



*Town Manager*

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To: Mayor and Members of Council

February 15, 2010

Re: Professional Engineering Service Contract – KGS-MR2 Consulting Engineers

### **Background**

The Town's administrative and operations support does not include professional engineering services. When professional engineering services are required, the Town relies on private professional engineering companies. While the Town has engaged a number of engineering firms over the years to support their development and operations requirements, they have frequented few firms. One such firm that has a long standing relationship with the Town is KGS-MR2 Consulting Engineers (alias MR2).

The purpose of this report is to establish, through an agreement, a more formal relationship with a professional engineering firm, in support of various development and operations challenges that the Town may encounter in 2010.

### **Discussion**

There are occasions when the Town requires professional engineering advice. The Town however, does not have an engineer on staff and must rely on the services of a private engineering firm. While this has been a common practice it appears there is currently no formal contract in place that would confirm the terms of the Town's relationship with an engineering firm including their fees. This is not only important in understanding various aspects of the services that would be available to the Town through an engineering firm, but also from a budgetary perspective.

Attached is an Engineering Services Agreement for KGS-MR2 Consulting Engineers. The Town Administration has utilized the services of this firm for many years including 2009. They have done considerable work for the Town over the years on the sewer/water utility and are therefore, quite familiar with the Town's infrastructure. Their pricing is also competitive when compared to other engineering companies. The Administration also has a good working relationship with them.

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## **Budget Implications**

The Administration estimates that it will require approximately \$10,000 in engineering consulting advice in 2010 based on projected development (servicing requirements) and operation matters. E.g. pump houses, lift stations etc.

## **Conclusion**

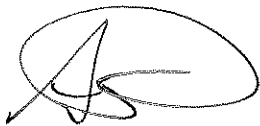
The Town does not employ a professional engineer on staff and must rely on the services of private engineering firms when engineering expertise is required. The Administration proposes to establish a more formal working relationship with KGS-MR2 through an agreement. KGS-MR2 has done considerable work for the Town including work in 2009, and has a good working relationship with the Administration. The one year Agreement attached hereto as Appendix "A" defines our respective responsibilities and establishes a fixed set of consulting fees for the year 2010.

## **Recommendation**

Your Administration recommends that:

1. Council enters into an agreement for the year 2010 with KGS-MR2 for the provision of engineering consulting advice that may be required by the Administration in the management of the Town's assets.

Respectfully submitted,



Bryan Dimen,  
Town Manager

APPENDIX "A"

|Kontzamanis|Graumann|Smith|MacMillan|Inc.|



January 29, 2010

File No. 09-1785-01

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Bryan Dimen  
Administrator  
Town of White City  
Box 220  
14 Ramm Avenue East  
White City, SK S4L 5B1

Dear Mr. Dimen

**Re: General Municipal Engineering  
Professional Engineering Services Agreement**

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As discussed, enclosed are two (2) copies of an engineering services agreement. This agreement will cover general municipal engineering services as required for 2010. The PSAB assistance and the Waterworks System Assessment proposals as issued under separate cover, would be part of this Agreement. Our fee schedule is attached.

If acceptable, please execute both copies and return one to our office. The other copy is to be retained your file.

If you have any questions or wish to discuss, please call our office.

Sincerely

**KGS MR2 Consulting Engineers**

R.A. McDonald, P.Eng.  
Senior Project Manager / Specialist  
Water and Wastewater

If  
Encl. (2)

THIS AGREEMENT, made in duplicate this 9 day of February, 2010

BETWEEN:

("Town of White City")

- and -

**KGS-MR2 Consulting Engineers ("KGS-MR2")**

WHEREAS the Client desires KGS-MR2 to provide professional Engineering Services in connection with a project to be undertaken by the Client.

AND WHEREAS KGS-MR2 is prepared to perform such services upon the terms and conditions set forth in this Agreement.

NOW THEREFORE the parties agree to perform the duties, responsibilities and obligations described in the following documents (collectively referred to as the "Contract Documents"), each of which are to be read into and form part of this Agreement:

- (a) This Agreement;
- (b) Schedule A; and
- (c) KGS Standard Terms and Conditions.

IN WITNESS WHEREOF the parties hereto have executed this Agreement and by the hands of their duly authorized representatives this 9 day of February, 2010.

**TOWN OF WHITE CITY**

Per:

\_\_\_\_\_

**KGS-MR2 CONSULTING ENGINEERS**

Per:

\_\_\_\_\_

**Town of White City****Project No. 09-1785-01****Schedule "A"****Professional, Technical, and Administrative  
Services to Be Performed by the Engineer****1. General**

1. The Engineer shall render his Services to the Client under this Agreement with that degree of care, skill, and diligence normally provided in the performance of Services in respect of projects of a similar nature to that contemplated by this Agreement at the time and place that such Services are rendered.
2. In rendering his Services on the Project, the Engineer may, at his discretion, and at any stage of the Services, engage Sub-consultants to perform services necessary to enable the Engineer to carry out his duties and responsibilities as set forth in this Agreement.
3. The Client shall provide relevant information in his possession.
4. The primary purpose of this project is to provide consultative, technical and related engineering services to the Client in response to agreed needs, measures and requirements as identified by the Client and in consultation with the Engineer.

**2. Scope**

Services can include but are not necessarily limited to:

1. Assistance with identification of issues and development of strategies and phasing for implementation of improvements or works.
2. Communications with the Client and representatives to address emergent issues.
3. Provision of information or advice on relevant matters.
4. Provision of field services as may be desired.
5. Development and maintenance of plans and drawings including information that may be provided by the Client.
6. Provision of technical assistance and communications with applicable regulators and for applications including financial assistance programs.
7. Preparation of conceptual or predesign reports and plans for specified utilities or components.
8. Provision of technical assistance related to bylaws or other matters within the expertise of the engineer.
9. Preparation of final designs, drawings and specifications for construction projects including tendering assistance and services during construction.
10. Liaison and reporting as desired with the Council and designated representatives of the Client.

**3. Miscellaneous**

- 3.1 Upon mutual agreement, provide to the Client assistance not herein specified that is relevant to the Project.

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## KGS GROUP STANDARD TERMS & CONDITIONS

### 1. DEFINITIONS

- 1.1 (a) "Agreement" means the agreement executed by the Client and KGS regarding the Services. The Agreement includes the Contract Documents.
- (b) "Contract Documents" means the documents identified as such in the Agreement together with any written amendments agreed upon by the parties.
- (c) "Cost of Services" means the dollar amount that the Client will pay to KGS for the Services as described in detail in the Proposal, expressed in Canadian dollars, unless otherwise stated, and does not include any taxes, duties, levies or other assessments, all of which are extra.
- (d) "Client" means the person or entity identified as such in the Agreement.
- (e) "Deliverables" means all items to be prepared by or on behalf of KGS and delivered to the Client under the Agreement, and includes without limitation, all drawings, models, designs, specifications, reports, computer software, surveys, calculations and other data, whether in printed or electronic format.
- (f) "Disbursements" means the reimbursable costs and expenses and any facility usage charges described in detail in the Proposal, expressed in Canadian dollars, unless otherwise stated, and does not include any taxes, duties, levies or other assessments, all of which are extra.
- (g) "KGS" means the entity identified as such in the Agreement.
- (h) "Project" means the project or proposed project that is the subject matter of the Services, as described in detail in the Proposal.
- (i) "Project Site" means the site of the Project.
- (j) "Proposal" means the document identified as such in the Agreement.
- (k) "Services" means the engineering and associated services to be provided or procured by KGS under the Agreement, as described in detail in the Proposal.

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## 2. GENERAL

- 2.1 The Agreement constitutes and contains the entire and only agreement between the parties with respect to the Services and supersedes and cancels any and all pre-existing agreements and understandings between the parties relating in any way to the Services. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.
- 2.2 The parties further agree that the Agreement supersedes the terms and conditions set out in any purchase order or other documents supplied by the Client and that such terms and conditions have no effect and are null and void.
- 2.3 Changes, alterations, or modifications to the Agreement shall not be effective unless agreed to in writing by the parties.
- 2.4 No action, failure to act or delay in acting by a party shall constitute a waiver of any right or obligation of either party under the Agreement, nor shall any such action, failure to act or delay constitute an approval or an acquiescence in any breach of the Agreement, except as specifically agreed to in writing by the parties.
- 2.5 Neither the Client nor KGS shall assign or transfer its rights and obligations under the Agreement, or any portion thereof, to a third party, without the prior written consent of the other party.
- 2.6 In performing the Services, KGS shall be an independent contractor and not an agent, employee, partner, joint venturer or representative of the Client.
- 2.7 The Client agrees that under no circumstances shall KGS, in performing the Services, have or be deemed at any time to have care and control of the Client's property or equipment.
- 2.8 The Agreement shall be construed and governed by the laws of the province in which KGS has issued the Proposal. The parties attorn to the jurisdiction of the courts of that province.

## 3. OBLIGATIONS OF KGS

- 3.1 KGS will perform the Services with that degree of skill, care and diligence ordinarily expected to be exercised by qualified professional engineering firms for services and projects, and under circumstances, in all cases similar to the Services.
- 3.2 All work performed by KGS will be undertaken, performed and delivered in accordance with reporting, analysis, drawing format and quality assurance practices established by KGS. If the Client wishes to have KGS conform to

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alternative standards, these standards must be agreed to in writing by the parties.

- 3.3 KGS is only required to make the number of site visits and attend the number of meetings during construction that are specified in the Proposal. The number of site visits or meetings during construction can be increased if agreed to in writing by the parties.

#### 4. OBLIGATIONS OF CLIENT

- 4.1 The Client shall in a timely manner:
- (a) make available to KGS all technical or other data that is available to the Client and pertinent to the Project which is required by KGS, or reasonably necessary for the planning and provision of the Services;
  - (b) engage consultants directly to perform any services that are not described in the Proposal, which are reasonably necessary for the planning and provision of the Services;
  - (c) provide to KGS all documents, information and advice in the Client's possession, knowledge or control relating to the nature, characteristics, composition, quality and general and local conditions of the Project Site.
- 4.2 KGS shall, acting reasonably, be entitled to rely upon the accuracy and completeness of all data, records and other information and documents provided by the Client, its employees, representatives or agents.
- 4.3 The Client shall be responsible for securing all necessary regulatory approvals for the Project, at its own cost, unless otherwise specified in the Proposal.

#### 5. COMPENSATION, INVOICING AND PAYMENT

- 5.1 Except where the Proposal specifically stipulates a lump sum price for the Cost of Services, the Cost of the Services shall be based on the hourly billing rates set out in the Proposal and the number of manhours worked by KGS's employees, representatives or sub-contractors. The Client acknowledges that the number of engineering manhours and Disbursements necessary to complete a project, or a portion thereof, cannot always be accurately estimated and that KGS does not represent or warrant that it can complete the Services, or any portion thereof, in accordance with the estimates set out in the Proposal. KGS does not assume any responsibility to the Client in contract, tort or otherwise, in connection with such estimates and shall not be liable to the Client if such estimates prove to be inaccurate or incorrect.
- 5.2 Unless stated otherwise in the Proposal, KGS will invoice the Client in KGS's standard billing format, on a monthly basis, for all Services performed and

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Disbursements incurred by KGS during such monthly period. Payment is due to KGS within 30 days of each invoice date. Interest is payable on all past-due accounts at the rate of 1.5% per month.

6. **DEFAULT AND TERMINATION**

6.1 The Client may suspend or terminate the Agreement without cause on 30 days written notice to KGS. In such event, the Client will pay:

(a) KGS for all Services performed and Disbursements incurred by KGS up to the effective date of the termination of the Agreement; and

(b) the reasonable expenses of KGS for the winding down of the Services.

6.2 If the Client is in default in the performance of any of the Client's obligations set forth in the Agreement, KGS may give the Client written notice specifying the breach and requiring the Client to remedy such breach. If within 30 days after receipt of such notice, such default has not been corrected, KGS may, without prejudice to any right, remedy or claim that KGS may have (for loss of profits or otherwise), terminate the Agreement.

6.3 If KGS is in breach of any of its obligations under the Agreement, the Client may give KGS written notice specifying the breach and requiring KGS to remedy such breach. Upon receipt of such notice, KGS shall have 30 days in which to either remedy the breach, or if such breach cannot be remedied within 30 days to provide the Client with a reasonable plan including a schedule for the expeditious remedying of such breach. If such breach is of a nature that can be remedied within 30 days, the Agreement shall, at the option of the Client, terminate if such breach is not remedied within the 30 day period. If the breach is of a nature which cannot be remedied within 30 days and if KGS fails to provide the Client with a plan for remedying the breach within the said 30 day period, the Agreement shall, at the option of the Client, terminate. On receipt of a plan from KGS which is given in accordance with the foregoing, the Client shall review it and if such plan is reasonable, advise KGS to proceed to carry out such plan. If the Client is not satisfied that such plan is reasonable, the Client shall so advise KGS and provide KGS with the option of submitting a revised plan within 10 days of receipt of such advice from the Client. If KGS does not provide a reasonable plan for remedying the breach within the timelines set out above, the Agreement shall, at the option of the Client, terminate. If the Client approves a plan, it shall not be entitled to terminate the Agreement so long as KGS continuously and diligently proceeds to carry out such approved plan in accordance with the schedule included in the plan.

7. **FORCE MAJEURE**

7.1 Notwithstanding anything herein contained, neither party shall be responsible or accountable to the other party for total or partial failure to perform any obligations hereunder if such failure shall arise from Force Majeure

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- 7.2 "Force Majeure" shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which said party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to: acts of God or the Queen's enemies, terrorism, expropriation or confiscation of land and personal property, war, riot, rebellion, sabotage, flood, fire, unusually severe weather that could not reasonably have been anticipated, explosion, and strike or other labour disturbance. The provisions of the Agreement shall not be construed as requiring either party hereto to accede to the demands of labour or labour unions that it in its sole discretion considers unreasonable. An event or occurrence shall be considered Force Majeure only to the extent the delay exceeds 5 days of continuous duration.
- 7.3 The Agreement shall be suspended during any period of Force Majeure. The performance of the Agreement shall be resumed as soon as practicable after Force Majeure has ceased.
- 7.4 Should either party be delayed in the performance of its obligation by an event or occurrence it believes is Force Majeure and if that party cannot avoid said prevention of delay by any commercially reasonable effort, it shall promptly after the occurrence of the Force Majeure event or occurrence orally advise the other party of the nature, date of commencement and expected duration of the Force Majeure event and the extent to which it will prevent the party giving such advice from performing its obligations under the Agreement. The party giving such oral advice shall then also notify the other party in writing of the Force Majeure event within 72 hours of the event or occurrence. Such party claiming Force Majeure shall use all commercially reasonable efforts to shorten, avoid and mitigate the effects of the delay and to remove the obstacles which prevent or delay performance. Such party shall keep the other party advised as to the continuance and impact of the Force Majeure event or occurrence.
- 7.5 If the Force Majeure continues for a period of 60 days, then either party may terminate the Agreement. In the event the Agreement is terminated by either party as a result of Force Majeure, KGS will only be entitled to be paid for all Services performed and Disbursements incurred up to the effective date of the termination of the Agreement.

## 8. CONFIDENTIALITY, OWNERSHIP AND USE OF DOCUMENTS

- 8.1 The Client acknowledges that the Deliverables and the Proposal and all intellectual property rights therein including, without limitation all copyright, patent or trademark rights (collectively hereinafter referred to as the "Confidential Information") shall be the exclusive property of KGS and constitute confidential information owned by KGS. The Confidential Information, or any portion thereof, shall not be used or exploited by the Client, directly or indirectly, for any purpose other than the Project without the prior written agreement of KGS.
- 8.2 The Confidential Information shall be kept strictly confidential. The Client shall not, directly or indirectly, disclose the Confidential Information, or any portion thereof:

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- (a) to any person other than the client's directors, officers, employees and representatives who need to know the Confidential Information for the purpose of the Project and have been informed of the confidential nature of the Confidential Information prior to such disclosure; and
  - (b) to any other person, for any purpose, without the prior written agreement of KGS.
- 8.3 The Deliverables are not to be altered or revised in any manner by the Client without the prior written agreement of KGS.

## 9. LIABILITY AND INDEMNITY

- 9.1 KGS, at its own expense, carries professional liability insurance to the extent that it deems prudent.
- 9.2 Notwithstanding and superseding anything to the contrary in the Agreement, but expressly subject to section 9.6 herein:
- (a) the liability of KGS and KGS's officers, employees, sub-consultants and agents for any loss, damage or costs suffered or incurred by the Client arising out of or in connection with the Agreement or the performance or non-performance of the Services, including negligent acts and omissions, or howsoever arising (such loss, damage or costs being collectively a "Loss") shall be and is hereby limited to:
    - (i) in cases where insurance furnished by KGS applies, and where the total Cost of Services under this Agreement is equal to or less than \$250,000, the amount of the applicable insurance limit to a maximum of \$250,000; and
    - (ii) in cases where insurance furnished by KGS applies, and where the total Cost of Services under this Agreement is greater than \$250,000, the amount of the applicable insurance limit to a maximum of \$1,000,000; and
    - (iii) in all other cases, the aggregate amount of all payments and compensation received by KGS from the Client for the Services up to a maximum of \$1,000,000;
  - (b) in no event shall KGS or its officers, employees, sub-consultants or agents be liable to the Client, in contract, tort, or otherwise, for a Loss:
    - (i) which relates to loss of revenue, loss of profits, loss of opportunity, loss of contract, loss of production, loss of use, loss by reason of shutdown or increased expense of operation, economic loss, loss of goodwill or reputation, delay, business interruption, equipment

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or goods, or which are construed as consequential losses or damages, or for punitive or exemplary damages;

- (ii) which results from pre-existing conditions at the Project Site of which KGS did not know and which it could not reasonably be expected to have known.
- (iii) arising out of failure of any manufactured product or factory assembled system of components to perform in accordance with the manufacturer's specifications, advertising, product literature or written documentation on which KGS reasonably relied in performing the Services.
- (iv) arising out of:
  - A. the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of; or
  - B. a failure to prevent, respond to, test for, monitor, abate, mitigate, remove, clean-up, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of; or
  - C. the actual or alleged failure to detect, report, test for, monitor, clean-up, remove, contain, dispose of, treat, detoxify, neutralize, or in any way respond to assess the effects of or advise of the existence of

any fungi or mould, any spores, mycotoxins, odours, or any substance, products or by-products produced by, released by, or arising out of the current or past presence of fungi or mould.

- 9.3 The Deliverables may contain estimates regarding work to be performed by contractors or third parties involved in the Project including but not limited to the approximate cost of construction and/or the approximate amount of time to complete the Project or portions thereof. Such estimates represent KGS's opinion based on current market conditions and are contingent on several factors over which KGS has no control. KGS does not assume any responsibility to the Client, in contract, tort or otherwise, in connection with such estimates and shall not be liable to the Client if such estimates prove to be inaccurate or incorrect
- 9.4 KGS does not assume any responsibility to the Client for the performance, safety, acts, errors or omissions of any person or entity that may be involved in the Project that is not employed or contracted directly by KGS. KGS shall not be liable for any loss or damages caused by such parties.

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- 9.5 Shop drawings and/or other documents submitted by contractors or third parties for review by KGS will be reviewed by KGS for the sole purpose of ascertaining that the information set forth therein generally conforms with the stated design intent for the Project. KGS does not assume any responsibility to the Client for its review of such documents and shall not be liable for errors, inconsistencies or omissions in such documents.
- 9.6 The Client will indemnify and hold harmless KGS and KGS's officers, employees, sub-consultants and agents, from any and all third party claims, demands, actions or liabilities, including legal fees, arising out of or in connection with the performance or non-performance of the Services, including negligent acts or omissions.
- 9.7 An action or proceeding against KGS relating to the Services, in contract or in tort or howsoever arising, shall not be commenced by the Client more than 1 year after the effective date of the suspension or termination of this Agreement or the date of the alleged act or omission giving rise to the cause of action, whichever occurs first.

# KGS GROUP

## STANDARD BILLING RATES

EFFECTIVE January 1, 2010 to December 31, 2010

LEVEL		2010 Billing Rate
Clerical		\$65.00
Mgmt. Ass't		\$88.00
Tech Level	1	\$74.00
Tech Level	2	\$80.00
Tech Level	3	\$91.00
Tech Level	4	\$98.00
Tech Level	5	\$108.00
Tech Level	6	\$117.00
Prof Level	1	\$88.00
Prof Level	2	\$98.00
Prof Level	3	\$109.00
Prof Level	4	\$132.00
Prof Level	5	\$144.00
Prof Level	6	\$160.00
Manager		\$182.00