hazardous substances, or for the exposure of persons, property or the environment to asbestos or other hazardous substances.

GC3.11 Unless otherwise specifically stated in Schedule "A", all samples obtained by KGS Group, including soil samples, may be discarded by KGS Group after 30 days from the date of submission of KGS Group's report to the Client.

GC3.12 Except as otherwise agreed in writing, all of the Services shall be for the Client's internal purposes and use. The Services are not intended for the express or implied benefit of any third party. No third party is entitled to rely, in any manner or for any purpose, on the advice, opinions, reports and/or other materials given or provided by KGS Group to the Client under this Agreement without the prior written consent of KGS Group. The Client further agrees that such advice, opinions, reports and/or materials shall not be distributed to any third party without the prior written consent of KGS Group.

GC4. OBLIGATIONS OF THE CLIENT

GC4.1 The Client will advise KGS Group of the Client's requirements in connection with the Project, including but not limited to, design objectives, time and other constraints, special equipment and systems and the budget for the Project.

GC4.2 The Client will, as soon as possible, make available to KGS Group all relevant data and information that KGS Group may need to perform the Services. KGS Group will, acting reasonably, be entitled to rely upon the accuracy and completeness of all such data and information furnished by or through the Client.

GC4.3 Unless otherwise specifically stated in Schedule "A", the Client will engage third parties directly to perform ancillary or specialized services that are necessary to enable KGS Group to carry out the Services. Such ancillary or specialized services may include, but are not limited to, legal or topographic surveys, mapping, quantity surveys and testing services. The Client will be entitled to determine which third parties to engage but will consult with KGS Group prior to doing so.

GC4.4 The Client is responsible for obtaining legal advice regarding tenders, requests for a proposal, quotation or information, bids, contract awards and the like, regarding the Project. The Client is responsible for decisions relating to the issuance, validity or award of tenders, proposals, bids or contracts and the like, and for the resulting consequences, even where the Services require KGS Group to review, evaluate or assist in the preparation of tenders, proposals, bids or contracts and the like or to make recommendations regarding them or regarding the qualification or selection of bidders.

GC4.5 The Client will designate in writing a representative who will have authority to transmit instructions to and receive information from KGS Group and to bind the Client.

GC4.6 The Client will promptly consider requests by KGS Group for directions or decisions and diligently inform KGS Group of the Client's direction or decision within a reasonable time so as not to delay the Services and/or the Work.

GC4.7 Unless otherwise specifically stated in Schedule "A", the Client will obtain required approvals, licenses and permits from municipal, governmental or other authorities having jurisdiction over the Project so as not to delay the Services and/or the Work.

GC4.8 If necessary, the Client will arrange access to any location that KGS Group must access to perform the Services.

GC4.9 The Client will promptly notify KGS Group whenever the Client or any of the Client's representatives becomes aware of any defects or deficiencies in the Services or the Engineering Documents.

GC5. OWNERSHIP AND USE OF DOCUMENTS AND INTELLECTUAL PROPERTY

GC5.1 The Engineering Documents are the property of KGS Group.

GC5.2 KGS Group retains ownership of all patents, trademarks, copyrights, industrial or other intellectual property rights resulting from the Engineering Documents, the Services or from concepts, products or processes which are developed or first reduced to practice by KGS Group in performing the Services. The Client will not use, infringe or appropriate such proprietary rights without the prior written consent of KGS Group.

GC5.3 Provided that the Services have been paid for in full, the Client will receive a royalty-free, non-transferable, non-exclusive license to use any proprietary concept, product or process of KGS Group which relates to or results from the Services for the life of the Project and solely for purposes of its maintenance and repair.

GC5.4 The Client will not, without notifying KGS Group and obtaining KGS Group's prior written consent:

- (a) provide the Engineering Documents to third parties for purposes other than in connection with the Project;
- (b) alter the Engineering Documents; or
- (c) use the Engineering Documents on any other projects.

KGS Group Schedule B - General Terms and Conditions

circumstances. Nothing herein will limit the obligation for any party to make any payment required by this Agreement.

GC8. LIMITATION OF LIABILITY

GC8.1 In this Section GC 8:

- (a) "Client Claims" means any and all claims (which includes demands, losses, expenses, causes of action, liabilities and costs, including without limitation for all legal costs on a solicitor and own client basis) by the Client against any of the KGS Group Indemnified Parties, or third parties claiming contribution or indemnity from any of the KGS Group Indemnified Parties, that are related to or connected with this Agreement, including without limitation the performance of or failure to perform the Services, whether such claims arise in contract, tort (including without limitation negligence) or under any other cause of action, and "Client Claim" means any one of them;
- (b) "KGS Claims" means any and all claims (which includes demands, losses, expenses, causes of action, liabilities and costs, including without limitation for all legal costs on a solicitor and own client basis) by KGS Group against the Client that are related to or connected with this Agreement, whether such claims arise in contract, tort (including without limitation negligence) or under any other cause of action, and "KGS Claim" means any one of them;
- (c) "KGS Group Indemnified Parties" means KGS Group including, KGS Group's principals, officers, directors, employees, independent contractors, agents, representatives, subconsultants and/or subcontractors;
- (d) "Liability Limit" means (i) the total fees paid by the Client to KGS Group under this Agreement, or (ii) \$200,000, whichever is greater.

GC8.2 Notwithstanding any other provision of this Agreement, the liability of the KGS Group Indemnified Parties for Client Claims will not, in the aggregate, exceed the Liability Limit. Further, the Client agrees that it will indemnify and hold harmless the KGS Group Indemnified Parties from and against Client Claims which exceed the Liability Limit.

GC8.3 The Client agrees that KGS Group's principals, officers, directors, employees, independent contractors, agents, representatives, subconsultants and/or subcontractors will have no liability to the Client in respect of a Client Claim. Accordingly, the Client agrees that it will bring no proceedings and take no action in any court of law against any of KGS Group's principals, officers, directors, employees, independent contractors, agents, representatives, subconsultants or subcontractors.

GC8.4 The liability of each party with respect to a Client Claim or KGS Claim, as the case may be, is limited to direct damages only and neither party will have any liability whatsoever for indirect, incidental, economic or consequential loss or damage, including and whether or

GC5.5 The Client will indemnify and hold harmless KGS Group from and against any and all demands, claims, actions, losses, expenses, causes of action, liabilities and costs (including legal costs on a solicitor and own client basis) incurred as a result of any breach of this Article GC5. In no event will KGS Group be responsible for the consequences of any such breach.

GC6. TERMINATION AND SUSPENSION

GC6.1 The Client may terminate this Agreement without cause on 30 days written notice to KGS Group. In such event, the Client will promptly pay to KGS Group:

- (a) the fees and disbursements of KGS Group that are incurred and unpaid up to the date of termination; and
- (b) the expenses reasonably and necessarily incurred by KGS Group in winding down the Services.

GC6.2 If KGS Group is in material default in the performance of its obligations under this Agreement, the Client may notify KGS Group in writing that the default must be corrected. If KGS Group does not correct the default within 30 days after receipt of such written notice or if KGS Group does not take reasonable steps to correct the default if the default is not susceptible of correction within 30 days, the Client may terminate this Agreement upon further written notice to KGS Group, without prejudice to any other rights or recourses of the Client. Such termination will not release the Client from its obligation to pay the fees and disbursements incurred by KGS Group up to the date of termination.

GC6.3 If the Client is in material default in the performance of any of the Client's obligations under this Agreement, including but not limited to the non-payment of fees and disbursements of KGS Group, KGS Group may notify the Client in writing that the default must be corrected. If the Client does not correct the default within 30 days after receipt of such written notice, KGS Group may terminate this Agreement upon further written notice to the Client, without prejudice to any other rights and recourses of KGS Group.

GC6.4 The Client may suspend the Services for the convenience of the Client. In such event, KGS Group's fees, disbursements and schedule will be equitably adjusted.

GC6.5 If the Client suspends performance of the Services at any time for more than 30 days, then KGS Group may choose to terminate this Agreement upon written notice to the Client. In this event, the Client will promptly pay the fees and disbursements of KGS Group that are incurred and unpaid as of the date of such termination, plus the expenses reasonably and necessarily incurred by KGS Group in winding down the Services.

GC7. FORCE MAJEURE

GC7.1 Neither party will be in default of this Agreement where the failure to perform an obligation is caused by or resulting from conditions or causes beyond its reasonable control. In such an event, each party will be allowed a reasonable period of time to fulfill its remaining obligations under this Agreement having regard to the applicable

not the following are determined in any proceeding to be direct damages: loss of profit, loss of revenue, loss of production, loss of business, loss of contracts or loss of opportunity and/or increased cost of capital, increased cost of financing or increased cost of overhead.

- GC8.5 In any Client Claim, the Client agrees that KGS Group's liability will be several and not joint and several and that the Client will only be entitled to claim payment from KGS Group of KGS Group's proportionate share of the total liability based on the degree of fault of KGS Group as finally determined by a court of competent jurisdiction.

GC9. GENERAL LEGAL PROVISIONS

- GC9.1 Neither party may assign this Agreement in whole or in part without the written consent of the other, which consent will not be unreasonably withheld.

- GC9.2 No action or failure to act by the Client or KGS Group will constitute a waiver of a right or duty afforded or imposed under this Agreement, except as may be specified in writing.

- GC9.3 This Agreement will be construed and governed by the laws of the province in which KGS Group has executed this Agreement. The parties attorn to the jurisdiction of the courts of that province.

- GC9.4 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision will be severed from this Agreement and the remaining terms and provisions in this Agreement will remain in full force and effect.

- GC9.5 This Agreement, any amendment or other document delivered in connection herewith, may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.