

AGREEMENT
PROFESSIONAL ENGINEERING SERVICES
Agreement No. 2020-1005

PARTIES TO THE AGREEMENT

Date: June 16, 2020	SDG Project Number: 2020-111
PROFESSIONAL CONSULTANT: SDG Engineering, Inc. (SDG) N. C. Corp. License No. C-2366 EIN 46-0506837	CLIENT: Town of Lake Lure, NC
Address: 163 Heritage Lane Bostic, NC 28018	Address: 2948 Memorial Hwy PO Box 255 Lake Lure, NC 28746
Contact: Kurt Wright, PE, BCEE, PWAM President of SDG Office Telephone: (828) 245-4080 Mobile Telephone: (828) 223-2265 Fax: (828) 245-2189 Email: kwright@sdgengineering.us	Contact: C. Shannon Baldwin, AICP Lake Lure Town Manager Office Telephone: (828) 625-9983, Ext. 101 Mobile Telephone (828) 606-9561 Email: townmgr@townoflakelure.com

PROJECT AND SCOPE OF SERVICES

Project Name: <i>Contract Town Engineer</i> Project Address: Town of Lake Lure 2948 Memorial Hwy, PO Box 255 Lake Lure, NC 28746
SERVICES TO BE RENDERED: Professional Engineering Services to serve as "Contract Town Engineer" for the Town of Lake Lure. This Agreement is related to SDG Proposal Number 2020-2005 hereinafter referred to as the "Proposal," this Proposal is incorporated herein by reference.

DATES AND FEES

Project Start Date:	Anticipated: July 1, 2020
Project Completion Date:	Completion: June 30, 2021
Fee:	Lump Sum: \$100,000.00 in monthly installments of \$8,333.33 as described in the Proposal

WITNESSETH: WHEREAS, Client desires to contract with Consultant to furnish Professional Engineering Services to Client's Project identified on page 1 of this Agreement and the Proposal.

WHEREAS, Consultant is legally engaged in the state of North Carolina in the business of providing Professional Engineering Services and related labor, materials, and equipment (herein referred to as Services.)

NOW, THEREFORE, in consideration of the Mutual Covenants and Promises included herein, Client and Consultant agree as follows:

1. **OFFER ACCEPTANCE:** Client hereby accepts Consultant's offer to provide Services as described in Consultant's Proposal for Services referenced on page one of this Agreement and agrees that such Services and any additional Services authorized by Client shall be governed by this Agreement. If Client requests Consultant to start performing Services prior to receipt of this Agreement, Client agrees that Consultant's beginning of performance is based on reliance that Client will accept and execute this Agreement for Services. If Client requests Consultant to start performing Services prior to the execution of this Agreement For Services by the Client, then such request is an acceptance of this Agreement for Services to the same extent as if Client had executed this Agreement. Should Client choose to accept this Agreement for Services through the use of a Purchase Order, all preprinted terms and conditions on Client's purchase order are inapplicable to this Agreement as this Agreement is for Services that are not compatible with purchase order agreements. Unless this offer is previously accepted, it will be withdrawn automatically at 5:00 pm EST, thirty (30) days from the date of issue.
2. **CONTRACT DOCUMENTS:** "Contract Documents" shall mean this document as well as the Proposal (SERVICES TO BE RENDERED) each of which is incorporated into the other.
3. **PAYMENT:** Client will pay Consultant for Services and expenses in accordance with the Contract Documents. If prices for Services are not established under SERVICES TO BE RENDERED then the current fee schedule in effect for the location providing the Services shall be used as the amount to be paid by Client for Services provided. Consultant will submit progress invoices to Client monthly and a final invoice upon completion of its Services. Payment is due upon receipt of the invoice unless otherwise agreed to in writing prior to the submittal of the invoice. Invoices are due upon submission and considered past due 30 calendar days after the date of the invoice. Past due amounts are subject to a late payment fee of one and one-half percent per month (18 percent per annum) or the highest amount allowed by applicable law on the outstanding balance, whichever is less.

Attorney's fees and other costs incurred while collecting past due amounts shall be paid by Client. The Client's obligation to pay under this Agreement is in no way dependent upon the Client's ability to pay or obtain financing; payment from third parties; approval of governmental or regulatory agencies; or upon the Client's successful completion of the Project.

Consultant shall be paid in full for all Services rendered under this Agreement, including any additional Services authorized by Client in excess of those stated in this Agreement. However, if Client objects to all or any portion of any invoice, Client shall so notify Consultant in writing of the objection within fifteen (15) days from date of invoice, give reasons for the objection, and pay that portion of the invoice not subject to Client's objection. Client and Consultant will informally discuss Client's objections to the invoice and attempt to reach a resolution mutually acceptable to Client and Consultant. If Client or Consultant determine that an informal resolution is not possible then that party shall so state in writing to the other party and initiate a final resolution pursuant to the Dispute Resolution provisions of this Agreement for Services. If the Client does not object in writing to all or a portion of the invoice within fifteen (15) calendar days from date of invoice then the full amount of the invoice is due and payable and all objections are waived.

Without incurring any liability to the Client, Consultant may either suspend or terminate this Agreement if Client fails to pay any undisputed invoice amounts within 60 calendar days of the invoice date, or if Client states its intention not to pay forthcoming invoices. Such suspension or termination will not waive any other claim Consultant may have against Client. Following such suspension or termination, Consultant may resume work by mutual agreement with Client after payment by Client of all outstanding invoiced amounts and collection expenses. In case of such suspension or termination, Client waives all claims for damages or delay as a result of such suspension or termination.

Any invoices that are not paid within forty-five (30) calendar days of Client's receipt of letter from Consultant demanding payment of the invoices or a collection action notification by an attorney or collection agency shall constitute a release of Consultant by Client from any and all claims whatsoever, including, but not limited to, tort or contractual claims which Client may have against Consultant for Services performed under said invoice(s).

4. **STANDARD OF CARE:** Consultant and its agents, employees and subcontractors shall endeavor to perform Services for Client using that degree of care and skill ordinarily exercised, under similar circumstances, by others ordinarily

providing Services in the same or similar locality as the project at the time Services are provided. In the event any portion of the Services fails to substantially comply with this standard of care obligation and Consultant is promptly notified in writing prior to one year after completion of such portion of the Services, Consultant will re-perform such portion of the Services, or if re-performance is impractical, Consultant will refund the amount of compensation paid to Consultant for such portion of the Services. **THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE.** This **STANDARD OF CARE** is in lieu of all other warranties and standards of care. No other warranty or standard of care, expressed or implied, is made or intended by this Agreement, or by the Proposal, by oral communications, or by any representations made regarding the Services included in this Agreement.

5. **LIMITATION OF LIABILITY:** consultant and client mutually agree that the total cumulative liability of consultant, its agents, employees, and subcontractors whether in contract, tort including negligence (whether sole or concurrent), professional errors or omissions, breach of warranty (express or implied), negligent misrepresentation, and strict liability, or otherwise arising out of, connected with, or resulting from the services provided pursuant to this agreement shall not exceed the total fees paid by client. Client agrees that payment of the limit of liability amount is the sole remedy to the exclusion of all other remedies available for the total cumulative liability of consultant, its agents, employees, and subcontractors arising out of, connected with or resulting from the services provided pursuant to this agreement. Client is advised to carefully review client's risks of liability related to this contract AND ADDRESS SUCH RISKS THROUGH CLIENT'S INSURANCE OR OTHER MEANS.
6. **DISCLAIMER OF CONSEQUENTIAL DAMAGES:** In no event shall Consultant or Client be liable to the other for any special, indirect, incidental or consequential loss or damages, including, but not limited to, lost profits and loss of use arising from or related to Services provided by Consultant.
7. **REPORTS:** In connection with the performance of the Services, Consultant shall deliver to Client an electronic file containing the written documents reflecting Services provided and the results of such Services. All reports and written documents delivered to Client are instruments reflecting the Services provided by Consultant pursuant to this Agreement and are made available for Client's use subject to the limitations of this Agreement. Instruments of Service provided by Consultant to Client pursuant to this Agreement are provided for the exclusive use of Client, and Client's agents and employees for the Project and are not to be used or relied upon by third parties or in connection with other projects. Subject to the authorized use of Client, and Client's agents, and employees, all Instruments of Service, other written documents, all original data gathered by Consultant and work papers produced by Consultant in the performance of or intrinsic to the Services included in the Services are, and shall remain, the sole and exclusive property of Consultant. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Consultant. Consultant shall not be responsible for any alterations, modifications, or additions made in the electronic data by the Client or any reuse of the electronic data by the Client or any other party for this project or any other project without Consultant's written consent. Client shall indemnify, and hold Consultant harmless against any claims, damages or losses arising out the reuse of the electronic data without Consultant's consent or arising out of alterations, modifications, or additions to the electronic data made by anyone other than Consultant. Any Instruments of Service, including reports, generated as part of this Agreement are intended solely for use by Client and shall not be provided to any other person or entity without Consultant's written authorization.
8. **CONFIDENTIALITY:** Subject to any obligation Consultant may have under applicable law or regulation, Consultant will endeavor to release information relating to the Services only to its employees and subcontractors in the performance of the Services, to Client's authorized representatives(s) and to persons designated by the authorized representative to receive such information.
9. **REPRESENTATIONS OF CLIENT:** Client warrants and covenants that sufficient funds are available or will be available upon receipt of Consultant's invoice to make payment in full for the Services rendered by Consultant. Client warrants that all information provided to Consultant regarding the project and project location are complete and accurate to the best of Client's knowledge.
10. **CLIENT OBLIGATIONS:** Client agrees to furnish Consultant, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Consultant to enter onto the project site to perform the Services included in this Agreement.
11. **TERMINATION:** For Convenience - Upon written notice, Client or Consultant may terminate the performance of any further Services included in this Agreement if the terminating party determines termination is in the terminating party's interest. Upon dispatch or receipt of the termination notice, Consultant shall stop work on all Services included in this Agreement and deliver any Instruments of Service complete at that time to Client and Client shall pay Consultant within 30 days for all Services performed up to the dispatch or receipt of the termination notice. Upon Termination for Convenience, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.

For Cause -In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon 10 days written notice delivered or mailed to the other party, which notice must identify the material breach. The Agreement may not be terminated for cause if the breaching party cures the breach within ten days of receipt of the written notice. Upon Termination for Cause, Consultant shall stop work on all Services included in this Agreement and deliver any instruments of service complete at that time to Client and Client shall pay Consultant within 45 days for all Services performed up to the termination. Upon Termination for Cause, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.

12. **FORCE MAJEURE:** Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of an obligation (other than the payment of money) results from any causes beyond its reasonable control and without its fault or negligence. For this purpose, such acts or events shall include, but are not limited to, storms, floods, unusually severe weather, epidemics, civil disturbances, war, riot, strikes, lockouts or other industrial disturbances, and inability within reasonable diligence to supply personnel, information or material to the project. In the event that such acts or events occur, it is agreed that both parties shall attempt to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit and schedule of the Services covered by this Agreement. The time for performance shall be extended for a period equal to the delay.
13. **INDEMNITY:** To the extent allowable by law Client agrees to indemnify, and save harmless Consultant, its agents, employees, and subcontractors from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees), which Consultant, its agents, employees, and subcontractors may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Client's negligence or willful misconduct.

Subject to the Limitation of Liability in Article 5, Consultant agrees to indemnify, and save harmless Client from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees) which Client may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Consultant's negligence or willful misconduct.

Subject to the Limitation of Liability in Article 5, Client and Consultant shall, in the event of liability arising out of their joint negligence or willful misconduct indemnify, and save harmless each other in proportion to their relative degree of fault

14. **DISPUTE RESOLUTION:** Consultant may in Consultant's sole discretion pursue collection of past due invoices by litigation in a court of competent jurisdiction. Other than Consultant's collection of past due invoices, in the event of a dispute between Consultant and Client with regard to any matter arising out of or related to this Agreement, the Parties will use their best efforts to resolve the dispute amicably within fifteen (15) calendar days. If the dispute cannot be settled amicably, the Parties agree that the dispute shall be subject to mediation in accordance with the mediation rules of the American Arbitration Association or similar Dispute Resolution organization. Mediation in good faith shall be a condition precedent to the institution of legal or equitable proceedings by either party. Once a party files a request for mediation with the other party and with the American Arbitration Association, or similar Dispute Resolution organization, the parties agree to commence such mediation within thirty (30) days of the filing of the request. The costs of such mediation shall be borne equally by both parties. If the dispute is not resolved after such mediation, then the dispute shall be resolved by litigation in a court of competent jurisdiction.
15. **CAPTIONS AND HEADINGS:** The captions and headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, modify, or add to the interpretation, construction, or meaning of any provision of or scope or intent of this Agreement.
16. **SEVERABILITY:** If any provision of this Agreement or application thereof to any person or circumstance, shall to any extent be invalid, then such provision shall be modified if possible, to fulfill the intent of the parties as reflected in the original provision, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
17. **ASSIGNMENT AND SUBCONTRACTS:** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Consultant may subcontract for the Services of others without obtaining Client's consent if Consultant deems it necessary or desirable to have others perform Services.
18. **NO WAIVER:** No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.

19. LAW TO APPLY: The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the state in which the project is located.

CONSULTANT HEREBY ADVISES CLIENT THAT ITS PERFORMANCE OF THIS AGREEMENT IS EXPRESSLY CONDITIONED ON CLIENT'S ASSENT TO THE TERMS AND CONDITIONS DETAILED HEREIN.

ENTIRE AGREEMENT - This Agreement represents the entire understanding and agreement between the parties hereto relating to the Services and supersedes any and all prior negotiations, discussions, and Agreements, whether written or oral, between the parties regarding same.

TO THE EXTENT that any additional or different Provisions conflict with the Provisions of this Agreement, the Provisions of this Agreement shall govern. No amendment or modification to this Agreement or any waiver of any provisions hereof shall be effective unless in writing, signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative.

BY:

Consultant: SDG Engineering, Inc.

Kurt D. Wright
(signature)

Kurt D. Wright, PE, BCEE, PWAM - President

(print name and title)

June 16, 2020

(date)

BY:

Client Name: Town of Lake Lure, NC

C. Shannon Baldwin
(authorized signature)

C. Shannon Baldwin - Town Manager

(print name and title)

JULY 2ND, 2020

(date)

ATTEST:

Stephanie A. Wright
(signature)

Stephanie A. Wright - Corporate Secretary

(print name and title)

June 16, 2020

(date)

Michelle L. Jolley
(signature)

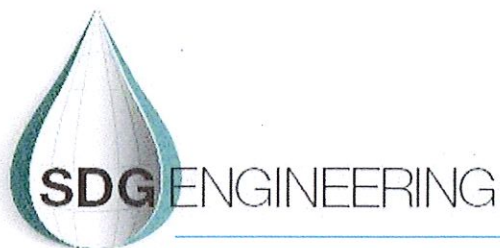
Michelle L. Jolley - Town Clerk

(print name and title)

July 2nd, 2020

(date)





163 Heritage Lane, Bostic, NC 28018 • 828.245.4080 office • 828.223.2265 mobile • 828.245.2189 fax

Proposal to the Town of Lake Lure North Carolina

Contract Town Engineer Fiscal Year 2020-2021

Presented to:

**C. Shannon Baldwin, AICP
Town Manager
Town of Lake Lure
2948 Memorial Highway
PO Box 255
Lake Lure, NC 28746**

Prepared by:

**Kurt D. Wright, PE, BCEE, PWAM
President
SDG Engineering, Inc.
163 Heritage Lane
Bostic, NC 28018
(828) 245-4080
NC License # C-2366**

Date:

June 16, 2020

Proposal Number: 2020-2005



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EXHIBITS

EXHIBIT A: SDG Engineering Memorandum dated June 4, 2020

EXHIBIT B: SDG Engineering's Rate Schedule for 2020

EXHIBIT C: Certificate of Professional Liability Insurance



1.0 INTRODUCTION

SDG Engineering, Inc. (SDG) provided Contract Town Engineer services to the Town of Lake Lure (TOLL) during Fiscal Year 2019-2020.¹ The TOLL desires to continue to utilize SDG Engineering as the Town's Contract Town Engineer for next Fiscal Year 2020-2021 due to the many infrastructure projects in which the Town is currently engaged.

2.0 SCOPE OF SERVICES

2.1 The Scope-of-Services for Contract Town Engineer

The Scope-of-Services for Contract Town Engineer consist of the following.

1. Act as the Town Engineer providing general project management for a variety of infrastructure projects that the Town is currently engaged in or may engage in during the Fiscal Year 20-21. The specific infrastructure projects are to be identified by the Town's Primary Point of Contact (PPOC) between SDG and the TOLL.
2. The Project Management services are to be provided for the specific projects identified by the PPOC.
3. The Project Management services are to be provided to the extent directed by the PPOC. In other words, the services may be any level from basic general oversight reporting back to the PPOC, or total control making decisions without necessarily having to obtain the PPOC's input. The level of authority assigned to SDG will be directed only by the PPOC.
4. In person attendance (or COVID-19 video conferencing) for the regularly scheduled monthly meetings of the Board of Commissioners (BOC). This is up to 12 BOC meetings during the FY.
5. In person attendance (or COVID-19 video conferencing) for the regularly scheduled monthly meetings of the Utility Advisory Board (UAB). This up to a total of 12 UAB meetings during the FY.
6. Attendance to other meetings as specifically directed by the PPOC in accordance with item no. 6. In Section 3.0.

2.2 Scope-of-Services NOT included for Contract Town Engineer

Contract Town Engineering services do not include certain specific professional engineering services such as engineering design. Nor does it include rendering formal engineering opinions regarding infrastructure issues. In order to further clarify what is not included the following list has been provide for illustrative purposes.

1. Professional Engineering Design Services.
2. Preparing construction drawings.
3. Obtaining Federal or State or other local permits for any infrastructure project undertaken by the TOLL.
4. Contract Administration for a Construction Contract for a project undertaken by the TOLL.
5. Construction Observation for a Construction Contract for a project undertaken by the TOLL.
6. Applying for grants and loans for funding infrastructure projects contemplated by or actually undertaken by the TOLL.
7. Conducting site reconnaissance for a specific infrastructure issue and rendering a formal written engineering opinion on that issue.

¹ During FY 19-20 Professional engineering services for "Contract Town Engineer" was called "Limited Program Management Professional Engineering Services."



3.0 TOLL RESPONSIBILITIES

The TOLL agrees to generally cooperate with SDG in the performance of its professional engineering services to the Town. Specifically, the Town agrees to do the following.

1. Provide a timely response to requests for information.
2. Provide a draft copy of the minutes to any meeting attended by SDG for review and after the minutes have been finalized to provide SDG with a copy of the approved minutes.
3. Provide an identical copy of the packet of information submitted to the Board of Commissioners for any meeting they undertake.
4. Clearly communicate needs and issues.
5. Appoint a PPOC. (Unless notified otherwise the PPOC shall be Shannon Baldwin, Town Manager.)
6. Utilize Microsoft Outlook Calendar (MOC) invitation software to invite Kurt Wright to meetings the TOLL expects or desires him to attend, outside the regularly scheduled meetings referred to in Section 2.0. In other words, an MOC is necessary for the additional meetings referred to in Section 2.2. If an MOC invitation is not provided it is possible Kurt Wright might miss it.
7. If there is a discrepancy between the services provided by SDG and the expectations of the TOLL related to the engineering agreement covering the services described in this Proposal identify them immediately to Kurt Wright. A face-to-face meeting is preferred over telephone discussions, emails, or texts.

4.0 FEE

4.1 Review of the Services Rendered for the Past Fiscal Year

In considering the Fee, SDG reviewed the past actual experience in providing professional engineering services to the TOLL during Fiscal Year 19-20. SDG stated in the agreement for professional engineering services to the TOLL for FY 19-20 that it would record the actual labor, both billable and non-billable, and expenses incurred to provide these services and compare it to the revenue received from the TOLL. During FY 19-20 SDG prepared a monthly memorandum to accompany each month's invoices and has thus been reporting monthly to the Town Manager of Lake Lure what has actually been taking place. A copy of the most recent memorandum was reviewed in the preparation of this Proposal which is presented in Exhibit A².

A summary of this information is provided below.

Summary from Kurt Wright's June 4, 2020 Memorandum

- | | |
|--|-------------|
| • Period of Reporting: | 11 months |
| • Fee Paid by the Town of Lake Lure for Article I Services: | \$27,500.00 |
| • Billable Time for the ARTICLE I Services provided: | \$43,999.10 |
| • Non-Billable Time in connection with ARTICLE I Services provided: | \$26,720.44 |
| • Total of Billable and Non-billable Time in connection with ARTICLE I Services: | \$70,719.54 |

As can be seen from the data provided:

- The total Billable time required to perform the Article I Services for the reporting period of 11 months was \$43,999.10 for which SDG receive payment of \$27,500.00. This is a ratio of 1.60. The difference over the 11-month period was \$16,499.10.

² There are several pages of attachments to this memorandum. They have been omitted in Exhibit A due to length.



- The total of Billable and Non-Billable Time for the reporting period of 11 months was \$70,719.54 for which SDG received payment of \$27,500.00. This is a ratio of 2.6. The difference over the 11-month period was \$43,219.54.

Expenses were not taken into consideration in the above calculation, only labor.

The discrepancies shown above are more than SDG normally allows. Although this is true, SDG continued to honor its commitments and service the contract throughout all of FY 19-20.

Due to the above SDG Engineering finds it necessary to craft a proposal and agreement for Contract Town Engineer for FY 20-21 that will reduce these discrepancies. A mechanism of checks and balances is proposed to ensure that

- SDG is providing the services to the TOLL in accordance with Section 2.0 to the satisfaction of the TOLL, and
- SDG is reasonably compensated for the professional engineering services that it provides to the TOLL.

The method employed as a check and balance is to monitor and report each month, as SDG did during FY 19-20 (see Exhibit A). SDG will submit a monthly memorandum reporting on the discrepancies discussed above. If that discrepancy is too large, then one of the following will be employed to reduce the discrepancies.

1. SDG will reduce the number of hours provided during the ensuing month in order to bring the discrepancies down to an acceptable level as discussed in Section 4.2.
2. The TOLL can elect to pay SDG the necessary Fees for the overage in hours. This will bring the discrepancies down to an acceptable level as discussed in Section 4.2.

SDG wishes to make certain the TOLL is receiving the full benefit of the monthly payment provided by the TOLL. The monthly memorandum will be used to ensure that the ratio is at least 1.0. If it is not, a mechanism will be employed to rectify the situation, which is described in item number 4. in the following section.

4.2 Fee

It is understood by SDG that the TOLL has allocated a total of \$100,000 for Contract Town Engineer during FY 20-21.

This translates to a monthly amount of \$8,333.33.

SDG proposes to bill the TOLL \$8,333.33 monthly for the services provided in Section 2.0.

A monthly memorandum will be submitted reporting on the services provided by SDG compared to the compensation provide by the TOLL, as discussed in Section 4.1. This memorandum will be similar to that which is presented in Exhibit A.

The monthly memorandum will calculate two ratios, the **"Base Ratio"** and the **"Modified Ratio,"** in accordance with the two formulas on the following page.



The billable costs recorded by SDG to Provide the Services Identified in Section 2.0. Billable costs are labor and reimbursable expenses, which includes among other things, mileage.

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The compensation provided to SDG by the TOLL for the Services identified in Section 2.0. In other words, the revenue received from the TOLL.

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BASE RATIO

The combined billable and non-billable costs to SDG to Provide the Services Identified in Section 2.0. Billable and Non-billable costs are labor and reimbursable expenses, which includes among other things, mileage.

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The compensation provided to SDG by the TOLL for the Services identified in Section 2.0. In other words, the revenue received from the TOLL.

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MODIFIED RATIO

The **Base Ratio** shall not exceed 1.20, nor be less than 1.0, from month to month. If it exceeds 1.20 then the amount of labor and reimbursable expenses provided by SDG for Contract Town Engineer will be reduced the ensuing month to bring that ratio below 1.20. If it is less than 1.0 then item 4. below will be employed.

The **Modified Ratio** shall not exceed 1.40 from month to month. If it exceeds 1.40 then the amount of labor, reimbursable expenses, and other out-of-pocket expenses, will be reduced the ensuing month to bring that ratio below 1.40.

If at the conclusion of FY 20-21 (June 30, 2021):

1. the **Base Ratio** exceeds 1.20, additional compensation is due SDG such that this ratio is reduced to 1.20.
2. the **Modified Ratio** exceeds 1.40, additional compensation is due SDG such that this ratio is reduced to 1.40.
3. additional compensation is required to meet either 1. or 2. above, the TOLL will include the requisite amounts to cover these additional fees in the FY 21-22 Budget. Payment for the additional fees will then be made to SDG on or before July 10, 2021.
4. the Base Ratio is less than 1.0, then SDG will pay the TOLL a Lump Sum amount on or before July 10, 2021 such that the ratio will be brought up to 1.0.



5.0 SCHEDULE

Contract Town Engineer services shall commence on July 1, 2020 and terminate on June 30, 2021.

6.0 INSTANCES WHERE RECUSAL MAY BE NECESSARY

6.1 REGARDING THE INTERCONNECT WITH THE TOWN OF SPINDALE, NC

If any discussion arises during the execution of the services identified in this proposal and related engineering agreement regarding the project contemplated by the Towns of Lake Lure and Spindale wherein a pipeline interconnect between the TOLL and the Town of Spindale was to be constructed, along with a number of pump stations, in order to pump wastewater from the Town of Lake Lure to be treated by the Town of Spindale, SDG will recuse itself from those discussions. It is understood that this project is no longer a viable project. This recusal is due to the fact that SDG provided engineering services on behalf of the Town of Spindale for matters related to that project. If that project becomes viable once again (which is very unlikely) SDG will be obligated to act on behalf of the Town of Spindale regarding those contract negotiations.

6.2 REGARDING CONTRACTUAL DISPUTES WITH OTHER PROFESSIONAL ENTITIES

Currently the TOLL has retained multiple professional entities to provide specified professional services to the TOLL. If the TOLL should find itself in an adversarial position regarding the performance of professional services by one or more of these entities in connection with an existing or future contract between the TOLL and one of these professional entities, SDG will recuse itself from those discussions. This is due to the fact that SDG wishes to avoid involvement with legal disputes between TOLL and other professional entities. SDG will not advise the TOLL or comment on any contract dispute. These are matters for the Town Attorney.

6.3 HYDROELECTRIC FACILITY

The Town of Lake Lure now has a Director of the Hydroelectric Facility. In the future, any engineering for the Hydroelectric Facility should be provided by a professional hydroelectric engineer. SDG is aware that LaBella Associates has resources for professional hydroelectric engineering. The TOLL may utilize those resources or any other hydroelectric engineer that it chooses. SDG will only be involved during FY 20-21 for issues at the hydroelectric facility if (a.) there is a logical reason for SDG to do so, (b.) there is a very specific written request for SDG to be engaged, and (c.) SDG agrees under the specific circumstances to provide the requested services.

7.0 TERMINATION

Either party may terminate the Agreement associated with this Proposal (see Section 8.0) for any reason having first provided the other party with fourteen days written notice. If the TOLL wishes to terminate SDG under these circumstances all outstanding billable labor and reimbursable expenses that have been accrued by SDG up to the date of termination shall be paid in full by the TOLL within seven calendar days of the termination date.

8.0 AGREEMENT

SDG will provide a signed agreement for TOLL to execute in connection with this proposal. The Agreement will include this Proposal by reference.

SDG Engineering, Inc. is a professional corporation registered with the North Carolina Board of Examiners for Engineers and Surveyors, Corporate License Number C-2366. A Certificate of SDG's Professional Liability Insurance (Errors and Omissions Insurance) is provided in APPENDIX C. SDG's Employer Identification Number (EIN) is 46-0506837.

EXHIBIT A



Memo

TO: Shannon Baldwin, Manager, Town of Lake Lure
FROM: Kurt Wright
DATE: June 4, 2020
SDG Proj. # 2019-104; 2019-1005
SUBJECT: Statement of Hours

This Memorandum is in connection with Engineering Agreement 2019-1003B for Phase II, Article I, of Professional Engineering Services for Limited Program Management for the town of Lake Lure (TOLL), SDG Project Numbers 2019-104 and 2019-1005.

The Lump Sum Contract Amount for this Agreement is \$30,000, which translates into a monthly payment to SDG of \$2,500.

Part of our agreement included the fact that SDG would state the number of hours logged by Kurt Wright and other members of the SDG Team each month in providing the above noted services and the associated fees for this professional time. This is not an invoice instead it is a manner in which to present to the TOLL how many hours SDG is actually logging to provide the services related to Engineering Agreement 2019-1003B Phase II, Article I. This is for information purposes and to be used in negotiating future similar agreements between SDG and the TOLL. Table 1 on the following page presents a Summary of the associated fees. The detailed breakdown is presented in Attachment A.

Billable hours, SDG Project Number 2019-104, represent hours that would be charged by SDG if this were a T&M contract.

Non-billable hours, SDG Project Number 2019-1005, are hours that would not be billed to the town of Lake Lure at my discretion if this contract was purely a T&M contract. Examples of nonbillable hours are:

- Driving time (no time is charged related to driving to or from Lake Lure in connection with this project)
- Time Sheets and Billings
- Luncheon meetings
- Other items similar to the above

EXHIBIT A



Table 1: Summary of Associated Fees

No.	BILLING PERIOD	ASSOCIATED INVOICE No.	MONTHLY INVOICE	BILLABLE TIME	NON-BILLABLE TIME	TOTAL BILLABLE PLUS NON-BILLABLE TIME
1	2019 - JULY	2424	\$2,500.00	\$4,824.60	\$2,179.40	\$7,004.00
2	2019 - AUGUST	2429	\$2,500.00	\$5,542.00	\$3,520.70	\$9,062.70
3	2019 - SEPTEMBER	2433	\$2,500.00	\$6,565.40	\$1,028.50	\$7,593.90
4	2019 - OCTOBER	2438	\$2,500.00	\$5,266.60	\$1,550.40	\$6,817.00
5	2019 - NOVEMBER	2443	\$2,500.00	\$3,017.50	\$2,903.60	\$5,921.10
6	2019 - DECEMBER	2451	\$2,500.00	\$1,849.60	\$4,518.60	\$6,368.20
7	2020 - JANUARY	2456	\$2,500.00	\$3,537.04	\$2,872.95	\$6,409.99
8	2020 - FEBRUARY	2461	\$2,500.00	\$4,995.89	\$2,550.75	\$7,546.64
9	2020 - MARCH	2472	\$2,500.00	\$1,482.12	\$1,288.80	\$2,770.92
10	2020 - APRIL	2480	\$2,500.00	\$2,880.11	\$801.92	\$3,682.03
11	2020 - MAY	2490	\$2,500.00	\$4,038.24	\$3,504.82	\$7,543.06
12	2020 - JUNE					
	TOTAL		\$27,500.00	\$43,999.10	\$26,720.44	\$70,719.54
CONTRACT AMOUNT FOR ARTICLE I SERVICES						\$30,000.00
DIFFERENCE						-\$40,719.54

Total of Monthly Invoices as a Percent of the Contract Amount	91.7%
Billable Time as a Percent of the Contract Amount	146.7%
Billable & Non-billable Time as a Percentage of the Contract Amount	235.7%
RATIO: Billable Time Divided by Monthly Invoices	1.60

Based on the above track record SDG Engineering is providing services at a rate of 1.60 to 1.0.

This means the actual value of the professional services rendered under Article I of the Agreement (Billable Time) is 1.60 times what the Town of Lake Lure is paying for through the Monthly Invoices for Article I services. Note that there are two (2) months left in the Fiscal Year covered by the Agreement.

Table 2 provides a record of the ratios from month to month of the actual value of the professional engineering services provided by SDG under Article I of the Agreement versus what the town of Lake Lure is paying through the monthly invoice of \$2,500 for Article I services.

EXHIBIT A



Table 2: Record of Ratios

Record of Ratios
Article I Professional Services Under the
Engineering Agreement

Actual Value of Professional Services		
versus		
What the Town of Lake Lure is Paying on a Monthly Basis		
Fiscal Year 2019 - 2020		
Consecutive Number	MONTH	RATIO
1	2019 - JULY	1.90
2	2019 - AUGUST	2.10
3	2019 - SEPTEMBER	2.30
4	2019 - OCTOBER	2.20
5	2019 - NOVEMBER	2.00
6	2019 - DECEMBER	1.80
7	2020 - JANUARY	1.70
8	2020 - FEBRUARY	1.78
9	2020 - MARCH	1.65
10	2020 - APRIL	1.60
11	2020 - MAY	1.60
12	2020 - JUNE	

As you can see the ratios have varied during FY 2019-2020 from a low of 1.60 to a high of 2.30. Another way to look at the information provided in Table 1 is to consider how much SDG is not paid for what it does under Article I services, see below.

- Total value to date of labor to provide Article I Services..... \$43,999.10
- Total monthly invoices paid by TOLL for Article I Services.... \$27,500.00
- Difference (how much SDG is not paid)..... \$16,499.10

Please note that the above information will be taken into consideration if the town of Lake Lure wishes SDG to continue to provide similar contract engineering services during the next Fiscal Year 2020 – 2021. ***SDG greatly values the relationship we have with the TOLL and wishes to arrive at a mutually beneficial arrangement if services are to continue to be provided in FY 2020-2021.***

If you should have any questions regarding the above, please contact me.

Thank you,
Kurt Wright, PE, BCEE, PWAM

EXHIBIT B

SDG RATE SCHEDULE Effective through December 31, 2020



DESCRIPTION

Labor Rates are provided as a general indication for the class of Labor shown. Although many classes of Labor are provided it may not cover some personnel that might be utilized for a given project.

RATE PER HOUR

LABOR

Project Principal	\$179.00
Senior Project Manager / Professional Engineer	\$152.00
Project Manager / Professional Engineer	\$137.00
Senior Designer / CAD Operator	\$128.00
Designer / CAD Operator	\$108.00
Operations - Specialist	\$119.00
Operations - Technician	\$108.00
Construction Observer – Grade III	\$103.00
Construction Observer – Grade II	\$99.00
Construction Observer – Grade I	\$84.00
Administrative Assistant	\$77.00
Technician	\$64.00
Secretarial Staff	\$58.00

Special Categories

Subject Matter Experts (Presented as a range depending on personnel)	\$189.00 to \$195.00
Engineer - Wastewater Treatment Plant Simulation (Utilizing BioWin Software. Rate includes use of BioWin Software.)	\$300.00

REIMBURSABLE EXPENSES

Mileage	IRS rate
Travel (airfare, car rental, parking, etc.)	At Cost
Meals	At Cost
Lodging	At Cost
Reproduction (photocopy, prints, plots, color printing, etc.)	Cost + 15%
Postage, Supplies	Cost + 15%
Sub-consultants, (example: Surveying, Geotechnical, etc.)	Cost + 15%

Terms: Payment due upon receipt of Invoice.

Past Due: Invoices are past due 30 calendar days after the date of the invoice. Past due amounts are subject to a late payment fee of one and one-half percent per month.

EXHIBIT C



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/22/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Hall & Company
19660 10th Ave NE
Poulsbo WA 98370

CONTACT NAME: Sally Wallace

PHONE (A/C No. Ext. 350-593-5028

FAX (A/C No. 350-593-3703

E-MAIL Address: SWallace@hallandcompany.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Argonaut Insurance Company

19501

INSURED
SDG Engineering, Inc
163 Heritage Lane
Bostic NC 28015

EXTENSION

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

COVERAGES

CERTIFICATE NUMBER: 250695577

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ACORD FORM NO.	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Per occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROTECT <input type="checkbox"/> LOC					PRODUCTS - COMMOD AGG \$
	OTHER					\$
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Per accident) \$
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY	<input type="checkbox"/> NON-OWNED AUTOS ONLY				PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> AUTOS ONLY					\$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR				EACH OCCURRENCE \$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$
	<input type="checkbox"/> COB <input type="checkbox"/> RETENTIONS					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	<input type="checkbox"/> Y/N <input type="checkbox"/> N/A				PER STATUTE <input type="checkbox"/> OTHER <input type="checkbox"/>
	ANY PERSONS OR PARTNERS/EXECUTIVE OFFICERS/OWNERS EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below					EL EACH ACCIDENT \$
						EL DISEASE - EA EMPLOYEE \$
						EL DISEASE - POLICY LIMIT \$
A	Professional Liability, Claims Made		121AE000001702	11/15/2019	11/15/2020	Per Claim Aggregate \$1,000,000 \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Additional Insured Status is not available on Professional Liability Policy.

CERTIFICATE HOLDER

CANCELLATION

Lake Lure, NC
2945 Memorial Hwy
Lake Lure NC 28746

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03)

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