

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

**AGREEMENT FOR PURCHASE AND INSTALLATION OF MOTORIZED DRUM
GATE HOIST TO REPLACE EXISTING MOTORIZED DRUM HOIST**

This Agreement (hereinafter "the Agreement") by and between the **Town of Lake Lure, North Carolina (hereinafter "the Town")** with an office at 2948 Memorial Highway, Lake Lure, NC 28746 and Engineered Systems, Inc., a Corporation organized and existing pursuant to the laws of South Carolina and registered in North Carolina as ESI of SC, Inc. (License # 042-461781), with its principal offices located at 1121 Duncan Reidsville Road, Duncan, SC 29334 and local office located at 12 Glen Willow Drive, Arden, NC 28714 (hereinafter referred to as ESI) (hereinafter collectively "the Parties").

WHEREAS, the Town of Lake Lure owns and operates Lake Lure Dam and its associated impoundment (Lake Lure); and,

WHEREAS, the Town also owns and operates a hydroelectric generating station located within the dam, and appurtenances which include a Penstock and concrete Intake Structure, which includes cylindrical gate at the top (hereinafter referred to as the Drum Gate); and,

WHEREAS, a motorized hoist mechanism is attached to the Drum Gate to raise and lower it over the top of the intake, the purpose of which is to control flow from the intake structure into the Penstock; and,

WHEREAS, the Town wishes to replace the motorized hoist mechanism on a like-for-like basis and which the Town considers to be a maintenance activity not requiring a permit from the NC Dam Safety and which in fact does not require permitting from Dam Safety; and,

WHEREAS, ESI has submitted a quote for a new ten (10) ton Drum Gate Hoist of equal or better strength of the existing hoist, inclusive of installation and testing, totaling \$79,892.50; and

WHEREAS, ESI has indicated that completion time of the project from the date of the Notice to Proceed is approximately 15-16 weeks (14 weeks for delivery of hoist to the job site) from the date of the Notice to Proceed and approximately one week to install the hoist and provide start-up services; and,

WHEREAS, ESI performs this work when the lake is at normal pool level due to the fact that ESI will utilize a barge to complete the installation;

NOW, THEREFORE, in consideration of the mutual agreements and promises herein expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties contract, covenant, and agree as follows:

1. SCOPE OF SERVICES.

ESI shall provide the materials and perform the Services set forth in its proposal, attached hereto as Exhibit A, which consists of supplying a new Cable King hoist, delivery, setup and use of barge for installation of hoist, and mileage and labor for two hoist technicians to be onsite from beginning of project through completion and startup and testing of hoist. ESI shall provide all necessary manpower, tools, equipment and materials to perform the work set forth in Exhibit A. The Drum Gate shall be supported by cribbing during construction and shall be removed at the completion of construction. Startup and testing shall consist of test runs of raising and lowering the Drum Gate, performed in the presence of Town personnel. The project shall be deemed complete when the designated representative of the Town signs off on the proper operation of the hoist, the barge is disassembled and ESI departs Town premises.

2. TERM OF AGREEMENT.

Upon execution by the Parties, this Agreement shall have the Effective Date as set forth below and shall remain in force until all obligations related to the Services have been fulfilled and the equipment is fully installed and functioning properly, unless sooner terminated as provided herein. The parties agree that time is of the essence and that the gate hoist shall be installed and operational within sixteen (16) weeks from the date of the Notice to Proceed, which the Town shall provide in writing.

3. ENTIRE AGREEMENT.

3.1 The Agreement between the Town and ESI shall consist of this Agreement, and Exhibit A, attached hereto and incorporated herein by reference. Together these elements will constitute the entire Agreement, superseding all prior written or oral negotiations, statements, representations, correspondence; and/or agreements. The parties must mutually acknowledge any changes to this Agreement in writing. All work performed, arranged and managed by ESI on or relating to the Project is subject to the terms and limitations of this Agreement.

3.2 If work is performed but the parties have not or do not reach agreement concerning modifications to the Scope of Work or compensation, then the terms and conditions of this Agreement apply to such work completed. Disputes concerning modifications to Scope of Work or compensation shall be resolved pursuant to Paragraph 14, "Dispute Resolution."

4. STANDARD OF CARE.

ESI shall provide materials and perform Services under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by persons and/or firms doing substantially similar work as that described herein under similar conditions.

5. SITE ACCESS

5.1 Town staff will provide rights of entry and access for ESI to perform the Services set forth herein.

5.2 ESI will take reasonable precautions to avoid damage or injury to the Dam and Intake Structure and related components in the prosecution of this work and in particular, will take appropriate measures to protect the Intake Structure and the Dam from coming into contact with the barge. In addition, ESI shall take reasonable precautions to prevent any materials or tools or other debris from dropping down the mouth of the intake shaft during construction. Should any materials fall down the shaft causing damage to the turbines, ESI assumes all liability for the resulting damage.

6. ENVIRONMENTAL.

ESI shall comply with any and all environmental regulations in connection with the project including issues related to any lead-based paint on the existing hoist and other existing metal parts related to the replacement project.

6. OWNERSHIP OF DOCUMENTS

All operational and maintenance manuals or other similar materials for the gate hoist shall be provided to the Town prior to start-up of the equipment and said materials shall become the property of the Town.

7. ASSIGNMENT.

Neither Town nor ESI may delegate, assign, sublet, or transfer all or any part of this Agreement, including its duties or interest in this Agreement without the written consent of the other.

8. TERMINATION, SUSPENSION.

8.1 Termination for Convenience. The Town may terminate this Agreement for its convenience upon fourteen (14) days written notice to ESI. In the event of termination for convenience, ESI shall be compensated for all materials purchased and services satisfactorily performed up to the effective date of termination for which ESI has not been previously compensated.

8.2 Termination for Cause. The Town may terminate this Agreement upon fourteen (14) days written notice if ESI fails to substantially perform through no fault of the Town and does not commence correction of such performance within ten (10) business days of written notice and diligently complete the correction thereafter. In the event of termination for cause, ESI shall be compensated for all services satisfactorily performed and costs incurred up to effective date of termination for which ESI has not been previously compensated.

8.3 Failure of Town to make payments when due. Payments are due within ten (10) days of date of invoices. ESI shall have the right to suspend work on the Project until payment has been brought current. In such event, ESI shall have no liability for any damages or losses that may result from any delay associated with the suspension of work due to Town's failure to make payments as outlined in Exhibit A attached hereto and paragraph 12 below. If Town's failure to pay

continues for more than thirty (30) days, ESI may terminate this Agreement effective upon written notice to Town.

9. INSURANCE.

For the duration of the Project, ESI shall procure and maintain General Liability insurance coverage and Certificates of Insurance shall be provided to the Town. The insurance required shall provide coverage for not less than the following amounts, or greater if required by law:

General Liability (Per Claim/Aggregate): \$1,000,000.00/\$2,000,000.00

10. INDEMNIFICATION

10.1 Indemnification of the Town. Subject to the provisions and limitations of this Agreement and to the extent allowable by law, ESI agrees to indemnify and hold harmless the Town, its officers, directors, employees, and agents from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reasonable attorney's fees and costs of defense) or other losses (collectively "Losses") to the extent caused by ESI's negligent performance of its Services under this Agreement.

10.2 Indemnification of ESI. Subject to the provisions and limitations of this Agreement and to the extent allowable by law, the Town agrees to defend, indemnify and hold harmless ESI from and against any and all claims by third parties related to services provided by ESI under this Agreement, and against any and all Losses to the extent caused by the negligence of the Town, its employees, agents and contractors.

11. WARRANTY-MATERIALS AND WORKMANSHIP

ESI agrees warrants that all labor and materials furnished, and work performed shall be in accordance with the contract documents and authorized modifications thereto, if any, and will be free from defects due to defective materials or workmanship for a period of one year from Date of Final Completion. This warranty commences on the date of final completion and expires one year from said date and/or the date any warranty work is completed as the case may be.

Should any defect develop during the warranty period due to improper materials, workmanship or arrangement, the defect, including adjacent work displaced, shall be made good by ESI at no expense to the Town.

Written notice of defective materials and/or workmanship shall be given to ESI by the Town. Should ESI fail to correct defective materials and work within a reasonable time after receiving written notice, the Town may, at its option, correct defects and charge ESI the costs for such correction and ESI agrees to pay such charges upon demand.

This warranty of materials and workmanship shall not displace or nullify any manufacturer's warranty on supplied hoist and related apparatus, which shall pass to Town upon completion of the project.

12. INVOICES, PAYMENTS.

Town agrees to make payment of 40% with purchase order, 40% prior to installation and remaining net 30 days upon completion. If the purchase order and installation progress payments are not received by ESI within 10 days of invoicing, ESI may suspend work (see paragraph 8.3)

13. NOTICE.

All notices, requests, claims, demands and other communications hereunder shall be in writing. Such notices shall be given (i) by delivery in person, (ii) by a nationally recognized commercial courier service; or (iii) by United States Postal Service, registered mail, postage prepaid and return receipt requested. Notices shall be effective upon actual delivery at the following addresses:

Town: Town of Lake Lure
 2948 Memorial Highway
 Lake Lure, NC 28746

ESI: ESI
 1121 Duncan Reidsville Road
 Duncan, SC 29334

or to that address which the receiving Party may from time to time give notice to the other Party in writing. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal to accept or inability to deliver.

14. DISPUTE RESOLUTION.

14.1 Claims, disputes, and other matters in controversy between the Town and ESI caused by or any way related to this Agreement will be submitted to non-binding mediation as a condition precedent to litigation. The cost for mediation including the mediator's fees, reproduction of documents, and miscellaneous out-of-pocket expenses will be borne equally by each party to this Agreement.

14.2 The law of the State of North Carolina will govern the validity of these terms, their interpretation and performance. The Parties agree that venue for any litigation will be in the courts of the State of North Carolina, and the parties both hereby waive any right to initiate any action in, or remove any action to, any other jurisdiction.

15. FORCE MAJEURE

Any delay in or failure of performance of, either party to this Agreement shall not constitute a default, if and to the extent such delay or failure is caused by occurrences beyond the reasonable control of the party affected, including but not limited to, acts of God or the public enemy, acts of war, public disorder, insurrection, rebellion, sabotage, flood, riot, or any causes a party is unable, with reasonable diligence, to prevent; provided, however, that a party who is prevented from performing for any reason shall immediately notify the other party in writing of the reason for the non-performance and the anticipated extent of any delay.

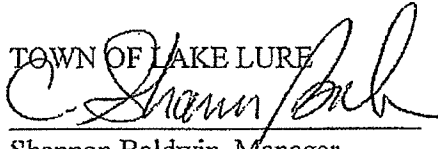
16. SEVERABILITY.

If any portion of this Agreement is void or voidable, such portion will be deemed stricken and the Agreement reformed to as closely approximate the stricken portions as the law allows.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have hereunto executed this Agreement, on the day and year written below.

This the 21TH day of NOVEMBER, 2019.

TOWN OF LAKE LURE


Shannon Baldwin, Manager

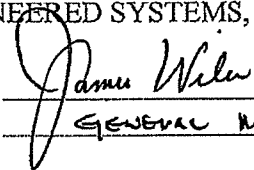
ATTEST:


Town Clerk

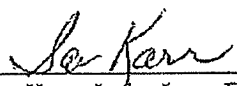
ENGINEERED SYSTEMS, INC.

By:

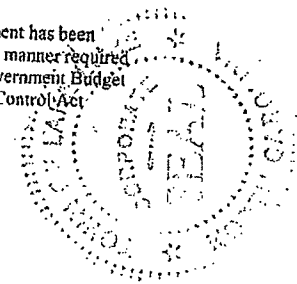
Title:


GENERAL MGR.

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.


Sam Kerr, Lake Lure Finance Director

This instrument has been
preaudited in the manner required
by the Local Government Budget
and Fiscal Control Act



State of South Carolina
County of Greenville

I, Christina Adams, a Notary Public, certify that James Wiles personally came before me this day and acknowledged that he/she is General Mgr of Engineered Systems, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its James Wiles (title of absent corporate officer), sealed with its corporate seal, and attested by himself/herself as its General Mgr (title of attesting corporate officer).

Witness my hand and official seal this 2nd day of Dec, 20 19

Christina W. Adams (Official Seal)
Signature of Notary

Notary's printed or typed name: Christina W. Adams
My commission expires: 8-1-2021

**CHRISTINA W ADAMS
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 8-1-2021**