

**AGREEMENT**  
**PROFESSIONAL ENGINEERING SERVICES**  
**Agreement No. 2019-1003B**

**PARTIES TO THE AGREEMENT**

Date: May 13, 2019	SDG Project Number: 2019-104
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) 490-3900  Email: townmgr@townoflakelure.com

**PROJECT AND SCOPE OF SERVICES**

Project Name: <i>Limited Program Management Professional Engineering Services – Phase II</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 assist the town of Lake Lure with Limited Program Management Professional Engineering Services. This Agreement is related to SDG Proposal Number 2019-2003B hereinafter referred to as the "Proposal," this Proposal is incorporated herein by reference.

**DATES AND FEES**

Project Start Date:	Anticipated: July 1, 2019
Project Completion Date:	Completion: June 30, 2020
Fee:	Lump Sum: \$30,000.00 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:** 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)

May 13, 2019

(date)

BY:

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

Client Name: Town of Lake Lure, NC

C. Shannon Baldwin  
(authorized signature)

C. Shannon Baldwin - Manager

(print name and title)

JULY 8, 2019

(date)

ATTEST:

Stephanie A. Wright  
(signature)

Stephanie A. Wright - Corporate Secretary

(print name and title)

May 13, 2019

(date)

Amy Wright  
(signature)

Amy Wright

(print name and title)

July 8, 2019

(date)