



PARTNERS IN  
ENGINEERING

September 17, 2020

Fourteen Island and Mink Lakes Watershed Association  
P.O. Box 105  
Hartington, ON  
K0H 1W0

**Attention: Mary Rae, Director and President**

Dear Ms. Rae:

**Re: Proposal for Engineering Services  
Fourteen Island Lake Dam  
Structural Inspection and Topographic Survey  
Township of South Frontenac, Ontario  
D.M. Wills Project No. 20-5394**

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D.M. Wills Associates Limited (Wills) is pleased to have the opportunity to submit this proposal for engineering services related to the Fourteen Island Lake Dam located in the Township of South Frontenac, Ontario, on Lot 3, Concession 11, Geographic Township of Portland.

Based on our discussions/correspondence with you, the site visit to the dam and the two (2) dam inspection reports provided, we understand that there are issues associated with the condition of the dam that require assessment and repair.

Based on our knowledge of the site and the current condition of the dam, we recommend that the engineering work be completed in two (2) separate phases.

Phase 1 would involve the completion of a structural inspection and topographic survey, followed by the preparation of a report outlining the scope of the recommended repairs as well as the Ministry of Natural Resources and Forestry (MNRF) permitting requirements. The feasibility of adding a rocky ramp to the structure and its implications would also be discussed.

Phase 2 would involve the completion of the required engineering analyses, the preparation of the detailed design drawings, applications for permits and approvals, tendering and construction inspection/contract administration. The complete scope of work for Phase 2 will only be known once Phase 1 is completed. A separate fee proposal will be provided for Phase 2 once Phase 1 is completed and the Phase 2 requirements are better understood.

D.M. Wills Associates Limited  
150 Jameson Drive, Peterborough, Ontario, Canada K9J 0B9  
P. 705.742.2297 F. 705.748.9944 E. wills@dmwills.com





Mary Rae  
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### **Scope of Work – Phase 1: Structural Inspection and Topographic Survey**

Wills shall visit the dam and undertake a detailed structural inspection as well as a topographic survey. The dam inspection will be documented using the standard MNRF Dam Inspection Form. The inspection will identify deficiencies with the structure and make recommendations for the repairs that should be completed. The dam inspection report, complete with site photographs and recommendations, will be submitted following the analysis of the information gathered from the site visit.

Wills shall prepare a letter-brief outlining the recommended works as well as the estimated costs and MNRF permitting requirements. This document will be the basis for scoping the Phase 2 work plan.

The topographic survey data will be processed and a base plan will be prepared. This information will be further used as part of Phase 2 of the project.

### **Fees and Invoicing**

Our fee for the above noted services will be \$8,510.00 excluding applicable taxes. No additional work will be completed without written authorization from the client. The specified fee does not include additional meetings/consultation with the MNRF. These services can be provided on a time and expense basis, if required.

The invoice for Phase 1 will be submitted following the submission of all deliverables. Payment will be due upon receipt. Any invoices outstanding beyond 30 days may be subject to interested charges at a rate of 1.5% per month.

### **Closing**

We trust that this information is suitable for your purposes at this time. If you are in agreement with this proposal, please fill out, sign and return the attached Standard Terms and Conditions to our office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Green'.

David Green, P.Eng.  
Assistant Manager,  
Water Resources Engineering

A handwritten signature in blue ink, appearing to read 'Sebastian Tejada'.

Sebastian Tejada, M.Sc.  
Project Manager

DG/ST/kr

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**D.M. Wills Associates Limited**  
**Standard Terms and Conditions**

**This Agreement**, made this 17 day of September, 2020 by and between **D.M. Wills Associates Limited** (hereinafter called "Wills"), located at 150 Jameson Drive in Peterborough, Ontario and Fourteen Island and Mink Lakes Watershed Association (hereinafter called "Client"), address: P.O. Box 105, Hartington, Ontario, K0H 1W0.

The parties agree as follows:

The Contract Documents (hereinafter called "Contract Documents") for this Agreement consist of these Wills Standard Terms and Conditions, any Work Order(s) (the form of which is attached as **Exhibit A**) issued hereunder, any proposals, attachments, change orders, exhibits, specifications and/or drawings, attached to or referenced in the Work Order, and all modifications issued after the execution of this Agreement.

## 1.0 Services

Wills agrees to perform the Services as set forth in the Work Order (the "Services"), subject to the Terms and Conditions stated herein. The Client shall designate in writing a person to act as the Client's representative with respect to the Services. Such person shall have complete authority to transmit instructions, receive information, and interpret and define the Client's policies and decisions with respect to the Services. Wills is authorized to rely fully on such instructions and information provided by such person.

## 2.0 Payment

The Client agrees to pay Wills for the Services such amount as indicated in the Work Order(s).

Invoices will be submitted upon completion of milestones or on a monthly basis for services performed and expenses incurred during the period, unless otherwise agreed. Payment will be due upon receipt. Interest will be added to accounts in arrears net 30 days of invoice date at the rate of one (1) percent per month (12 percent per annum) or the maximum rate allowed by law, whichever is less, of the outstanding balance. The Client will reimburse Wills for all reasonable legal fees, court costs, and other costs incurred to effect or ensure collection from the Client.

When Wills engages the services of sub-consultants or contractors to participate in a project, Wills shall include the sub-consultants' or contractors' invoiced amount plus a service charge of 5% of the value of the sub-consultant or contractor work in the invoice to the Client.

If payment of invoices by the Client is not made as required in this Agreement, Wills may, at any time and at its option, suspend further work entirely or suspend further work until the Client restores payment to a current basis and, if Wills desires, provides advance payments for further Services.



If Wills or the Client terminates this Agreement prior to the performance in full of Wills' Services, the Client shall remain fully liable for, and shall promptly pay Wills for, all Services and expenses incurred by Wills to the date of termination.

When Wills requires the payment of a retainer before commencing work, the value of said retainer shall be applied to the final invoice issued for the work.

### **3.0 Termination**

These standard terms and conditions shall apply to the specific scope of work outlined in the Work Order and shall cease to be in effect upon the completion of the work outlined in the Work Order.

This Agreement, and the work contemplated herein, may be terminated by either party prior to the completion date as a result of any of the following:

- a) The occurrence of an Unexpected Contingency as defined in Section 13, where Wills does not elect either to renegotiate the terms of this Agreement or to suspend performance during the Unexpected Contingency;
- b) The breach by the other party of any term of this Agreement, including, but not limited to, failure by the Client to remit payment in accordance with Section 2; or
- c) The frustration of this Agreement.

#### **3.1 Notice of Termination**

This Agreement may be terminated by either party upon 30 days' written notice to the other party. Either party may terminate this Agreement upon 10 days' written notice to the other party if the other party is in default of its obligations under this Agreement. The defaulting party shall have five (5) days to cure or take reasonable steps towards curing such default.

#### **3.2 Effect of Termination**

In the event this Agreement is terminated for whatever reason, the Client shall forthwith pay to Wills all amounts, including all expenses and other charges payable as at the date of termination as set forth in the Work Order(s), together with all obligations incurred or committed to by Wills in providing the Services or as a result of the termination of this Agreement.

In the event of termination, this Agreement shall become null and void and have no effect and any liability on the part of Wills, their officers, directors, employees, owners, agents, contractors, sub-consultants, successors and permitted assigns in respect of this Agreement, except for liability of a party pursuant to Section 2, hereof and except that the provisions of Section 2 shall remain applicable.

### **3.3 Release of Material**

In the event of termination, Wills shall provide all material related to the work file once, and only once, all outstanding accounts have been paid in full in accordance with Section 2. Upon project termination, Wills bears no liability at the point of undertaking by the client, another consultant or contractor.

### **4.0 On-Site Services**

When Wills' Services are provided on an active job site, it is understood that the Client and/or the Client's contractors will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work, and compliance with Occupational Health and Safety regulations in the jurisdiction in which the Services are being performed, and that these requirements will apply continuously and not be limited to normal working hours.

Any monitoring of the Client's contractors' performance conducted by Wills' personnel does not include review of the adequacy of the contractors' safety measures in, on, or near the work site.

Additionally, unless included within the scope of the Services with the Client, Wills takes no responsibility for budgetary or schedule matters associated with the contractors' performance other than for contractors retained directly by Wills, nor does Wills take any responsibility for the adequacy and reliability of any procedure or analyses performed by the Client's contractor(s).

### **5.0 Access**

The Client shall furnish Wills and its sub-consultants and contractors with access and right of entry onto any premises that are subject to the Work Order, and if such premises are not owned by the Client, the Client represents and warrants that it has full permission to allow Wills and its sub-consultants and contractors onto the premises. Such access, right of entry or permission shall be sufficient to enable the performance by Wills of the Services.

Wills shall take reasonable precautions to minimize damage to the land or premises from its operations, but Wills has not included in its fee the cost of the repair of damage that may result from its operations. If Wills is required to restore the land or premises to their former condition, the cost will be added to Wills' fee and paid by the Client.

### **6.0 Underground Structures**

It is the responsibility of the Client to provide Wills with assistance in locating underground structures and utilities in the vicinity of any construction, exploration or investigation. If neither party can confirm the location, the Client agrees to accept all liabilities and costs associated with the repair, replacement or restoration of any damage caused by Wills or its sub-contractor(s) in the performance of the Services.

Wills shall also rely upon third-party sources in order to determine the existence and location of any underground structures and utilities of any kind. The Client hereby acknowledges that Wills may rely on such third party advice, so long as such third party is a reasonable source for such information, without any requirement that Wills shall make independent evaluation or investigation of such underground structures and utilities. In the event that the information supplied by third parties is incorrect, the Client acknowledges that Wills shall not be responsible for any damage or any consequential damage done to any such subsurface structures or utilities.

The Client agrees to indemnify, defend and hold harmless Wills and its present and future officers, directors, employees, owners, agents, contractors, sub-consultants, successors and permitted assigns from and against all claims, damages, losses, expenses, fines or penalties, whether direct, indirect, economic, consequential or otherwise, whether or not relating to bodily injury, illness, death, property damage or any other source, including but not limited to fees and charges of lawyers and investigative and discovery costs, court and arbitration costs, arising out of, related to, or based upon damage to or difficulty in locating underground structures and utilities.

Special risks are inherent and occur whenever engineering or related disciplines are requested to identify underground structures or sub-surface conditions. A comprehensive sampling and testing program implemented in accordance with a professional standard of care may fail to detect certain conditions. The limit of refusal, environmental, geological, geotechnical, geochemical, hydrogeological and all other conditions, Wills or its sub-consultant interprets to exist between exploration points, may differ from those that actually exist.

## **7.0 Reliance on Client**

The Client shall be obligated to furnish to Wills all existing studies, reports and other available data, and work done by the Client or by other contractors retained by the Client pertinent to the Services, or reports done by others for which the Client has received reliance (such information, materials and work are referred to herein collectively as the "Client Information"). Wills shall be entitled to rely upon all such information and work in performing the Services.

During the course of this work, Wills may also rely on certain information provided by government officials (at any level) and other parties and on information contained in the files of government agencies available to Wills at the time of the study (such information is referred to herein as the "Official Information"). Wills shall not attempt to independently verify, and shall have no responsibility for, the accuracy, completeness, workmanship or any other aspect of the Official Information and the Client Information, except where explicitly as part of the Work Order. Wills shall not begin to investigate or verify any works prior to receiving written authorization to proceed or enter the property.

## 8.0 Ownership of Documents and Samples

All documents which Wills prepares, including, without limitation, drawings, estimates, analyses, specifications, field notes, and data (including any copies thereof) constitute the intellectual property of Wills and all copyrights relating thereto are and remain the property of Wills. Wills shall retain all pertinent records relating to the Services for a period of seven (7) years following submission of a report by Wills, during which period the records will be made available to the Client at all reasonable times after full payment of Wills' fees and expenses.

If it is necessary for the performance of the Services for Wills or any sub-contractor to take samples of any sort, including, without limitations, samples of soil, rock, or water, such samples shall remain the property of the Client although they are being handled, transported and disposed of by Wills or such sub-consultant or contractor. The cost for all such transport, handling and disposal shall be the responsibility of the Client.

## 9.0 No Third-Party Reliance

All Services are provided solely for the benefit of the Client and not for the benefit of any other party. No party other than the Client shall be entitled to rely on the Services or any information, documents, records, data, interpretations, advice or opinions or other materials given to the Client by Wills in the performance of the Services. The Services relate solely to the specific project for which Wills has been retained under this Agreement and shall not be used or relied upon by the Client or any third party for any variation or extension of this project, any other project or any other purpose. Any unpermitted use by the Client or any third party shall be at the Client's or such third party's own risk.

The Client agrees to indemnify, defend and hold harmless Wills and its present and future officers, directors, employees, owners, agents, contractors, sub-consultants, successors and assigns from and against all claims, damages, losses, expenses, fines or penalties, whether direct, indirect, economic, consequential or otherwise, whether or not relating to bodily injury, illness, death, property damage or any other source, including but not limited to fees and charges of lawyers and investigative and discovery costs, court and arbitration costs, arising out of, related to, or based upon, any unpermitted use of the Services or of any information, documents, records, data, interpretations, advice or opinions or other materials given to the Client by Wills.

## 10.0 Standard of Care

Wills agrees to use reasonable care, skill, competence and judgment in the performance of its Services hereunder which are generally consistent with professional standards for individuals providing similar services at the same time, in the same locale, and under like circumstances.



Wills and any sub-consultant will endeavour to alert the Client regarding any matter they become aware of and believe requires immediate attention to help protect public health and safety. If the client decides to disregard Wills' recommendation(s), Wills and its sub-consultants have the right to terminate this agreement without penalty or recourse from the owner.

## 11.0 Limitation of Liability and Indemnification

Each party agrees to indemnify, defend and hold harmless the other party and its present and future officers, directors, employees, owners, agents, contractors, sub-consultants, successors and assigns from and against all claims, damages, losses, expenses, fines or penalties, whether direct, indirect, economic, consequential or otherwise, whether or not relating to bodily injury, illness, death, property damage or any other source, including but not limited to fees and charges of lawyers and investigative and discovery costs, court and arbitration costs, arising out of, related to, or based upon the gross negligence or willful misconduct of the indemnifying party or a breach of this Agreement by the indemnifying party.

The Client shall be obligated to promptly report any failure by Wills to conform to the agreed standard of care in writing to Wills within three (3) months after completion of the Services, whereupon Wills shall, at its option, correct such nonconformity or reimburse the Client the price of the nonconforming work provided. This shall constitute the exclusive remedy of the Client under this Agreement.

Wills and its sub-consultants and contractor(s) shall in no event be liable to the Client, any successors in interest or any beneficiary or assignee for punitive, consequential, or indirect damages arising out of this Agreement or any breach thereof, whether based upon loss of use or lost profits, revenue or interest, or otherwise, whether or not such loss or damage is based on contract, warranty, negligence, indemnity or otherwise.

Notwithstanding anything to the contrary contained in this Agreement, the aggregate liability of Wills for any and all claims, damages, injuries, losses (including reasonable lawyers' fees and legal costs) and other liabilities of any kind under this Agreement, including, without limitation, for negligence, professional negligence, gross negligence, and breach of contract, fundamental or otherwise, shall not exceed the lesser of Wills compensation under this Agreement or \$50,000.

Wills shall neither create nor contribute to the creation of any hazardous, radioactive, toxic, pollutant, or otherwise dangerous substance or condition ("pollutants"), at the site, and our compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. Therefore, to the full extent permitted by law, the Client agrees to indemnify, defend and hold harmless Wills and its present and future officers, directors, employees, owners, agents, contractors, sub-consultants, successors and permitted assigns from and against all claims, damages, losses,



expenses, fines or penalties, whether direct, indirect, economic, consequential or otherwise, whether or not relating to bodily injury, illness, death, property damage or any other source, including but not limited to fees and charges of lawyers and investigative and discovery costs, court and arbitration costs, arising out of, related to, or based upon a release, suspected release, removal or investigation of pollutants, or removal or investigation of, or remedial action taken because of, the release or suspected release of pollutants, or the assessment of fines or penalties related to pollutants.

## 12.0 Disclaimer

The Client agrees that except as expressly provided in this Agreement, Wills makes no representation or warranty of any kind whatsoever, oral or written, expressed or implied; and all implied warranties of merchantability and fitness for a particular purpose, are hereby disclaimed.

## 13.0 Unexpected Contingencies

- a) If (i) Wills is unable to commence or complete the Services within the time set forth in this Agreement because of any Unexpected Contingency (as defined in subsection (b)) below, or (ii) Wills' performance of any covenant, agreement, condition or term of the Agreement is prevented, delayed, made impossible or otherwise interfered with by an Unexpected Contingency, then, at Wills' option, Wills shall either (a) terminate the Agreement in accordance with Section 3 above and be paid by the Client as provided in Section 2 above, (b) renegotiate the Terms and Conditions set forth in the Agreement on a basis satisfactory to Wills and the Client, or (c) suspend performance during the continuance of any Unexpected Contingency and for a reasonable time thereafter and extend the time for its performance of the Services. Wills shall not be liable under any circumstances to the Client for any failure of Wills to perform the Services to the extent that such failure is caused in whole or in part by any Unexpected Contingency.
- b) For purposes of this Agreement, an "Unexpected Contingency" shall mean (i) any consequence arising out of inaccurate information, advice, or instructions provided by the Client or any third party, (ii) strikes, walkouts, riots, unavoidable accidents, inclement weather, acts of God or a public enemy or unavailability of transportation, (iii) any lawful order issued by a government authority with jurisdiction at the location of the Services, (iv) any unforeseen or unexpected contingency, the non-occurrence of which was expressly or impliedly assumed in the Agreement, or (v) any other cause beyond Wills' reasonable control.

## 14.0 Disputes

All disputes arising out of or in connection with this Agreement or the interpretation or breach thereof ("Disputes") shall be referred by either party to the parties' respective senior representatives, those with signing authority for such firm, for such purpose, who shall meet and attempt in good faith to resolve the Dispute within a period of not more than twenty- one (21) days from the date of submission.

If the parties' representatives are unable or unwilling to resolve the Dispute within such twenty-one (21) days, then the parties agree to proceed to mediation under mediation rules agreed by the parties at the time, and to conclude such mediation within the time period provided in such rules; provided that no mediation shall take place if the parties cannot agree upon the mediation rules at the time and further provided that the time period for the mediation shall not exceed thirty (30) days after the appointment of a mediator unless otherwise agreed. Mediation shall take place at the offices of Wills. Each party shall pay its own costs, plus an equal share of the cost of the mediator and mediation facilities, if any.

If the Dispute between the parties to this Agreement cannot be resolved by mediation within thirty (30) days after the appointment of a mediator, then the Dispute shall be referred to and finally resolved by arbitration, in accordance with the *Arbitration Act, 1991*, SO 1991, c17, as amended. The place of arbitration shall be the city in which the Wills office providing the Services is located. In no event shall the demand for arbitration be made after the date when institution of legal, equitable, or other proceedings based on such claim, dispute or other matter in question would be barred by the limitation period set out in Section 11.

## 15.0 Independent Contractor Status

Wills is an independent contractor and shall not be regarded as a partner, employee or agent of the Client for any purpose.

## 16.0 Performance Time Period



The dates of performance shall be interpreted as a material consideration in this Agreement; however, in no event shall dates be constructed as falling within the meaning of "time is of the essence".

## 17.0 Miscellaneous

- a) The headings in this Agreement are for convenience and shall not affect the construction hereof.
- b) This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- c) This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof and may not be amended except in writing signed by both parties.
- d) All terms and provisions shall be binding upon and ensure to the benefit of and be enforceable by the parties and their successors and assigns, provided that no party may assign its rights or obligations hereunder without prior written consent of the other party.
- e) In the event that any provision of this Agreement is found to be void, illegal or unenforceable by a court of competent jurisdiction, such finding will not affect any other provision of this Agreement. If any provision of the Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only as broad as is enforceable.



**In Witness Whereof**, the parties hereto have caused this Agreement to be duly executed on the date set forth in the Work Order(s).

D.M. Wills Associates Limited		Client	
		<b>Client Name:</b>	Fourteen Island and Mink Lakes Watershed Association
<b>By:</b> Signature		<b>By:</b>	
		(Signature of Authorized Agent of the Client)	
<b>Print Name:</b>	Sebastian Tejada, M.A.Sc.	<b>Print Name:</b>	
<b>Title:</b>	Water Resources Project Manager	<b>Title:</b>	
<b>Date:</b>	September 17, 2020	<b>Date:</b>	
<b>Witness:</b> Signature		<b>Witness:</b> Signature	
<b>Print Name:</b>	David Green, P.Eng.	<b>Print Name:</b>	
<b>Corporate Seal</b> (if required)		<b>Corporate Seal</b> (if required)	



<b>D.M. Wills Associates Limited</b> <b>Exhibit A – Work Order</b>			
<b>Project Name:</b>	Fourteen Island and Mink Lakes Watershed Association		
<b>Project Number/Phase:</b>	20-5394	<b>Date:</b>	September 17, 2020
<b>D.M. Wills Project Manager:</b>	Sebastian Tejada, M.A.Sc.		
<b>Client Name:</b>	Fourteen Island and Mink Lakes Watershed Association		
<b>Client Address:</b>	P.O. Box 105, Hartington, Ontario, K0H 1W0.		
<b>Location of Services:</b>	Same as above		
<b>Scope of Work described as follows or as described in the attached proposal:</b>			
Please refer to letter proposal dated September 17, 2020.			
<b>Attachments:</b>			
Letter proposal dated September 17, 2020.			
<b>Retainer Amount:</b>			
<b>Contract Price:</b> \$8,510.00 excluding applicable taxes			
<b>Written Format:</b> Eight thousand, five hundred and ten dollars, excluding applicable taxes			
<b>Schedule:</b>	<b>Start Date:</b>	<b>Completion Date:</b>	
<b>Subject to Terms &amp; Conditions of D.M. Wills Associates Limited's Agreement with Client Dated:</b> September 17, 2020			<b>Not Applicable:</b> <input type="checkbox"/>
<b>D.M. Wills Associates Limited:</b>			
		<b>Date:</b> September 17, 2020	
<b>Signature (above)</b>			
Sebastian Tejada, M.A.Sc., Water Resources Project Manager			
<b>Print Name and Title (above)</b>			
<b>Client:</b>			
		<b>Date:</b> _____	
<b>Signature (above)</b>			
<b>Print Name and Title (above)</b>		<b>Email Address and Telephone Number</b>	
<b>Both Parties understand what is being signed and have had the opportunity to review the Agreement with their Solicitors.</b>			