



Contract Agreement

To: Mr. Malcolm Ragan, Assistant Planner Town of Stow 380 Great Road Stow, MA 01775	Project: Active Adult Residential Location: Athens Street Stow, MA Date: July 27, 2022 Project No.: 22056
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SCOPE OF SERVICES

Ron Müller & Associates (the ENGINEER) is pleased to submit this Contract Agreement for traffic engineering and consulting services to provide a peer review of the traffic study for the proposed active adult residential community development to be constructed on Athens Street in Stow, Massachusetts. As proposed, the project consists of constructing 141 residential units with access via Athens Street

The review will focus on the capacity and safety of the site access driveways and nearby intersections to accommodate the increase in traffic from the development and will assess the adequacy of on-site circulation and site access design. The following documents will be reviewed as part of these services:

- *Traffic Impact Assessment; Proposed Active Adult Residential Community, Athens Street, Stow, MA; prepared by Vanasse & Associates, Inc.; April 19, 2022.*
- Site development plans to be supplied by the CLIENT.

The ENGINEER will provide the CLIENT with a letter report summarizing the findings of the peer review. It is understood that the ENGINEER will perform these services under the sole direction of the CLIENT. If it is determined during the review that clarifications or additional information are necessary for the completion of the review, the ENGINEER will contact the CLIENT to request such information.

A. Traffic Review

The ENGINEER will perform a professional and independent review of the above information. Specific tasks will include the following:

1. Conduct a site visit of the study area roadways and intersections to visually inspect operating conditions and intersection sight lines. This will be cross-referenced with information provided by the applicant in their traffic study.
2. Review the traffic study for technical accuracy and consistency with local and state standards for traffic impact assessment and general industry standards.
3. Review and comment on the following traffic issues and analyses:
 - Adequacy of traffic study area
 - Intersection traffic volume data and adjustments
 - Roadway and intersection safety
 - Trip generation methodology
 - Trip distribution and traffic assignment analysis
 - Intersection capacity analysis under Existing, No-Build and Build conditions
 - Conclusions reached by the applicant's traffic engineer on the impact of site generated traffic and the recommendations made to offset those impacts.
4. Evaluate and identify additional mitigating measures necessary to minimize the impact of site traffic on the study area locations, if any.
5. Review the site plan set to assess the adequacy of on-site circulation and site access design.
6. Prepare a letter report detailing the findings of the review.
7. Review one (1) round of responses by the applicant's traffic engineer to the above comment letter and prepare a final review letter listing any remaining issues to be addressed, if any.

B. Meetings and Follow-On Services

Meetings with the development team and town officials as well as public hearing attendance and assistance in technical or procedural aspects of the project may be required as the project proceeds. Services for meetings include coordination, preparation, travel, attendance, supporting graphics (when required), and documentation in the form of meeting notes (when requested). **Such services will be provided at the request of the**

CLIENT and will be billed in accordance with the hourly rates in Attachment A, or the rates in effect at the time the work is performed. A minimum of three (3) hours will be billed for any public hearing attendance, whether via virtual or in-person attendance. For the purpose of this Agreement, an initial upset limit is included in this contract that will not be exceeded without prior authorization by the CLIENT.

FEES & SCHEDULE

The following table summarizes the costs, schedule, and payment method of the tasks described in this Agreement. The schedule begins on the date written authorization to proceed is received. The schedule is also subject to the timely delivery of information to be provided to the ENGINEER and is exclusive of delays caused by the review of interim products.

Tasks	Labor Fee	Schedule	Payment Method
A. Traffic Review	\$4,500	3-4 Weeks	Lump Sum
B. Meetings	\$1,000	As Needed	Hourly
TOTAL	\$5,500		

Direct expenses incurred in conjunction with the performance of the work as described are included in the above fees.

MISCELLANEOUS

1. It is understood that all information the CLIENT has relative to the project will be made available to the ENGINEER so that we may properly review the project area. The ENGINEER will rely upon the accuracy and completeness of CLIENT-furnished information in connection with the performance of services under this Agreement.
2. Fees for services as described herein will be paid to the ENGINEER by the CLIENT as the work progresses, based upon the presentation of a bi-weekly statement of services by the ENGINEER. (See attached "General Terms and Conditions.")
3. Nothing contained herein shall obligate the ENGINEER to prepare for, or appear in, arbitration or litigation on behalf of the CLIENT or to undertake additional work on matters

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not included herein, except in consideration of additional compensation mutually agreed upon.

4. Unless otherwise provided for herein before, the attached "General Terms and Conditions" are incorporated herein by reference, and shall be considered as part of this Agreement.

We are prepared to initiate work and complete the tasks as described after receipt of the signed Agreement. Written authorization must be received before work can begin. If you are in agreement with the scope of services, fees, and Terms and Conditions of Agreement, please sign below and return to our office. If you should have any questions, please feel free to contact me.

Thank you for the opportunity to propose on this project.

Sincerely,

Ron Müller & Associates



Ronald Müller, P.E.
Principal

Attachments

Accepted By: **Town of Stow**

Signature: _____

Name: _____

Title: _____

Date: _____

GENERAL TERMS AND CONDITIONS

1. EMPLOYMENT OF THE ENGINEER

- 1.1. The CLIENT agrees to engage the ENGINEER to perform the Scope of Services set forth herein as part of this Contract Agreement, and the ENGINEER agrees to perform those services as a representative of the CLIENT.

2. SCOPE OF SERVICES

- 2.1. The Scope of Services to be performed under this Agreement, along with the definition of specific tasks and limitations are attached hereto and made part of this Agreement.

3. PERIODS OF SERVICE

- 3.1. The CLIENT and the ENGINEER are aware that many factors outside the ENGINEER's control may affect the ENGINEER's ability to complete the services described in the Scope of Services within the periods of time set forth in the Agreement. The ENGINEER will perform these services with reasonable diligence and expediency consistent with sound professional practices.
- 3.2. Should additional services be added to the Scope of Work by amendment to this Agreement, the period of service shall be specified in each amendment.
- 3.3. The ENGINEER shall not be responsible for failure to perform or for delays in the performance of work under this Agreement, which arise out of causes beyond the control and without the fault or negligence of the ENGINEER.

4. CHANGE OF WORK

- 4.1. The CLIENT may request at any time, changes to the Scope of Services. Such changes, including any increase or decrease in the compensation, which are mutually agreed upon by the CLIENT and the ENGINEER, shall be incorporated as written amendments to this Agreement.
- 4.2. If the ENGINEER is of the opinion that any work it has been directed to perform is beyond the Scope of Services and constitutes additional services, the ENGINEER shall promptly notify the CLIENT in writing. Such changes mutually agreed upon by the CLIENT and the ENGINEER shall be incorporated as written amendments to this Agreement. The ENGINEER will perform these additional services after such amendment is duly executed by both parties.

5. INDEPENDENT CONSULTANT

- 5.1. It is understood and agreed that the ENGINEER shall perform all services under this Agreement as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

6. INDEMNIFICATION

- 6.1. Each party agrees, to the fullest extent permitted by law, to indemnify and hold harmless the other party, its officers, directors, employees, and subconsultants against all damages, liabilities, or costs, including reasonable attorney's fees and defense costs, to the extent caused by either party's negligent acts in connection with the project and that of its contractors, consultants, or subconsultants or anyone for whom the parties are legally liable. Neither the CLIENT nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

7. RISK ALLOCATION

- 7.1. In recognition of the relative risks and benefits of the Project to both the CLIENT and the ENGINEER, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of the ENGINEER and ENGINEER's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the ENGINEER and ENGINEER's officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed the ENGINEER's total fee for services rendered on this Project or \$50,000, whichever is higher. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

8. TERMINATION

- 8.1. Either party may terminate this Agreement for cause by giving the other party not less than seven (7) calendar days' written notice.
- 8.2. In the event of termination by either party, the CLIENT shall, within fifteen (15) calendar days of termination, pay the ENGINEER for all services rendered and all reimbursable expenses costs incurred by the ENGINEER up to the date of termination, including those expenditures necessary for the orderly termination of services, and all costs of settling or discharging outstanding obligations incurred by the ENGINEER with respect to the terminated services and work under this Agreement.

9. OWNERSHIP OF INSTRUMENTS OF SERVICE

- 9.1. All reports, drawings, computer files, field data, notes and other documents and instruments prepared by the ENGINEER as instruments of service under this agreement shall remain the property of the ENGINEER. The ENGINEER shall retain all common law, statutory and other reserved rights, including without limitation, the copyrights thereto.

10. SUBCONSULTANTS

- 10.1. Services to be performed by subconsultants under the Agreement shall not commence prior to receipt of written approval of the subconsultant by the CLIENT. Such approval shall not be unreasonably withheld and the CLIENT agrees to inform the ENGINEER of its decision within three (3) days of notification of the selected subconsultant(s). Schedule delays resulting from CLIENT's failure to act in a timely manner in approving recommended subconsultants will be the responsibility of the CLIENT.

11. METHOD OF PAYMENT

- 11.1. The ENGINEER shall submit to the CLIENT bi-weekly invoices for services performed. Each invoice shall be rendered in accordance with the ENGINEER's standard invoicing practice and shall contain the amount due for the current period and any past-due amounts.
- 11.2. Reimbursable expenses as described within the Scope of Services and including subconsultant fees will be invoiced at a multiplier of 1.1 times the actual cost of the expenses. Reimbursement for mileage will be at \$0.55 per mile, or the prevailing IRS rate at the time of travel, whichever is highest.
- 11.3. CLIENT agrees to make payments to the ENGINEER within twenty (20) days of the date of invoice. A financing charge of 1-1/2 percent per month, from date of invoice, will be added to all amounts more than thirty (30) days past due. If the CLIENT fails to make payments when due or otherwise is in breach of this Agreement, the ENGINEER may suspend performance of services under this Agreement, after giving seven (7) days written notice to the CLIENT. The ENGINEER shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension caused by any breach of this Agreement by the CLIENT. Upon payment in full by the CLIENT of all amounts due to the ENGINEER and/or any of its sub consultants, the ENGINEER shall resume services under this Agreement and the time schedule and compensation shall be equitably adjusted to compensation for the period of suspension.
- 11.4. Should it become necessary to use legal or other resources to collect any or all moneys rightfully due for services rendered under this Agreement, ENGINEER shall be entitled to full reimbursement of all such costs as part of this Agreement.

12. CERTIFICATION OF NON-SEGREGATED FACILITIES

- 12.1. The ENGINEER certifies that he does not maintain, and will not maintain nor provide for his employees, facilities that are segregated on the basis of race, color, religion, or national origin.

13. ASSIGNMENT

- 13.1. Neither party to this Agreement shall transfer, sublet, or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due, or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by the ENGINEER as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

14. MISCELLANEOUS PROVISIONS

- 14.1. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- 14.2. The CLIENT shall not request affidavits, certifications, or guarantees that would require expertise, knowledge, or services beyond the scope of this Agreement and/or the qualifications or competence of ENGINEER. The CLIENT also agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such affidavits, certifications, or guarantees.
- 14.3. Since the ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, the ENGINEER's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications. They represent the ENGINEER's best judgment as an experienced and qualified professional engineer. The ENGINEER cannot and does not guarantee that proposals, bids, or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phase, the CLIENT wishes greater assurance as Total Project Construction Costs, CLIENT shall employ an independent cost estimator.
- 14.4. Dispute Resolution. Any claim or dispute between the Client and the ENGINEER shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator(s). Unless otherwise specified, this agreement shall be governed by the laws of the principal place of business of the ENGINEER.

15. EXTENT OF AGREEMENT

- 15.1. In entering into this Agreement, CLIENT has relied only upon the representations (a) set forth in this Agreement; or (b) implied in law. No verbal warranties, representations, or statements shall be considered as part of this Agreement or a basis upon which the CLIENT relied in entering into this Agreement. No statements, representations, warranties or understandings, unless contained herein, exist between the CLIENT and the ENGINEER.
- 15.2. This Agreement represents the entire agreement between the CLIENT and ENGINEER and supersedes all previous negotiations, proposals, and representations. This Agreement may be amended only by a written amendment signed by both the CLIENT and ENGINEER.

Attachment A

Hourly Rates – 2022

Principal/Chief Engineer.....	\$190.00
Project Manager.....	\$160.00
Project Engineer/Designer.....	\$130.00
Engineer.....	\$100.00
Administrative.....	\$70.00
Expert Testimony.....	\$250.00