

Professional Services Agreement

Agreement made the 14TH day of JANUARY, 2020

between

LaBella Associates, P.C.
("LaBella")

and

Town of Lake Lure
("Client")

for services related to the following Project:

Lake Lure On-call Engineering Services
("Project")

LaBella and Client hereby agree as follows:

- Description of Services:** LaBella shall perform the services set forth and described in LaBella's proposal, dated 1/13/2020 a copy of which is attached as *Exhibit A*, in accordance with the terms and conditions of this contract attached as *Exhibit B*.
- Compensation for Services:** Client shall compensate LaBella for its professional services as set forth in LaBella's proposal. LaBella shall submit invoices for services rendered on a monthly basis. Client shall make payment to LaBella no later than thirty (30) days after the date of each invoice.
- Term:** LaBella shall commence performing its services when Client gives notice to proceed. This Agreement shall terminate when LaBella's services are completed, or as otherwise provided in this Agreement.

LaBella Associates, P.C.

Town of Lake Lure

By:



Southeast Regional Vice President

Title

January 13, 2020

Date:

By:



Title

TOWN MANAGER

Date

1/14/2020

Exhibit A



January 13, 2020

Shannon Baldwin, Town Manager
Town of Lake Lure
2948 Memorial Highway
Lake Lure, NC 28746

SUBJECT: Lake Lure On-Call Professional Services – Task 1 Deliverable

Dear Shannon:

LaBella Associates appreciates the opportunity to work with the Town of Lake Lure (Town) on this project. We hope to build an ongoing relationship as we work with you through your various engineering needs. We have previously provided an engineering services agreement, and this work would be performed under that agreement. This proposal letter provides a scope of work and budget to provide the Task 1 deliverable as described below. The deliverable will be submitted in draft form during a meeting with NC DEQ on January 29, 2020. The scope of work is summarized below:

- LaBella will prepare a technical memorandum, which will provide an evaluation of the current ER-EID report, Bunnell-Lammons Engineering report, and other relevant reports or design documents. The evaluation will include the low pressure sewer system previously recommended and the associated cost estimate. In addition, LaBella will develop a preliminary list of alternatives and present a high level overview of the current alternatives. Per your request, the alternatives will include the following:
 - “Do Nothing” option
 - Green Line Pump Station project
 - Low Pressure Sewer System
 - HDPE Perimeter system
 - Repair/Rehabilitate the Existing System
 - Drain the lake option
- LaBella will coordinate with the Town staff to review the currently observable perimeter manholes and the wastewater treatment plant.
- LaBella will meet with the Town staff, UAB, elected officials and other stakeholders to develop the alternatives and incorporate stakeholders’ input in the alternatives analysis process.
- LaBella will review the available as-built or other documents that are relevant to the project and will have them Scanned and provide a copy to the Town.
- LaBella will meet with the NC DEQ and other stakeholders on January 29, 2020 and present the draft technical memorandum. We will work the NC DEQ in this meeting and be prepared to discuss the alternatives and address issues that arise.
- LaBella will consult with other Hydro Division clients concerning the insurance issues the Town is facing.

LaBella may provide other related engineering services as requested by the Town, hourly at contracted billing rates in addition to the budget provided for this scope.

Maurice (Reese) Walsh, P.E. will continue to serve as LaBella’s Program Manager for this contract, providing direction and oversight for other staff assigned to specific tasks under this contract. Brian Houston will coordinate with Reese on the technical memorandum and Keith Garbrick will be the qualified technical reviewer as part of our excellence assurance program. Other staff assigned to this contract shall have appropriate experience for the assigned task.

Typically under this type of contract, LaBella would provide a lump sum contract. At the request of the Town, we are submitting this on a time and material basis. On larger projects, we will furnish the Town an estimated cost of services



prior to initiating the work. LaBella will continue to submit monthly invoices that track the charges for each individual task. An allowance shall be established for reimbursable expenses incurred by the Engineer during performance of this agreement. Reimbursable expenses shall be compensated at cost unless otherwise noted and shall be limited to the actual expenditures made by the Engineer during the performance of the work with respect to travel, postage, courier expenses, copies, printing, plots, permitting fees, photographs, maps, or other miscellaneous project expenses.

A summary of the budget for the scope of work described above is as follows:

<u>Description</u>	<u>Fee</u>
Task 1 Deliverable - Draft Technical Memorandum	\$33,500.00
Allowance for Reimbursable Expenses	\$1,500.00
Total Budget	\$35,000.00

If this proposal is acceptable to the Town, please sign this proposal on the signature line below to authorize the scope defined in this proposal and return one copy to us. We appreciate the opportunity to continue our relationship with the Town of Lake Lure. If you have any questions or need additional information, please call me directly at (704) 941-2128.

Sincerely,

LaBella Associates, P.C.

Maurice J. Walsh, P.E.
Program Manager

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

Town of Lake Lure, North Carolina

Authorized Signature

By:

Title TOWN MANAGER

Date 1/14/2020



LABELLA ASSOCIATES
Lake Lure ON-CALL ENGINEERING SERVICES

SCHEDULE OF FEES
JANUARY 1, 2020 – DECEMBER 31, 2021

<u>CLASSIFICATION</u>	<u>BILLING RATE</u>
Principal	\$180.00/hour
Project Manager	\$175.00/hour
Senior Engineer	\$165.00/hour
Senior Project Engineer	\$140.00/hour
Project Engineer	\$120.00/hour
Design Engineer	\$105.00/hour
GIS Analyst	\$115.00/hour
Senior Engineering/GIS Technician	\$105.00/hour
Engineering Technician	\$95.00/hour
Construction Inspector	\$85.00/hour
Engineering Co-op	\$70.00/hour
Clerical	\$70.00/hour
Mileage	at current IRS rate
Expenses	at cost
Subconsultants	at cost plus 10 percent

Exhibit B

Terms and Conditions

LaBella's Responsibilities: LaBella shall designate a representative authorized to act on its behalf with respect to the Project. All notices required under this Agreement shall be given to that representative.

LaBella shall perform its services consistent with the professional skill and care ordinarily provided by members of the same profession practicing in the same or similar locality under the same or similar circumstances. LaBella shall perform its services as expeditiously as is consistent with such professional skill and care, and the orderly progress of the Project.

LaBella shall comply with all applicable federal, state, and local laws and regulations in effect during the term of this Agreement. LaBella shall promptly inform Client of any changes to any laws and regulations that LaBella reasonably believes will have a material effect upon the cost of the Project, or the scope of LaBella's services. In such event, Client and LaBella shall re-negotiate the terms of this Agreement, and if unable to do so, then either party may terminate this Agreement without cause and without penalty or liability to the other party.

Client's Responsibilities: Client shall designate a representative authorized to act on its behalf with respect to the Project. All notices required under this Agreement shall be given to that representative.

Client shall provide LaBella with all available information regarding the Project necessary for LaBella to perform its professional services, including Client's requirements for the Project. Client also shall provide information regarding the Project site and any existing facilities, including destructive testing and investigation of concealed conditions and hazardous substances, in a timely manner. If Client does not perform destructive testing or investigation, nor provide information beyond that which is apparent by non-intrusive observations, or in the event documentation or information furnished by Client is inaccurate or incomplete, then any resulting damages, losses and expenses, including the cost of LaBella's changes in service or additional services, shall be borne by Client.

Client shall examine documents submitted by LaBella and render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of LaBella's services.

Additional Services: LaBella may provide additional services after execution of this Agreement without invalidating the Agreement. LaBella shall not proceed to provide any additional services, unless and until LaBella receives written direction from Client. Client shall compensate LaBella for additional services as set forth in LaBella's proposal, or as agreed upon in writing signed by both parties.

Assignment: Neither party may assign any benefit or obligation under this Agreement without the prior written consent of the other party, except LaBella may use the services of persons and entities not in LaBella's employ when appropriate and customary to do so.

Confidentiality: During the Project, confidential and/or proprietary information of the Client might be furnished to LaBella. LaBella shall use such information for the purpose of providing its professional services on the Project, and for no other purpose. LaBella shall hold such information in strict confidence, and shall not disclose such information to any person or entity, except sub-consultants engaged on the Project. Upon completion of its services, LaBella shall return or destroy all confidential and/or proprietary information to the Client.

OWNERSHIP OF DOCUMENTS. Upon full payment for LaBella's services, the Client, and not LaBella, will acquire, enjoy and retain ownership and intellectual property rights in all materials specifically prepared by LaBella in performance of its services under a Task Order (the "Work Product"); provided, however, that any modification to LaBella's Work Product or use of the Work Product for any purpose other than in connection with the project for which the Work Product was created shall be at the sole risk of Client; and provided further that LaBella shall have the right to continue using any standard or pre-existing details, forms, formats, data, graphics or the like incorporated into any Work Product.

Escalation: In the event the term of this Agreement is extended beyond the period of service set forth in LaBella's proposal, then compensation for professional services are subject to review and escalation by LaBella upon thirty (30) days written notice to Client. The project budget will be adjusted accordingly.

Suspension or Termination for Convenience: Client may suspend or terminate this Agreement in whole or in part at any time for convenience upon seven (7) days written notice. Upon receipt of notice, LaBella shall immediately discontinue all services. LaBella shall be entitled to compensation for all services rendered up to the date of suspension or termination. If Client suspends, and the suspension exceeds three (3) months, an equitable adjustment in compensation shall be negotiated to compensate LaBella for all reasonable costs incurred by LaBella on account of the suspension of the Project, such as for preparation of documents for storage, maintaining space and equipment pending resumption, the orderly demobilization of staff, and making revisions to comply with Project requirements at the time of resumption.

Termination for Cause: Either party may terminate this Agreement for cause upon seven (7) days written notice with an opportunity to cure any default during that period.

Insurance: LaBella shall maintain, at its own expense, throughout the term of this Agreement and until the expiration of all applicable statutes of limitation, the following insurance coverages:

- Comprehensive general liability insurance with policy limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage;
- Automobile liability insurance covering owned, non-owned, rented and hired vehicles operated by LaBella with policy limits of not less than \$1,000,000 combined single limit and aggregate for bodily injury and property damage;
- Umbrella liability insurance with policy limits of not less than \$10,000,000 each occurrence and \$10,000,000 in the aggregate;
- Worker's compensation insurance at statutory limits and employer's liability insurance with a policy limit of not less than \$1,000,000 for all employees engaged in the rendering of professional services under this Agreement; and
- Professional liability insurance with policy limits of not less than \$3,000,000 per claim and \$5,000,000 in the aggregate.

Client shall be named as an additional insured under the CGL, Automobile and Umbrella insurance policies. LaBella shall provide to the Client certificates of insurance evidencing compliance with the requirements of this Agreement. The certificates shall contain a provision that at least thirty (30) days prior written notice shall be given to Client in the event of cancellation, non-renewal, or reduction of the insurance.

Indemnification: To the fullest extent permitted by law, LaBella shall indemnify and hold the Client and its officers and employees harmless from and against liabilities, damages, losses and judgments, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of LaBella, its employees and its consultants in the performance of professional services under this Agreement. Client agrees that LaBella's financial responsibility for any and all liabilities, damages, losses, judgments, expenses and attorneys' fees shall be limited to the available proceeds of LaBella's insurance coverage.

Disputes: The parties agree that mediation before a mutually agreeable neutral third party shall be a condition precedent to any legal action arising out of this Agreement, unless waived in writing by the parties. The cost of the mediation shall be borne equally by the parties. The mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, unless the parties agree otherwise. No demand for mediation shall be made after the date that the applicable statute of limitations would bar a legal or equitable action based on the claim or dispute.

Venue and Jurisdiction: Any legal suit, action or proceeding arising out of or relating to this agreement shall be instituted in a court of competent jurisdiction located in the state and county where the project is located, and the parties hereby waive any objection which they may have now or hereafter to the venue of any such suit, action or proceeding, and also hereby irrevocably consent to the personal jurisdiction of any such court in any such suit, action or proceeding.

Choice of Law: This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state where the project is located without giving effect or reference to any conflict of laws provisions.

Consequential Damages: In any suit, action or proceeding, the parties shall be entitled to recover compensatory damages incurred as a result of the breach of this Agreement, but neither party shall be liable to the other for any special, indirect, or consequential damages.

Late Fees, Costs and Attorneys' Fees: An additional charge of 1.5% of an invoice will be imposed each month on all past due accounts. Imposition of such charges does not constitute an extension of the payment due date. In the event that LaBella must bring suit to collect payment of any invoices, then Client agrees to pay LaBella's costs and expenses, including reasonable attorneys' fees.

Remedies Cumulative: The rights and remedies available to a party under this Agreement are cumulative and in addition to, not exclusive of, or in substitution for, any other rights or remedies either party may have at law, or in equity, or under this Agreement. Nothing contained in this Agreement shall be deemed to preclude either party from seeking injunctive relief, if necessary, in order to prevent the other party from willfully or intentionally breaching its obligations under this Agreement or to compel the other party to perform its obligations hereunder.

Non-Waiver: Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any right accruing under this Agreement, nor affect any subsequent breach, nor affect the effectiveness of this Agreement or any part hereof, nor prejudice either party as regards any subsequent action.

Force Majeure: Neither party to this Agreement shall be liable to the other for delays in performing the obligations called for by this Agreement, or the direct and indirect costs resulting from such delays, that are caused by labor strikes, riots, war, acts of government authorities other than the

Client (if a governmental authority), extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

Severability: The provisions of this Agreement are hereby agreed and declared to be severable. Any term or provision of this Agreement which is held to be unenforceable by a court of competent jurisdiction shall be deemed to have been stricken from this Agreement, and the remaining terms and provisions of this Agreement shall be construed and enforced without such terms or provisions.

Counterparts: This Agreement may be executed in one or more counterparts, each one of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Scope of Agreement: This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral, except that terms specific to future projects shall be set forth in LaBella's proposals. This Agreement may be amended only by written instrument signed by both parties.