

**Agreement Between Client And Engineer
For Professional Engineering Services**

AGREEMENT made this 6th day of November, 2019

BETWEEN: Municipality of North Grenville
285 County Road 44, PO Box 130
Kemptville, Ontario
K0G 1J0
Phone: (613) 258-9569

hereinafter called the "Client"

and Kollaard Associates Inc..
Box 189, 210 Prescott Street, Unit 1
Kemptville, Ontario K0G 1J0
Phone: (613) 860-0923

hereinafter called the "Engineer"

WHEREAS the Client has requested the Engineer to perform the services set out in Articles 1 and 2 hereof, and the Engineer has agreed to perform said services for the fees outlined in Article 3 hereof,

THEREFORE, in consideration of the mutual promises hereinafter contained and subject to the terms and conditions of this Agreement, including the General Terms of Engagement as listed on page 4 of this Agreement, and subject to the terms and conditions of Schedules A and B attached hereto, the Client and the Engineer mutually agree as follows:

Article 1 - DEFINITIONS:

The terms defined in this Article shall for purposes of this Agreement have the meaning herein specified unless the context otherwise specifies or requires:

"Project" shall mean:

Civil Engineering Services for the completion of the subdivision located at Lot 17, Concession 3, Municipality of North Grenville (Oxford), known as the Stonehaven Subdivision including but not limited to:

The Stonehaven drainage modification and redesign include the following items*:

- 1) Full review of the Stonehaven Subdivision stormwater management plans and report including a gap analysis on all storm water management features related to the subdivision i.e. full catchment area review including all upstream lands and all downstream lands up to a "sufficient outlet" (County Road 43 box culvert)
 - a. This item includes any and all data collection required to complete an appropriate review and gap analysis (i.e. surveying, etc.).
- 2) Following item 1, the Engineer is directed to complete any design modifications identified under the gap analysis. This will include any and all required easements, drainage courses and stormwater management facilities
 - a. This item includes any and all data collection required to complete an appropriate design (i.e. surveying, etc.).
- 3) The Engineer is further directed to address all future and outstanding comments which have been sent to the Engineer by the municipality, the conservation authority, Ministry of the Environment, Conservation & Parks (MECP) or applicable residents.

* All items will be to the satisfaction of the municipality, conservation authority and MECP.

"Initial Work" shall mean:

Initials ____ / ____

All the work and services performed or partially performed by the Engineer for 1693965 Ontario Inc. AAA Stonehaven Estates, Stonehaven (Phase1) relating to Stonehaven Plan of Subdivision, Phase 1 (07 T 06002)

Article 2 - ENGINEERING SERVICES:

To complete the above noted "project" the Engineer shall complete all design, reporting and construction stage services in accordance with the Kollaard Associates Inc. proposal as revised October 15, 2019, attached hereto as Schedule A.

Article 3 - FEES:

The Client shall pay to the Engineer the following *estimated* fees for the performance of the services set out in Articles 1 and 2 hereof:

\$58,800.00 - as outlined in Schedule A. HST will be added to all quoted prices. Invoices will be issued upon completion of the design phase and monthly during the construction stage.

The Client reserves the right to negotiate with the Engineer the terms and conditions presented within Task B (Tendering and Construction Phase) upon completion and approval of Task A (Revisions to the Approved Drainage Plan) based on Schedule A.

Article 4 – INSURANCE

The Engineer shall take out and keep in force Professional Liability insurance in the amount of \$1,000,000 providing coverage for acts, errors and omissions arising from their professional services performed under this Agreement. The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per claim limit. The policy shall be underwritten by an insurer licensed to conduct business in the Province of Ontario and acceptable to the Client. The policy shall be renewed for 3 years after contract termination. A certificate of insurance evidencing renewal is to be provided each and every year. If the policy is to be cancelled or non-renewed for any reason, 90 day notice of said cancellation or non-renewal must be provided to the Client. The Client has the right to request that an Extended Reporting Endorsement be purchased by the Engineer at the Engineers sole expense.

Article 5 – WORK PROGRESS

The Engineer agrees to proceed diligently with the performance or provision of the work required in this Project referred to in this Agreement and its other duties and obligations and the Client shall directly compensate the Engineer as set forth under this Agreement.

Article 6 – TIMELINE

The Engineer acknowledges being advised that the Client requires that the revised reports and plans be prepared and submitted to the Client for review no later than the 23rd day of December, 2019. During the design process, the Engineer and the Client will maintain regular communication with the common goal to streamline the review process following document submission. The Client agrees that review comments will be provided promptly. The Engineer agrees that it will respond promptly to review comments provided by the Client. The Client and the Engineer will aim to have documentation prepared for tendering and submission to the Ministry of the Environment, Conservation and Parks (MECP) by mid-February, 2020.

Article 7 – INDEMNIFICATION

By entering into this Agreement, the Engineer acknowledges and agrees that the Client is not waiving its right to pursue possible legal action in the future relating to the Initial Work performed by the Engineer. The Engineer agrees that it shall not be relieved from any possible future liability for its own negligence relating to the Initial Work that the Engineer performed.

Initials ____ / ____

Article 8 - TOLLING AGREEMENT

In consideration of the elements of this Agreement, the Client and Engineer agree to enter into, execute and exchange a Tolling Agreement in the form attached hereto as Schedule B and further agree to execute and exchange said Tolling Agreement immediately upon their execution of this Agreement.

Article 9 - AUTHORIZATION

The Client hereby authorizes the Engineer to perform the above-described services.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the 6th day of November, 2019 at the Municipality of North Grenville, Ontario

Engineer: Kollaard Associates Inc.

Signature: _____

I have authority to bind the Engineer for purposes of this agreement.

Printed: _____

Client: Municipality of North Grenville

Signature: _____

I have authority to bind the Client for purposes of this agreement.

Printed: Nancy Peckford, Mayor

Signature: _____

I have authority to bind the Client for purposes of this agreement.

Printed: Cahl Pominville, Director of Corporate Services / Clerk

General Terms of Engagement

The Engineer shall render the Services, as specified in the attached Agreement, to the Client for this Project in accordance with the following terms of engagement. The Engineer may, at its discretion and at any stage, engage subconsultants to perform any part of the Services.

Engineer's Professional Responsibility

The Engineer shall render services to the Client in a timely manner. The Engineer shall perform the services under this agreement with that degree of care, skill and diligence normally provided in the performance of such services as contemplated by the agreement at the time such services are rendered and as required by the *Professional Engineers Act* (RSO 1990, Ch P.28) and regulations therein.

Responsibility of the Client

The client shall:

1. make available to the Engineer all relevant information required by the Engineer, and shall instruct the Engineer fully as to the Client's requirements including, but not limited to, scope of the proposed work, design objectives, site requirements and construction budget.
2. give the Engineer the authority to act as the Client's agent in all matters falling within the scope of the Engineer's services.
3. obtain and pay for all required consents, approvals, licenses and permits from authorities having jurisdiction.
4. immediately notify the Engineer whenever the Client becomes aware of a defect or deficiency in the project work or the contract documents.

Compensation

Charges for the Services rendered will be in accordance with provisions indicated in the attached Agreement, or if no specific amount is indicated, fees will be in accordance with the Engineer's rate of fees and disbursements in effect from time to time as the Services are rendered. When the Engineer is required to provide additional services, the fees for these additional services will be based on hourly rates or as otherwise negotiated between the Engineer and Client. The applicable Harmonized Sales Tax will be payable, in addition to the fees charged. All charges will be payable in Canadian dollars. Balance is due and payable in accordance with Article 3 of this Agreement. Interest on overdue accounts is 2% per month (26.8% per annum).

Limitation of Liability

The Engineer shall not be responsible for:

1. the failure of a contractor, retained by the Client, to perform the work required for the Project in accordance with the applicable contract documents.
2. the design of or defects in equipment supplied or provided by the Client for incorporation into the Project.
3. any cross-contamination resulting from subsurface investigations.
4. any damage to subsurface structures and utilities which were identified and located by the Client.
5. any Project decisions made by the Client if the decisions were made without the advice of the Engineer or contrary to or inconsistent with the Engineer's advice.
6. any consequential loss, injury or damages suffered by the Client, including but not limited to loss of use, earnings and business interruption
7. the unauthorized distribution of any confidential document or report prepared by or on behalf of the Engineer for the exclusive use of the Client.

The total amount of all claims the Client may have against the Engineer shall be strictly limited to the amount of any professional liability insurance the Engineer may have available for the payment of such claims. No claim may be brought against the Engineer in contract or tort more than two (2) years after the Services were completed or terminated under this engagement. The Engineer agrees to indemnify and save harmless the Client from losses arising out of errors, omissions or negligent acts of the Engineer in the performance of professional services under the agreement.

Documents

All documents prepared by the Engineer or on behalf of the Engineer in connection with the Project are instruments of service for carrying out the Project. The Engineer retains copyright for such instruments of service, which may not be used for any other project without the Engineer's written consent.

Field Services

Where applicable, field services recommended for the Project are the minimum necessary, in the sole discretion of the Engineer, to observe whether the work of a contractor retained by the Client is being carried out in general conformity with the intent of the Services. Any reduction from the level of services recommended will result in the Engineer providing qualified certifications for the work.

Termination and Successors and Assigns

Either party may terminate this engagement without cause upon thirty (30) days' notice in writing. On termination by either party under this paragraph, the Client shall forthwith pay to the Engineer its charges for the Services performed, including all reimbursable expenses and other charges incurred by the Engineer for this project. This agreement shall inure to the benefit of, and be binding upon, the parties hereto and their executors, administrators, successors and assigns, except as otherwise provided herein. Neither party may assign this agreement without the prior written consent of the other.

Initials ____ / ____



Schedule A

August 20, 2019 Revised October 15, 2019

Municipality of North Grenville
285 County Road 44, PO Box 130
Kemptville, Ontario
K0G 1J0

Attn: Karen Dunlop, Director of Public Works

**Re: Proposal for Civil Engineering Services
Civil Engineering Services for the completion of the residential development known as the Stonehaven Subdivision - Part of Lot 17, Concession 3, Municipality of North Grenville (Oxford), Ontario**

It is the understanding of Kollaard Associates that the responsibility for completion of the Stonehaven Subdivision has been assumed by the Municipality of North Grenville. The following proposal includes civil engineering services only. All other services necessary to declare this project complete (legal, surveying, etc.) are outside the scope of this proposal. Anticipated services can be described as follows:

A. REVISIONS TO THE APPROVED DRAINAGE PLAN

Topographical Surveying

Although we have topographical information on file for this site, further surveying is necessary in the immediate areas where modifications to the original drainage plan are proposed. Where access to private property is necessary, this will be arranged by municipal staff.

Storm Water Control Modelling and Reporting

It is proposed to make elevation changes to the original subdivision drainage plan to facilitate better drainage of lots in specific areas. The existing stormwater model for the subdivision must be adjusted accordingly and a new storm water management must be produced for review by North Grenville's peer reviewer, RVCA and MECP.

Revisions to Civil Drawing Set

Revisions have already been made to the drawings for the storm water management pond in Phase I. Revisions to the site grading and drainage plans upstream of the storm water management pond are proposed, which will impact buried utilities and existing culverts. Some of the plan and profile drawings will also require revisions.

Assistance with Public Meeting

Upon approval by RVCA and the township, the proposed revision to the drainage plan are to be presented to the affected home owners at a public meeting organized and chaired by the municipality. Kollaard staff will be present to answer technical questions. Where modifications are proposed on private property and where access to private property is required to complete the proposed modifications, it is the responsibility of the municipality to obtain the appropriate permission from the home owners.

**MECP ECA Amendment Application**

Upon approval by RVCA and the township, the stormwater information is submitted to the MECP in conjunction with an Environmental Compliance Approval amendment application for the storm water management system.

B. TENDERING AND CONSTRUCTION PHASE**Produce "For Construction" Set and Tender Specifications for All Proposed Works Required to Complete Subdivision Project****Following MECP Approval**

Drawings will be provided in .pdf format and made available for print. CAD drawings will be made available to the selected contractor for the areas to be modified only. All tender back end documents will be produced to assist with tender package prepared by the Municipality of North Grenville. A Class "D" estimate will also be provided.

Meetings, Response to Questions and Addenda as Required

We will co-chair an on-site pre-bid meeting with prospective contractors, which will be followed by a 2 week bidding period.

Estimated time allocated:

- Senior civil engineer: 8 hours
- Intermediate civil engineer: 8 hours

Contract Administration and Inspection Services**Following Selection of Contractor**

We have estimated that the proposed works could be completed within a 6 week period (not necessary in 6 consecutive weeks). During this time we will have technician on site full-time when necessary.

Estimated time allocated:

- Field Technologist: 160 hours

We also anticipate our engineering staff to participate in a start-up meeting and weekly progress meetings. Considerations for change orders, progress reports and completion certificates have been included.

Estimated time allocated:

- Senior civil engineer: 24 hours
- Intermediate civil engineer: 6 hours

Lab fees for asphalt testing (patches where culverts are to be lowered and Phase III top lift) are included. Disbursement: \$800.00

Final Certification, As-Built Survey and As-Built Drawing Set

Following completion, an as-built survey of the storm water management facility and drainage network will be completed. A final as-constructed set of drawings will be provided in .pdf only.



The Summary of Engineering Charges:

(all amounts are estimates based on anticipated requirements and do not include HST)

Task	Estimated Fees
A. REVISIONS TO THE APPROVED DRAINAGE PLAN	
Topographical Surveying	\$3,890
Storm Water Control Modelling and Reporting	8,700
Revisions to Civil Drawing Set	11,440
Assistance with Public Meeting	580
MECP ECA Amendment Application	3,880
Total Design Phase Fees	\$28,490
B. TENDERING AND CONSTRUCTION PHASE	
Construction Set and Tender Specifications	3,520
Meetings, Response to Questions and Addenda	2,000
Contract Administration and Inspection Services	18,510
Final Certification, As-Built Survey and As-Built Drawing Set	6,280
Total Construction Phase Fees	\$30,310
TOTAL ESTIMATED FEES (+ HST)	\$58,800

With respect to charges for services, they will be charged upon completion of various milestones, on a "time and expense" basis. The charges for any and all required engineering services will be based upon the following hourly rates:

Senior Civil Engineer	145.00/hour
Intermediate Engineer	105.00/hour
Field and Drafting Technologist	85.00/hour
Clerical	40.00/hour
	(+HST)

We would like to thank you for the opportunity for providing this estimate. We trust this letter provides sufficient information for your purposes and look forward to working with you on this project. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,
KOLLAARD ASSOCIATES, INC.

William Kollaard, P.Eng.

SCHEDULE B - TOLLING AGREEMENT

THIS TOLLING AGREEMENT is made as of the 6th day of November, 2019 (the “**Effective Date**”).

WHEREAS the Municipality of North Grenville (the “**Municipality**”) and Kollaard Associates Inc. (“**Kollaard**”) (the “**Municipality**” and “**Kollaard**” are collectively the “**Parties**”) may have an issue between them relating to services performed or partially performed by Kollaard for 1693965 Ontario Inc. AAA Stonehaven Estates for Phase 1 of Stonehaven regarding storm water drainage in that Phase (the “**Issue**”).

AND WHEREAS the Issue may be in dispute between the Parties.

AND WHEREAS at this time the Parties wish to avoid incurring the cost of commencing and defending a legal proceeding in respect of the Issue.

AND WHEREAS the Parties wish to avoid the expiry of any limitation period under the *Limitations Act 2002*, S.O. 2002, c. 24, Sched. B (the “**Limitations Act**”), any other applicable statute of limitations, any contractual time limitation on the commencement of proceedings, and any other time-related doctrine including waiver, estoppel or laches (each a “**Limitation Period**”).

AND WHEREAS this Tolling Agreement is intended to be an agreement in accordance with Section 22(3) of the *Limitations Act* and a business agreement in accordance with Section 22(5) of the *Limitations Act*.

NOW THEREFORE and in consideration of the mutual covenants contained in this Tolling Agreement and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. As of the Effective Date, and continuing until any termination of this Tolling Agreement in accordance with Section 2, the Parties agree to toll and suspend the running of all Limitation Periods solely in relation to the Issue as described above. The Parties agree that if a legal proceeding is ultimately commenced in respect of the Issue, no Party will plead a Limitation Period as a defence in respect of the time period in which this Tolling Agreement remains in effect. This Tolling Agreement in no way precludes, waives or resurrects any Limitation Period defence which may exist as of the Effective Date.
2. Section 1 of this Tolling Agreement will terminate upon any Party providing 30 days’ written notice of an intention to terminate to all other Parties, and upon the expiry of such 30 day notice any time provided for by a Limitation Period will recommence running as of such date. For greater certainty, the time during which the Parties agree to the suspension of Limitation Periods pursuant to this Tolling Agreement will not be included in the computation of any Limitation Period.

3. Notwithstanding anything contained herein, this Tolling Agreement will terminate eighteen (18) months from the Effective Date.
4. Save as set out herein, the Parties agree that the existence and fact of this Tolling Agreement will be held in confidence and will receive no publication either oral or in writing, directly or indirectly, by any party without the express written consent of the other.
5. The Parties agree that neither the existence nor the terms of this Tolling Agreement will be introduced as evidence in any legal proceeding, except to the extent that any of the issues addressed by this Tolling Agreement are at issue and a Party wishes to enforce this Tolling Agreement.
6. This Tolling Agreement does not constitute any acceptance or acknowledgement of any obligation or liability whatsoever by any of the Parties or a waiver of any claim or position by any of the Parties.
7. For the purpose of this Tolling Agreement, any notice will be considered valid if delivered to the following addresses by mail, courier, facsimile or electronic transmission:

Notice to the Municipality of North Grenville:

285 County Road 44, PO Box 130
Kemptville, Ontario
K0G 1J0

Attention: Chief Administrative Officer
Fax No. (613) 258-9620
Email: general@northgrenville.on.ca

Notice to Kollaard Associates Inc.:

Box 189, 210 Prescott Street, Unit 1
Kemptville, Ontario
K0G 1J0

Attention: William Kollaard, P.Eng.
Fax: (613) 258-0475
Email: bill@kollaard.ca

8. This Tolling Agreement constitutes the entire agreement between the Parties with respect to Limitation Periods and may not be modified except in writing and signed by all Parties.
9. This Tolling Agreement will not be binding on any Party unless signed by all of the other Parties, provided, however, that it may be executed in one or more counterparts, and each such counterpart, upon execution and delivery, will be considered to be a

complete original. All counterparts taken together will constitute one and the same instrument.

10. This Tolling Agreement will bind and inure to the benefit of the Parties and their respective agents, successors and assigns.
11. If any provision of this Tolling Agreement is determined to be invalid, void or unenforceable in whole or in part, such invalid, void or unenforceable provision will be severed from this Tolling Agreement and will be considered not to affect or impair the validity or enforceability of any other remaining provisions of this Tolling Agreement.
12. This Tolling Agreement will be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable in Ontario.
13. The Parties hereto acknowledge that each of them has had the benefit of counsel and has been offered an opportunity to review this Tolling Agreement with counsel. The Parties hereto further acknowledge that they have, through their respective counsel, participated in the preparation of this Tolling Agreement, and it is understood that no provision hereof shall be construed against any party hereto by reason of either party having drafted or prepared this Tolling Agreement.

IN WITNESS WHEREOF, the Parties have signed these presents by the hands of their duly authorized signing officers.

Municipality of North Grenville

By: _____

Nancy Peckford
Mayor
I have authority to bind the Corporation.

By: _____

Cahl Pominville
Director of Corporate Services / Clerk
I have authority to bind the Corporation.

Kollaard Associates Inc.

By: _____

William Kollaard
President
I have authority to bind the Corporation.