

LAKE LURE TOWN COUNCIL WORK SESSION MEETING PACKET

Wednesday, May 24, 2023
8:30 a.m.



**Mayor Carol C. Pritchett
Mayor Pro Tem David DiOrio
Commissioner Patrick Bryant
Commissioner Scott Doster
Commissioner Jim Proctor**

TOWN OF LAKE LURE
Town Council Work Session Meeting
Wednesday, May 24, 2023 - 8:30 AM
Lake Lure Municipal Center



Agenda

- I. Call to Order**
- II. Agenda Adoption**
- III. Review Procurement Policy and Card Policy - Page 1**
- IV. Review Schnabel Work Order No. 7A, Professional Dam Engineering Services for the Reservoir Drain Construction at Lake Lure Dam - Page 29**
- V. Ruby-Collins GMP Update - Page 42**
- VI. Discuss Lake Drawdown Schedule - Page 44**
- VII. Discuss Sunset Cove Meeting - Page 45**
- VIII. Review Schnabel Partial Work Order No. 9A, Field Investigation Services for Replacement of Lake Lure Dam - Page 46**
- IX. Review Schnabel Partial Work Order No. 9B, Field Investigation Services for Replacement of Lake Lure Dam - Page 64**
- X. Discuss TDA Lease Amendment - Page 82**
- XI. Project Updates - Page 95**
- XII. Town Manager Updates - Page 96**
- XIII. Adjournment**

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: May 24, 2023**

SUBJECT: Review Procurement Policy and Card Policy

AGENDA INFORMATION:

Item Number: III
Department: Administration
Contact: Hank Perkins, Town Manager
Presenter: Hank Perkins, Town Manager

BRIEF SUMMARY:

During the April 26th work session meeting, Town staff presented a preliminary draft of a procurement policy to replace the policy adopted in 2018. It is the opinion of staff that the proposed replacement policy is practical, comprehensive to both purchase and contracting, and up to date with all available resource guidance. Following the work session meeting, Town staff worked with a former auditor to make necessary improvements to the preliminary draft.

Town staff also presented a draft credit card policy at the April 26th work session. The draft presented was deemed sufficient and no changes were made.

Staff desires Council review and consensus to proceed with placing the two policies on the June 13th regular Council meeting agenda.

ATTACHMENTS:

Proposed Procurement Policy; Proposed Card Policy



Town of Lake Lure, North Carolina

Procurement Policy

Contents

1.0	Policy Purpose	2
2.0	Roles & Responsibilities	2
a.	Town of Lake Lure Procurement Division.....	2
b.	All Town Departments.	2
c.	Standards of Conduct.....	2
3.0	Penalties for Non-Compliance	2
4.0	Types of Purchases	3
a.	Goods (Apparatus, supplies, materials, or equipment).....	3
b.	Services	3
c.	Architects, engineers, surveyors, design and build, or construction manager at risk	4
d.	Construction or Repair.....	4
e.	Information Technology	5
5.0	Bidding	5
a.	Formal Bids.....	5
b.	Informal Bids.....	7
c.	Bid Specifications.....	7
d.	Request for Proposals (RFP)	7
e.	Request for Qualifications (RFQ)	7
f.	Exemptions.....	8
6.0	Procurement Methods.....	10
a.	Requisitions	10
b.	Purchase Orders	10
c.	Change Orders	11
d.	Procurement Cards.....	11
e.	Electronic Payments	11
f.	Contracts.....	11
7.0	Delivery and Performance	12
8.0	Minority, Women, and Small Business Suppliers.....	12
	Exhibit A – Dollar Thresholds in North Carolina Public Contracting Statutes.....	14
	Exhibit B - Independent Contractor / Employee Checklist	15
	Exhibit C - Procurement Guidance When Using Federal Funds	16

1.0 Policy Purpose

This policy is intended to be a guide to all Town of Lake Lure Government employees responsible for obtaining apparatus, supplies, materials, equipment, and services. The intent is to design policies and procedures that will serve the Town's needs, provide for effective, efficient and economical buying processes, and follow the legal guidelines set forth in the North Carolina General Statutes.

2.0 Roles & Responsibilities

The procurement roles and responsibilities of Town of Lake Lure Government can largely be assigned to the following:

a. Town of Lake Lure Finance Department

The Town's Finance Department is responsible for:

- Policy development, revision, implementation, and monitoring;
- Administration of centralized procurement programs and processes;
- Development and provision of any required procurement-related training to employees;
- Assisting all employees with procurement needs.

b. All Town Departments

Department Directors and their designees, and all staff with procurement-related roles are responsible for the following:

- Conducting all purchasing activities in accordance with the applicable North Carolina General Statutes, Town policies and procedures, ordinances, Federal rules and regulations, and in pursuit of the best interests of Town of Lake Lure;
- Developing and maintaining good public, supplier, and internal relationships;
- Ensuring fair and open competition by ethical means;
- Extending honest, courteous, and impartial treatment to all interested suppliers;
- Respecting public trust and not abusing the procurement process for personal advantage or gain.

c. Standards of Conduct

i. Gifts and Favors from Suppliers

North Carolina General Statute § 133-32 addresses the legal implications of governmental employees accepting gifts and favors from suppliers. Briefly summarized, this statute states it is unlawful for any supplier who has a current contract with a governmental agency, has performed under such a contract within the past year, or anticipates bidding on such a contract in the future to give gifts or favors to any employee of a governmental agency who is charged with preparing plans, specifications, or estimates for public contracts, awarding or administering such contracts, or inspecting or supervising construction. It is also unlawful for a governmental employee to willfully receive or accept such gifts or favors.

ii. Supplier Relations

Should a department have trouble with a supplier, concerns should be documented in an email to the Procurement Division. Correspondence should be as specific as possible, detailing the circumstances, dates, personnel involved (including titles), and phone numbers. This information will be helpful in determining if the supplier will be considered for future bid awards.

3.0 Penalties for Non-Compliance

Failure to comply with this policy may result in an audit finding and/or disciplinary action, including termination and criminal charges. Individuals and departments identified as failing to comply with Town of Lake Lure policies shall be notified and potentially identified to Town management, internal audit, and/or law enforcement, as appropriate.

4.0 Types of Purchases

Purchases must be made according to the dollar thresholds set forth by North Carolina law (see **Exhibit A – Dollar Thresholds in North Carolina Public Contracting Statutes**). Additional Town policies may also apply, as shown below.

a. Goods (Apparatus, supplies, materials, or equipment)

The following thresholds are established to govern the procurement of goods.

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$4,999	Multiple quotes not required P-Card recommended	Authorized Department Staff
\$5,000 - \$29,999	Multiple quotes recommended Requisition Purchase Order or Contract	Town Manager or Designee
\$30,000 - \$89,999	Informal bid process Requisition Purchase Order or Contract	Town Manager or Designee
\$90,000 or greater	Formal bid process Purchase Order or Contract	Town Manager or Designee Town Council Notified

i. Vehicle Purchases

The purchase of vehicles should be coordinated in conjunction with the Finance Department. Title and/or bill of sale must be received and maintained for all vehicle purchases.

ii. Buy and Sale of Real Property

The buy and sale of real property at any dollar amount must be approved by the governing Council.

b. Services

Competition may be formal or informal based on the dollar amount and project (RFP, simple quotes, or other best practice method). Award should be based on the best overall, justifiable solution, which may include cost and other factors. Refer to **Exhibit B - Independent Contractor / Employee Checklist** for help in determining whether someone qualifies as an independent contractor.

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$4,999	Best practice based on the needs of the department Purchase Order recommended Contract may be advisable based on risk	Authorized Department Staff
\$5,000 - \$89,999	Best practice based on needs of the department Purchase Order or Contract required Contract may be advisable based on risk	Town Manager or Designee
\$90,000 or greater	Solicitation or Request for Proposals required unless waived (reason for waiver must be provided) Purchase Order or Contract	Town Manager or Designee Town Council Notified
Contracts with schools, universities or other agencies for student interns	Contract	Town Manager or Designee

One-year leases, rentals and maintenance contracts	Contract	Town Manager or Designee
Multi year leases, rentals, and maintenance contracts	Contract	Town Manager or Designee Town Council approval required if contract does not include non-appropriations clause

For services contracts, consider the following:

- Issuance of a Request for Proposals (RFP) is the preferred method when and if a Town department chooses to use a more formal competitive solicitation process.
- The procedures for advertising and proposal opening are flexible.
- Award of service contracts may be based on factors other than cost and responsiveness with such factors as vendor experience, qualifications, and solution possible taking precedence over price.

Waiver of competitive solicitation of services contracts

A Department may waive the requirement for issuance of a competitive solicitation for a services contract over \$90,000 when it is in the Town's best interest to do so. Examples of such instances include the following:

- continuum of service delivery is paramount;
- competition will not yield significant benefits;
- when only a single vendor can provide a specific service.

c. Architects, engineers, surveyors, design and build, or construction manager at risk

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$49,999	Qualification-Based Selection (unless exempted)	Town Manager or Designee
\$50,000 - \$89,999	Qualification-Based Selection	Town Council or Designee
\$90,000 or greater	Qualification-Based Selection	Town Council Approval

1. Qualification-Based Selection (QBS)

- A Selection Committee comprised of at least 3 members must be used.
- A scoring process and criteria based on qualifications shall be used to evaluate participating firms.
- When using construction manager at risk, prequalification of first-tier subcontractors must be determined as stated in General Statute §143-128.1.
- If the exemption of the qualification process is being used it must be noted in any advertisement or by announcement.

2. Task Orders

Any task order issued by an architect, engineer, or surveyor shall be approved by the Council or an employee designated by the Council.

d. Construction or Repair

General Statute § 143-129 requires counties to obtain formal bids for construction or repair for projects of \$500,000 and above. An advertisement must run one time at least ten calendar days before the bid opening. The advertisement must list the date and time of the bid opening, mention where the specifications may be obtained, and state that the Council reserves the right to reject any and all bids.

Three bids are required and if three are not received, the project must be re-advertised at least ten days before the next bid opening. If three are still not received, a contract can be awarded by the Town Council after evaluation, to the lowest responsive, responsible

bidder, taking into consideration quality, performance, and the time specified for performance of the contract.

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$4,999	Best practice based on the needs of the department	Authorized Department Staff
\$5,000 - \$29,999	Best practice based on the needs of the department Purchase Order or Contract	Town Manager or Designee
\$30,000 - \$89,999	Informal bid process Purchase Order or Contract	Town Manager or Designee
\$90,000 - \$499,999	Informal bid process Purchase Order or Contract	Town Manager or Designee Town Council Notified
\$500,000 or greater	Formal bid process Contract	Town Council Approval

5.0 Bidding

All bidding shall be compliant with North Carolina statutes.

When procurement requires both the purchase of goods and services, it is imperative to determine which element, whether goods or services, constitutes the larger component of cost. **The element constituting the larger portion of the procurement is the predominant aspect.** The predominant aspect must be identified in order to determine the procurement method required to fulfill the purchase.

The record of bids submitted shall be maintained. Departments should supply this record to the Finance Officer as directed.

a. Formal Bids

A **competitive bid process** in compliance with NCGS § 143-129 must be used in the following cases:

- Purchase of supplies, materials, and equipment estimated at \$90,000 and above;
- Construction or repair contracts estimated at \$500,000 and above.

1. Notify Finance Department that a formal bidding process is required.

2. Prepare Specifications

Detailed written specifications will be prepared by the requesting Department with the assistance of the Finance Officer or designee when needed. Refer to the section labeled "Bid Specifications" for additional information.

3. Create Bid Package or Request for Bid

A Request for Bid will be issued and will contain at a minimum the following information:

- A. The name of the requesting department.
- B. A brief description of the goods or services to be purchased.
- C. The date and time of the bid opening.
- D. The date and time of the pre-bid conference, if applicable.
- E. The name of the Finance Officer or designee.
- F. General Conditions, applicable for a Formal Bid Proposal.
- G. Specific requirements for the goods or services to be purchased.

4. Post Advertisements

Advertisement of Bids: North Carolina General Statute § 143-129(b) requires that at least seven (7) calendar days must lapse between the date the advertisement appears

and the date of the opening of formal bids. Bidding opportunities are publicized electronically using the Town website. The Town may also choose to publicize bid opportunities in the local newspaper and by other means.

5. Submission of Bids

Proposals for Formal Bids must comply with the following:

- A. Oral, telephone, or faxed bids are not accepted: The Finance Officer or designated staff will not accept oral bids nor bids received by telephone, or fax, for formal bids.
- B. Bids must be sealed: Bids shall remain sealed until the date and time set for the opening.
- C. Deviations: Bids containing conditions, omissions, erasures, alterations, or items not called for in the bid may be rejected by the Town as being incomplete.
- D. Bid forms must be signed: The bid forms must be signed in order to be considered a responsive, responsible bid. If a bidder is a corporation, the bid must be submitted in the name of the corporation, not the corporation's trade name. The bidder must indicate the corporate title of the individual signing the bid.
- E. Confirmation of receipt: The bidder is responsible for confirming the receipt of a bid submission.

6. Receipt of Bids

The Finance Officer or designee will receive bids as follows:

- A. Bids must be received timely: If bid specifications indicate bids are to be delivered in person, through the postal mail, or by parcel service, bids must be delivered no later than the date and time set for the receipt of bids in the bid specifications.
- B. Bids must be kept in a secure location until opened: All bids received must be sealed and will be kept in a secure location until the time and date set for the opening of bids.
- C. Identity of Bidders confidential: Prior to the time and date of opening, the identity of the suppliers submitting bids and the number of bids received is confidential and may be disclosed only to Town officials and only when disclosure is considered necessary for the proper conduct of the bidding process.
- D. Inadvertent opening of bid: If a bid is inadvertently opened in advance of the prescribed bid opening, the Finance Officer or designee will write an explanation of the inadvertent opening on the envelope, with the bid number, time and date of opening. The envelope will be resealed and deposited with the other bids.
- E. Late Bids: Late bids will not be considered under any circumstances and will be returned unopened with a letter or email of explanation to the sender.

7. The Opening of Bids

The Finance Officer or designee will open formal bids according to the following procedure:

- A. Bids opened and read aloud: All bids received timely will be opened and publicly read aloud at the time and date established for such opening in the Bid Package.
- B. Bids submitted electronically: Bids received via the electronic purchasing system are closed at the determined close time. A bid tally will be run indicating the suppliers responding to the bid and their bid amounts as submitted.
- C. Bids submitted for Information Technology goods and services: Proposals submitted for information technology goods or services, including software, telecommunications, data processing, etc., are not subject to public inspection until a contract is awarded. Therefore, there will be no public bid opening to comply with NCGS 143-129.8 for information technology related items.

8. Evaluation of Bids

The bids received timely will be examined by the Finance Officer or designee for compliance with the requirements set forth in the Bid Package. The Finance Officer or designee will review

each bid to determine whether it has facial deficiencies that preclude it from being examined further.

9. Award

Bids shall be awarded in accordance with North Carolina General Statutes § 143-129(b) to the lowest responsive, responsible bidder taking into consideration quality, performance, and the time specified in the proposal for the performance of the contract.

b. Informal Bids

An informal bidding process will be used for the following:

- Construction or repair contracts estimated from \$30,000 to \$499,999
- Purchases of supplies, materials, and equipment estimated from \$30,000 to \$89,999

While informal bids are acceptable at these thresholds, departments may also choose to use a formal process if desired. If the estimated total dollar amount of an informal purchase is over \$80,000 for purchases of goods or over \$450,000 for construction or repair contracts, then it is recommended to use a formal bid process to prevent rebidding if all quotes received are over the formal threshold.

NCGS § 143-131 does not specify any methods for securing informal bids, however it does require awards be made to the lowest responsible bidder taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. Methods of receiving quotes are at the discretion of the Finance Officer or the requesting department designee.

State and Town policy require the following for all informal bids:

- Written documentation of contacting more than one vendor to support the competitive process.
- All verbal pricing or quotes must be documented in writing.
- The record of bids shall not be subject to public inspection until the contract is awarded.

c. Bid Specifications

When using a formal or informal bidding process, specifications must be prepared. All specifications should do at least the following:

1. Identify minimum requirements;
2. Encourage competitive bids;
3. Be capable of objective review;
4. Provide for an equitable award at the lowest possible cost;
5. Identify factors to be used in evaluating bids.
6. Specifications will be as simple as possible while maintaining the degree of exactness required to prevent bidders from supplying substandard goods or services and otherwise taking advantage of their competitors.
7. All specifications utilizing a name brand must include the term "or substantially equivalent" to avoid being restrictive and eliminating fair competition from the bidding process.

Different methods of structuring specifications include:

- Qualified products on acceptable supplier list
- Specification by architectural or engineer drawings
- Specification by chemical analysis or physical properties
- Specification by performance, purpose or use
- Specification by identification with industry standards
- Specification by samples

d. Request for Proposals (RFP)

NCGS § 143-129.8 authorizes the use of a Request for Proposals (RFP) process rather than an Invitation to Bid (ITB) in certain instances. RFP's may be used for the following:

- Purchases of services;
- Any combination of goods or services, particularly when the services component of the purchase is greater than the goods component;
- Technology and services contracts;
- Other combinations of goods and services not best handled by NCGS 143-129 and where departments have a need for a more flexible approach.

e. Request for Qualifications (RFQ)

In instances where a Qualifications-Based Selection (QBS) is required, a Request for Qualifications (RFQ) will be used to solicit responses from interested firms and individuals. The Finance Officer or designee should be notified to begin this process, to guide the QBS through selection, and to assist with creation of a proper RFQ.

f. Exemptions

G.S. 143-129 defines several exemptions to the competitive bidding requirements. The following categories of purchases are exempt from both the formal and informal bidding requirements established in NCGS. 143-129. However, the following list is just a shorthand statement of these categories; before attempting to make purchases using these exceptions read the relevant sections of the statute contained in NCGS. 143-129 very carefully as this statute provides additional guidance. Items 1) through 11) are found in NCGS 143-129 (e). Statutory guidance as to the other items is found in the statutes listed beside the item.

1. Purchases from other units of government;
2. Emergencies;
3. Group or Cooperative Purchasing Programs;
4. Change Order Work;
5. Gas, Fuel, and Oil;
6. Sole Source Purchases;
7. Information Technology Goods and Services awarded by the North Carolina Office of Information Technology Services;
8. Guaranteed Energy Savings Contracts; (See also G.S. 143-129.4)
9. State Contract Purchases;
10. Federal Contract Purchases
11. Purchase of Used Goods; (See G.S. 143-129 (e)(10))
12. Construction Management at Risk;
13. Previously Bid or "Piggybacking" Contracts; (See G.S. 143-129 (g))
14. Solid Waste Management Facilities; (See G.S. 143-129.2)
15. Use of Unit's Own Forces (force account work); (See G.S. 143-135 & SL 2009-250)
16. Purchases of Goods and Services from Nonprofit Work Centers for the Blind and Severely Disabled. (G.S. 143-129.5)

Most Common Exemptions

1. Emergency Purchases

NCGS § 143-129(e) (2) defines emergency purchase as "Cases of special emergency involving the health and safety of the people or their property." This exception is used in rare circumstances, such as natural disaster or sudden and unforeseeable damage to property. In cases of emergencies, the Department Head or designee may purchase directly from any supplier, supplies or services whose immediate procurement is essential to prevent delays in work, which may affect the life, health, or safety of Town of Lake Lure employees or citizens. The user department will exercise good judgment and use established suppliers when making emergency purchases. Always obtain the best possible price and limit purchases to those items emergency related. Not anticipating needs does not constitute an emergency.

- During working hours, the following procedure should be used for emergency purchases:
An electronic requisition entered and approved by the requesting department

will grant permission to the Purchasing Division to issue the purchase order. The requesting department will include in the requisition supporting documentation for the emergency purchase order: item(s) to be purchased with estimated quantities and the reason for the emergency purchase. After verifying available funds, a purchase order number will be issued for the expenditure. Should the purchase exceed the available account budget, a Request for Transfer of Funds will need to be completed immediately.

- After working hours, the following procedure should be used for emergency purchases:

An electronic requisition will be entered and approved the next working day from the requesting department. The requesting department will also include any pertinent information associated with the emergency purchase, to serve as supporting documentation and will be attached to the purchase order, including but not limited to: item(s) to be purchased with estimated quantities, and the reason for the emergency purchase.

Emergency purchases, although sometimes necessary, are costly both in time and money. The use of emergency procedures will be limited and monitored for abuse.

2. State Contract Purchases

Departments may use State of North Carolina contracts to procure available items without bidding if the contractor is willing to extend to the Town the same or more favorable prices, terms, and conditions. Following is a link to the state purchasing and contracting site where items can be searched for by keyword. These procurements do not require Council approval. <http://www.doa.state.nc.us/PandC/keyword.asp>

3. Cooperative and Group Purchasing Programs

Similar to State Contract Purchases, the Town may make purchases of supplies and equipment through group purchasing programs, which another entity has already carried out a competitive process to establish contracts on behalf of multiple entities at discount prices. These procurements do not require Town Council approval.

4. Sole Source

In the rare event there is only one supplier capable of providing a particular good or service, the competitive pricing procedures outlined in this manual may be waived by the Finance Officer. Whenever Department Heads or designees determine a need to purchase goods from a "sole source", they will document the reason. The provisions of N.C.G.S. 143-129 will require the Town Commissioners approve this sole source exception. A sole source purchase exemption applies when at least one of these conditions exist:

- a. Performance or price competition for a product is not available.
- b. A needed product is available from only once source of supply.
- c. Standardization of compatibility is the overriding consideration.

If one of these conditions applies to the good to be purchased, then the item will be exempt from bidding and the purchase must have Council approval. Contact the Finance Officer for guidance before proceeding.

5. Piggybacking

The Town can purchase, without bidding, from a supplier that has, within the past 12 months, successfully gone through the competitive bidding process for that item or service and contracted to furnish an item or service to another public agency. The supplier must be willing to supply the same item at the same or more favorable prices and other terms. The contract intended to be copied must be one that was entered into following the award of a public bidding process similar to ours.

North Carolina General Statutes § 143-129(g) allows municipalities, counties, or other subdivisions to piggyback for supplies, materials, or equipment from another governmental entity that has within the previous 12 months, completed a

formal bid process, to purchase similar supplies, materials, or equipment if agreed upon by the supplier. The Statute requires approval by the Council of Commissioners and advertisement of intent to award. Federal guidelines may prohibit the option of piggybacking.

6. Grants

When the Town is awarded a grant that has procurement requirements specified by the grantor, the Town will follow those requirements as long as they do not violate North Carolina General Statutes or Federal Uniform Guidance.

7. Use of Federal Funds

When using federal funds, the Town must follow NC Statutes as well as OMB Guidance provided in the Code of Federal Regulations, Subpart D - Post Federal Award Requirements. The thresholds for micro- purchases, small purchases, and when sealed bids are required are set by OMB Guidance provided in the Code of Federal Regulations Title 2 Vol. 1 § 200.67 and §200.88. This guidance includes but is not limited to the following requirements:

1. **Micro-purchases (\$0 - \$9,999)**
When practical, distribute micro-purchases among qualified suppliers.
2. **Small Purchases (\$10,000 – \$249,999)**
 - a. Price rate quotations must be obtained from an adequate number of qualified sources.
 - b. Written procurement procedures to define number and methods for obtaining quotes.
3. **Sealed Bid Procedures Required (\$250,000 and higher)**
 - a. Price rate quotations must be obtained from an adequate number of qualified sources;
 - b. Publicly advertised;
 - c. Competitive proposals;
 - d. Non-competitive proposals require written approval and justification (e.g. only one source/vendor available, inadequate competition, emergency).
4. **Documentation required (All amounts)**
 - a. Evidence the awarded supplier is not excluded from doing business with the Federal Government.
 - b. When quotes are required, documentation that an attempt was made to contact at least three suppliers to obtain quotes.

View Exhibit C - Procurement Guidance When Using Federal Funds for further guidance.

6.0 Procurement Methods

a. Requisitions

An electronic requisition initiates the procurement cycle for purchase orders. The receipt of the request with the required information, appropriate approvals, and sufficient budget gives the Procurement Division the authority to issue a purchase order. The Department Head or designee must approve all requisitions within the requesting department.

b. Purchase Orders

Purchase orders are required for all purchases of \$5,000 and above.

A purchase order is a contract between the Town and a supplier and is not binding until accepted by the supplier. Obtaining supplies, materials, equipment or services \$5,000 and over without a purchase order is an unauthorized purchase and a violation of resolution 03-04-04, adopted April 2003 by the Council of Commissioners. **Unauthorized purchases or split purchases to avoid the \$5,000 threshold are against Town policy and may result in disciplinary action.**

i. Purchase Order Requirements

1. **Submission of a requisition** through the town's Finance Department. Purchase

orders will not be created without a properly submitted requisition.

2. **Terms and conditions** must clearly define the delivery and performance requirements of the services, supplies, or equipment.
3. **Completion of the purchase order** by the Finance Officer or designee. The purchase order must be pre-audited, and the signatures of the Finance Officer and Finance Director must be on the completed document to be valid.
4. **Processing invoice(s) for payment** against a purchase order requires the applicable purchase order number be indicated for the invoice and that the purchase order have sufficient balance to cover the invoice amount. Receipt of goods and/or services must be verified prior to final payment of an invoice.

ii. Blanket Purchase Orders

Blanket Purchase orders can be used when there is a recurring need for expendable goods that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably. Use of this process helps to avoid the creation of numerous purchase orders and contracts for routine purchases. Blanket purchase orders can also be a useful budgetary tool, as they obligate funds and allow easy tracking of recurring purchases throughout the year. A blanket purchase order should be used if the following criteria are applicable:

1. The annual cost can be reasonably estimated;
2. The purchases are paid through invoices (though it can be done if P-Cards are used);
3. There is a single account to which the expenses should be charged.

Examples would include maintenance agreements, purchase of building/cleaning supplies, etc. Requests for blanket purchase orders must, in addition to the required information, indicate the following:

5. Items covered by the blanket purchase order and the amount should be listed in the purchase order comments;
6. If blanket purchase order should be limited to certain department employees, please include their names in the purchase order.

The issued purchase order will instruct the supplier that unauthorized purchases will not be allowed. It is the responsibility of the individual authorized to purchase under a blanket purchase order to ensure that an unspent balance remains to cover the purchases to be made for the remainder of the purchase order period.

iii. Purchase Order Cut-Off Date

Requisitions for materials, supplies, services and equipment (not included in blanket purchase orders or service contracts) for the ending current fiscal year must be submitted on or before a predetermined date provided to departments by the Finance Director. Requisitions of a routine nature that could have been scheduled prior to the cut-off date, and deemed not critical, will be processed in the new fiscal year. This procedure affords the Finance Department the opportunity to complete fiscal year end activities in a timely and proper manner and prepare for the annual audit.

c. Change Orders

- Changing, modifying, or canceling an existing purchase order can be initiated by the issuing department using the procurement system.
- Approval of change orders is based on the new cumulative amount of the purchase order. Refer to the Types of Purchases section to view approval authorities.
- Changes to a purchase order will not be processed if the scope of services has been rendered or materials have already been received.

d. Procurement Cards

Purchases less than \$5,000 should be obtained by procurement card when possible. Please refer to the Credit Card Policy.

e. Electronic Payments

Electronic payments may be authorized as defined by G.S. 159-28. All pre-audit and

disbursement rules must be followed per North Carolina Administrative Code (20 NCAC 03.0409 and 20 NCAC 03.0410. Please refer to the Credit Card Policy for additional guidance.

f. Contracts

All contracts are required to follow the Town of Lake Lure Contracts Policy and Contracts Control Process contained within.

i. Contracts for Services

Contracts are advised for use when the terms and conditions of the Town's purchase order is not sufficient to adequately protect against possible risk, or the scope of work is too complex to be adequately detailed in a purchase order.

ii. Contracts for Goods

In most cases a purchase order is sufficient as a contract for goods. Contracts for goods should be used if the nature of purchase is high risk and is not sufficiently controlled by the terms and conditions in the purchase order.

iii. Contracts for Grants

Any grant the Town awards should be entered into the Town's financial software to obligate funds, and stored in the Town's contract repository.

iv. Multi-year Contracts

Contracts that are not associated with a project ordinance, more than 12 months in length, cross Town fiscal years, and require funding from subsequent Town budgets require a non-appropriation clause or Council of Commissioners approval.

For example:

1. A contract runs from June – May (12 months) and the total for the entire contract is \$60,000 (\$5,000 per month). The current fiscal year funds \$5,000 and the subsequent fiscal year funds \$55,000. This contract does not require BOC approval because the term is not more than 12 months.
2. A contract runs from June – September (16 months) and the total for the entire contract is \$80,000 (\$5,000 per month). The current fiscal year funds \$5,000 and the subsequent fiscal year funds \$75,000. This contract requires BOC approval because the contract requires funding from more than one fiscal year and the term is more than 12 months.
3. A contract runs from April – June (15 months) and the total for the entire contract is \$75,000 (\$5,000 per month). The current fiscal year funds all the \$75,000. This contract does not require BOC approval because all the funding comes from the current fiscal year, not requiring funding in subsequent fiscal years.

7.0 Delivery and Performance

i. Delivery schedule

The importance of the delivery schedule may be emphasized to the supplier within the bid documents. Delivery requirements will be clearly written and fully understood by all suppliers. If several items are required by the purchase order, there may be a different delivery schedule for each item. It is necessary to clearly indicate the delivery location on the requisition.

ii. Non-performance

If a supplier fails to meet any requirements of the specifications or terms and conditions of the contract or purchase order, the supplier can be cited for non-performance. The seriousness of non-performance will be evaluated by the department and Finance Officer based upon the circumstances of each violation.

iii. Inspection and testing

Goods and materials should be checked at the time of receipt for damage or defects. The inspection will include assuring goods comply with the specifications. If damage is found or the goods fail to comply with the specifications, the item(s) will be rejected. To protect the Town's rights in the event of a rejection for any reason, the supplier will be informed immediately. Reasons for the rejection must be documented in an email to the Procurement Division in a timely manner.

iv. Supplier relations

Should a department have trouble with a supplier, concerns should be documented in an email to the Procurement Division. Correspondence should be

as specific as possible, detailing the circumstances, dates, personnel involved (including titles) and phone numbers. This information will be helpful in determining if the supplier will be considered for future bid awards.

v. Program Compliance Requirements

All written statements, certifications or intentions made by the Bidder will become a part of the agreement between the Contractor and Town of Lake Lure for performance of this contract. Failure to comply with any of these statements, certifications, or intentions or with the Minority Business Plan will constitute a breach of the contract. A finding by Town of Lake Lure that any information submitted either prior to award of the contract or during performance of the contract is inaccurate, false or incomplete, will also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It will be solely at the discretion of Town of Lake Lure whether to terminate the contract for breach. In determining whether a contractor has made best faith efforts, Town of Lake Lure will evaluate all efforts made by the Contractor and will determine compliance.

8.0 Minority, Women, and Small Business Suppliers

According to NCGS 143-129(b) the Town has no authority to establish preferences of any kind and are bound by law to award to the “lowest responsible, responsive bidder, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.” However, it is the desire of the Town to purchase from Minority Businesses and suppliers located within Town of Lake Lure whenever possible. Local suppliers and Minority Business suppliers should be encouraged to compete for Town business.

i. Participation Goals

Annual verifiable goals for minority business participation in construction projects (other provisions apply depending on project type & funding), procurement projects, professional, and other service projects are as follows:

- Construction – 12% overall for all minorities
- Procurement – 10% overall for all minorities
- Professional – 10% overall for all minorities
- Other Services – 10% overall for all minorities

ii. Construction projects over \$300,000

Per NCGS 143-128, for projects with an estimated cost of \$300,000 or greater that involve construction or repair to buildings, the bidder must provide, with the bid, documented proof in one of the following forms:

- **The State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts** along with the **Identification of HUB Certified / Minority Business Participation**
- **The State of North Carolina AFFIDAVIT B – Intent to Perform Contract with Own Workforce.** Other forms **must** be submitted with AFFIDAVIT A either at the time the bid is due or 72 business hours after the bid opening by the lowest responsible bidder or bidders who wish to be considered.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and will award to the next lowest responsible bidder. Town of Lake Lure reserves the right to waive any informality, if it can be resolved prior to award of the contract, and it is in the best interest of the Town to do so. For a full description of the Minority Business Forms and what must be completed to submit a responsible bid, contact the Finance Officer for guidance.

Exhibit A – Dollar Thresholds in North Carolina Public Contracting Statutes

Requirement	Threshold	Statute
Formal Bids		
Construction or repair contracts	\$500,000 and above (estimated cost of	N.C.G.S §143-129
Purchase of apparatus, supplies, materials and equipment	\$90,000 and above (estimated cost of	N.C.G.S §143-129
Informal Bids		
Construction or repair contracts	\$30,000 to formal limit	N.C.G.S §143-131
Purchase of apparatus, supplies, materials and equipment	\$30,000 to formal limit	N.C.G.S §143-131
Construction methods authorized for building projects		
Separate Prime	Over \$300,000 (estimated cost of project)	N.C.G.S §143-128
Single Prime		
Dual Bidding		
Construction Management at Risk		
Minority-business enterprise requirements – Building Projects		
Projects with state funding	\$100,000 or more	N.C.G.S §143-128.2(a)
Locally funded projects	\$300,000 or more	N.C.G.S §143-128.2(a)
Projects in the informal range	\$30,000 to \$500,000	N.C.G.S §143-131(b)
Limit on use of own forces		
Construction or repair projects	Not to exceed \$125,000 (total project) or \$50,000 (labor only)	N.C.G.S §143-135
Bid bond or deposit		
Construction or repair projects	Formal bids (see above)	N.C.G.S §143-129(c)
Purchase contracts	Not Required	
Performance/payment bonds		
Construction or repair projects	Projects over \$300,000 for each contract over \$50,000	N.C.G.S §143-129(c); N.C.G.S §44A-26
Purchase contracts	Not Required	
General Contractor’s License	\$30,000 and above	N.C.G.S. §87-1
Use of registered architect or engineer required		
Nonstructural work	\$300,000 and above	N.C.G.S. §133-1.1(a)
Structural repair or new	\$135,000 and above construction	
Repair work affecting life safety	\$100,000 and above systems	
Selection of architect, engineer, surveyor, or construction manager at risk		
“Best qualified” selection procedure	All contracts unless exempted	N.C.G.S. §143-64.31
Exemption authorized	Projects where estimated fee is less than \$50,000 or other projects in sole discretion of BOC	N.C.G.S. §143-64.32

Exhibit B - Independent Contractor / Employee Checklist

To assist you in deciding whether a worker is an employee or an independent contractor, complete the following questions. A worker is generally considered to have an employee relationship with the Town if the questions below are answered "YES".

Complete this checklist only for individuals-sole proprietors, and partnerships. Do not complete for employees of a corporation.

NAME: _____

Circle Answer

1. Is the worker currently employed by the Town or has the worker previously been an employee of the Town? Position: _____	Yes	No
2. Are the hours of work established or regulated by the Town?	Yes	No
3. Are tools and equipment supplied by the Town? Independent contractors use their own equipment.	Yes	No
4. Does the worker provide their service only to the Town? Independent contractors may have several contracts with other companies and advertise their services in the phone book or other source. <i>List source:</i> _____	Yes	No
5. Is the method of payment by unit of time, (i.e. hourly, weekly or monthly wage)? <i>(Independent contractors are usually paid by job in a lump sum)</i>	Yes	No
6. Is training received from or at the direction of the Town - either formally or informally?	Yes	No
7. Are repairs to equipment paid by the Town? <i>Independent contractors pay for their own repairs.</i>	Yes	No
8. Is the worker required to work at a specific place or to work on the Town's premises if the work could be done elsewhere? <i>Independent contractors usually have a main office or other facility.</i> Office Location: _____	Yes	No
9. Does the worker submit regular oral or written reports to the Town to account for their actions?	Yes	No
10. Are business and/or travel expenses directly paid by the Town? <i>Independent contractors pay their own expenses.</i>	Yes	No
11. Does the Town restrict the worker from accepting any other work? <i>Independent contractors may have several jobs at one time.</i>	Yes	No
12. Does the worker act in the capacity of a foreman for/or a representative of the Town by hiring others, supervising them and paying them at the direction of the Town?	Yes	No
13. Does the worker wear a uniform with the Town logo or other means of identification, except for	Yes	No
14. Is insurance coverage (liability, health, etc.) supplied by the Town?	Yes	No
15. Does the Town use the worker for any odd jobs that differ from their normal activities?	Yes	No
16. Is the relationship between the Town and the worker a continuing one?	Yes	No
17. Is the worker free from any liability for quitting a job before the job is completed?	Yes	No
18. Does the worker have to perform services in the order or sequence set by the Town?	Yes	No

Note: Independent contractors are required to have all necessary licenses to perform the work that they are contracted to perform.

If all questions above are answered **NO**, the worker is an Independent Contractor.

If any question above is answered **YES**, explain the question and send the checklist with the contract to the Finance Department for a determination as to whether the worker is an employee or an Independent Contractor.

Exhibit C - Procurement Guidance When Using Federal Funds

OMB Guidance provided in the Code of Federal Regulations Subpart D - Post Federal Award Requirements, sections 200.318 through 200.326.

	Goods & Supplies	Construction/Repair	Services	
FORMAL	<ul style="list-style-type: none"> Formal bidding process required Publicly advertise Sealed Bids required Attempt to get bids from at least three bidders Award to lowest bidder Public bid opening 	<ul style="list-style-type: none"> Formal bidding process required Publicly advertise Sealed Bids required Attempt to get bids from at least three bidders Award to lowest bidder Public bid opening 	<ul style="list-style-type: none"> Request for proposals required Publicly advertise Attempt to get quotes from at least two sources Award to proposal most advantageous to the program, price and other factors considered 	\$250,000 or greater
		<ul style="list-style-type: none"> Informal quotes required 	<ul style="list-style-type: none"> Informal quotes required 	\$90,000
INFORMAL	<ul style="list-style-type: none"> Informal quotes required Attempt to get quotes from at least two sources Award to lowest bidder 	<ul style="list-style-type: none"> Attempt to get quotes from at least two sources Award to lowest bidder 	<ul style="list-style-type: none"> Attempt to get quotes from at least two sources Award to proposal most advantageous to the program with price and other factors 	\$10,000
NO QUOTE	<ul style="list-style-type: none"> No competitive quotes required if price appears to be reasonable 	<ul style="list-style-type: none"> No competitive quotes required if price appears to be reasonable 	<ul style="list-style-type: none"> No competitive quotes required if price appears to be reasonable 	\$0

ALWAYS	ALLOWED EXCEPTIONS
<ul style="list-style-type: none"> Document procedures Award on fixed price or not to exceed Document the awarded supplier is not excluded Contract or PO contain UG provisions Solicit M/WBE businesses when possible 	<ol style="list-style-type: none"> The item is available only from one single source. An urgent need or emergency will not permit a delay for competitive solicitation. The Federal awarding agency or pass-through allows noncompetitive proposals. from doing business with the Federal Gov.

* If seeking a contract with an architect, engineer, survivor, or CMAR the procurement method must follow the Mini-Brooks Act.



TOWN OF LAKE LURE

TOWN ISSUED CREDIT CARD POLICY

Prepared by:
Steve Ford
Finance Officer

Date Approved by
Town Council:

**TOWN OF LAKE LURE
TOWN ISSUED CREDIT CARD POLICY**

PURPOSE

To establish procedures and guidelines for using a Town issued credit card to purchase materials, supplies, and/or services by electronic means on behalf of the Town of Lake Lure.

OVERVIEW

Issuance of a Town credit card has been proven to be an effective tool and timely method for obtaining materials, supplies, and/or services to help departments maintain the consistent flow of day-to-day operations.

SCOPE

Town issued credit cards should only be used when:

- a. Making purchases for materials, supplies, and/or services that are for the official use of the Town of Lake Lure only.
- b. Making purchases for materials, supplies, and/or services that cannot be paid by means of an official check.
- c. Making purchases for materials, supplies, and/or services online or directly (in person).
- d. Paying travel expenses whenever the cardholder is on official Town business.
- e. Town issued credit cards will be assigned to employees who have direct authorization to make purchases using this method as approved by the Town Manager and Finance Director.

PROCEDURE

To ensure the process operates efficiently and within an acceptable internal control structure, a timely response to each of the following elements is required.

1. Issue/Return of Credit Card

- a. The employee must sign documentation verifying agreement to the conditions of card use on the “Credit Card Authorization Form” (See Exhibit A).
- b. Total purchase authority is limited by the total purchase limit assigned to the card. The Town Manager will indicate his/her approval by signing the Credit Card Authorization Form.
- c. The Finance Director will review the enrollment form and obtain the credit card for the approved employee.
- d. Changes in spending/authority levels must be authorized by the Town Manager in writing and then submitted to the Finance Director for processing.
- e. Any employee who received a Town issued credit card must turn the card into the Finance Director immediately upon resignation notice or termination.

2. Use of Town Issued Credit Cards

- a. Employees who have been issued credit cards should notify the Finance Director immediately if the Town issued credit card has been **lost, stolen, or compromised**. The Finance Director is responsible for canceling and obtaining all Town issued credit cards. All expired or worn cards should be turned into the Finance Director for proper documentation and disposal.
- b. Town issued credit cards are to be used for Town business only. The use of the credit card to acquire or purchase materials, supplies, and/or services other than for official business is strictly **prohibited**.
- c. The cardholder is responsible for maintaining all vendor receipts and/or records until such time as the receipts/records are due the Finance Department.

- d. The cardholder is **responsible** for all purchases made on the assigned card regardless of who used the card, unless the card was used in a fraudulent manner after loss or theft.
- e. Town credit cards should not be shared and cardholders should not delegate use of the card to another employee without proper approval of the Town Manager or Finance Director.

3. Pre-Auditing and Disbursement Procedures

The 2015 State Legislature modified GS 159-28(d2) to allow the Local Government Commission (LGC) to adopt rules to address the execution of the pre-audit and disbursement process related to electronic transactions for local governments. The new pre-audit and disbursement rules were effective as of November 1, 2017, and exist as part of the North Carolina Administrative Code (20 NCAC 03.0409 and 20 NCAC 03.0410).

Units of government can now be exempt from the pre-audit certificate and disbursement certificate requirements on electronic transactions if they follow the requirements as detailed in the new administrative code rules. The new rules apply to electronic transactions utilizing the following:

- 1) Credit cards
- 2) Charge cards
- 3) Debit cards
- 4) Gas cards
- 5) Procurement cards
- 6) Electronic funds transfers

The following policies are designed to comply with the new pre-audit and disbursement rules in the NC Administrative Code 20 NCAC 03.0409 and 20 NCAC 03.0410.

- a. The Town issued credit cards may be used to purchase materials, supplies, and/or purchases when the cardholder has established that credit cards may be used as payment and when it is established that payment with a Town check is not acceptable.

- b. Permission must be obtained from the Finance Director before any purchases may be initiated with the Town issued credit cards.
- c. The Finance Director must ensure that there is an appropriate budget ordinance or project/grant ordinance appropriation authorizing the obligation.
- d. The Finance Director must ensure that sufficient monies remain within the appropriation to cover the amount that is expected to be paid out during the current fiscal year if accounted for in the budget ordinance, or cover the entire amount if accounted for in a project or grant ordinance.
- e. The cardholder must submit itemized receipts immediately following each purchase transaction to the Finance Director. Each itemized receipt must contain the following:
 - 1) Card type and last 4 digits of card number
 - 2) Date of transaction/purchase
 - 3) Brief description of transaction
 - 4) Total amount of transaction
 - 5) Sales tax amount, if applicable
 - 6) Employee signature
- f. The cardholder must submit itemized receipts to match the monthly credit card statements. If a receipt has been lost, the cardholder must make a diligent attempt to obtain a duplicate receipt from the vendor. In the event this is not available, a "Lost Credit Card Receipt Form" (Exhibit B) must be completed, which includes a detailed description and must be approved by the Town Manager. The Finance Director has the right to seek reimbursement from an employee for undocumented and/or unauthorized purchases.
- g. The Finance Department will then record the amount of the transaction in the Town's encumbrance system.
- h. The Finance Director will review all receipts to ensure compliance with all purchasing and pre-audit requirements. Once confirmed, the Finance Department will apply charges to appropriate line items and process the payment to the credit card vendor.

4. Action Due to Inappropriate or Accidental Use

The use of a Town issued credit card to acquire or purchase goods and services other than for the official use of the Town of Lake Lure is considered **fraudulent use**. However, the Town recognizes that accidental use can occur. The Town reserves the right to cancel an individual employee card at any time due to any type of abuse.

- a. If a cardholder accidentally uses a Town issued credit card for a personal purchase, the Finance Director should be contacted immediately upon discovery. If the Finance Director discovers an error, the employee will be contacted immediately. The employee must submit a "Credit Card Reimbursement Form" (Schedule C), along with the full reimbursement.
- b. Records of accidental personal use will be maintained by the Finance Director. In the event accidental use by a cardholder is detected on a repetitive basis, the Town Manager will be notified and the employee may be subject to disciplinary action.

5. Inappropriate or Fraudulent Use

If a cardholder makes an inappropriate or fraudulent purchase, the Town Manager shall be notified immediately regarding the transaction.

- a. A cardholder guilty of fraudulent use or repetitive inappropriate charges will be subject to disciplinary action, up to and including dismissal. The Town has the right to file a police report and press charges for fraudulent use of Town issued credit cards.
- b. Records of inappropriate use will be maintained by the Finance Department. The Town Manager will be notified about any notable amount of abuse.

6. Policy Forms

- a. Credit Card Authorization Form
- b. Lost Credit Card Receipt Form
- c. Reimbursement Form for Accidental or Inappropriate Use of a Town Issued Credit Card

**TOWN OF LAKE LURE
CREDIT CARD AUTHORIZATION FORM**

I. Employee/Cardholder Information

Name: _____ Department: _____

II. Cardholder's Agreement

I understand that the use of the Town issued credit card is for purchases made on behalf of the Town.

I will be expected to use the credit card issued to me as directed and in accordance with this policy.

I will not permit another person to use the credit card issued to me (unless approved). Any such purchases made with my card will be considered to be made by me and my responsibility.

I will be responsible for the safe keeping of the credit card issued to me and, if lost, I will report its loss immediately to the Finance Director.

I understand that my personal credit will not be affected by any use of the Town issued credit card.

The use of a Town issued credit card to purchase goods and services for other than the official use of the Town of Lake Lure is fraudulent use. An employee guilty of fraudulent use will be subject to disciplinary action, up to and including dismissal. In addition, I agree that any reimbursement owed the Town, as a result of this type of use, may be deducted from my wages or other monies owed to me by the Town.

I have read, understand, and agree to the conditions above.

Employee Signature _____

Date _____

III. Approval: Town Manager Signature: _____

Date: _____

EXHIBIT A

**TOWN OF LAKE LURE
CREDIT CARD AUTHORIZATION FORM**

IV. Card Receipt

Card Issuer _____ Card Number _____

Date Issued to Cardholder _____

Finance Director Signature _____

Card Issuer _____ Card Number _____

Date Issued to Cardholder _____

Finance Director Signature _____

Card Issuer _____ Card Number _____

Date Issued to Cardholder _____

Finance Director Signature _____

Card Issuer _____ Card Number _____

Date Issued to Cardholder _____

Finance Director Signature _____

Card Issuer _____ Card Number _____

Date Issued to Cardholder _____

Finance Director Signature _____

**TOWN OF LAKE LURE
LOST CREDIT CARD RECEIPT FORM**

Date of Purchase: _____

Merchant Name: _____

Amount of Purchase: _____

Description and purpose of the purchase?

Why is the original receipt or appropriate documentation missing?

I certify that I have contacted the merchant and was unable to obtain a copy of the purchase documentation. I also certify that this purchase was made for an official Town business purpose.

Cardholder Signature: _____

Cardholder Printed Name: _____

Form must also be reviewed and approved by the Town Manager before submitting to the Finance Director.

Town Manager Signature: _____

Date: _____

This form is to be used as documentation only if the actual receipt, invoice, internet order screen, or appropriate substitute is unavailable for a purchase made on a Town issued credit card. It must be filled out completely and signed by both the cardholder and the Town Manager.

Date received by the Finance Director: _____

Finance Director Signature: _____

**TOWN OF LAKE LURE
REIMBURSEMENT FORM
FOR ACCIDENTAL OR INAPPROPRIATE USE
OF A TOWN ISSUED CREDIT CARD**

Complete this form if you accidentally used your credit card for non-Town of Lake Lure use (including personal use) or you used a credit card inappropriately and have been contacted by the Finance Director for reimbursement. This form, original receipts, and a copy of the reimbursement check, should be attached to this form and submitted to the Finance Director after it is signed by the Town Manager.

*****REMINDER*****

Appropriate action will be taken against personnel for inappropriate use that is repetitive and/or intentional according to the Town Issued Credit Card Policy. Infrequent, inadvertent personal use that is quickly acknowledged and reimbursed should not result in action against the cardholder.

Date of Purchase	
Merchant Name	
Amount of Purchase	

Describe the nature of the accidental or inappropriate use and how it occurred.

Describe how you plan to prevent future misuse.

Continued

**TOWN OF LAKE LURE
REIMBURSEMENT FORM
FOR ACCIDENTAL OR INAPPROPRIATE USE
OF A TOWN ISSUED CREDIT CARD**

Cardholder Name	
Cardholder Signature	
Town Manager Signature	

Date Received by Finance Director _____

Finance Director Signature _____

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM**

Meeting Date: May 24, 2023

SUBJECT: Review Schnabel Work Order No. 7A, Professional Dam Engineering Services for the Reservoir Drain Construction at Lake Lure Dam

AGENDA INFORMATION:

Item Number: IV
Department: Dam
Contact: Michael Dydula, Project Manager
Presenter: Michael Dydula, Project Manager

BRIEF SUMMARY:

Schnabel Engineering submitted a proposal for Work Order No. 7A for professional dam engineering services associated with the construction of the planned reservoir drain at Lake Lure Dam. Such services include providing construction phase services for the installation of the reservoir drain at Lake Lure Dam. Services for this project will be performed under the supervision of a Professional Engineer(s) licensed in the State of North Carolina. Work Order No. 7A was originally proposed in April with a lump sum of \$467,785.96. Since the estimated timeline of the drain valve construction project has expanded, Schnabel has revised the proposed Work Order No. 7A, and the lump sum is now listed at \$797,493.22.

ATTACHMENTS:

Proposed Schnabel Work Order No. 7A (Updated)

May 8, 2023

Mr. Michael Dydula, PE
Project Manager
Town of Lake Lure
2948 Memorial Highway
Lake Lure, NC 28746

Subject: 18P21021.04.02, Work Order No. 7A, Professional Dam Engineering Services for the Reservoir Drain Construction at Lake Lure Dam, Lake Lure, North Carolina

Dear Mr. Dydula:

SCHNABEL ENGINEERING SOUTH, P.C. (Schnabel) is pleased to submit this work order proposal for professional dam engineering services associated with the construction of the planned reservoir drain at Lake Lure Dam.

BACKGROUND

The Town of Lake Lure (Town) is implementing the reservoir drain as the first phase in the overall rehabilitation of Lake Lure Dam. In addition to addressing a major dam safety requirement, the reservoir drain will allow the Town to further lower the reservoir level, beyond the limitations of the existing spillway gates, to support the rehabilitation of the sanitary sewer system and additional maintenance activities such as lake dredging or work on the spillway gates. During the virtual workshop held on March 17, 2020, with representatives from the Town, the Town's consultants, NCDEQ Dam Safety, and the regulatory agencies responsible for the sanitary sewer system, NCDEQ Dam Safety indicated that they were agreeable to this phased approach of first installing the reservoir drain. The reservoir drain design is complete and has been approved by NCDEQ Dam Safety. Bids were received on April 11, 2023, and the apparent low bidder is Morgan Corporation (Morgan) of Spartanburg, SC. The Town intends to award the reservoir drain construction contractor to Morgan during their next work session on May 9 or 10, 2023, and provide Notice-to-Proceed shortly thereafter pending easement acquisition and environmental permit approvals. The Town has procured the reservoir drain valves under a separate contract, and valve delivery is tentatively scheduled for summer 2023.

SCOPE OF SERVICES

The objectives of Schnabel's services proposed under this work order are to provide construction phase services for the installation of the reservoir drain at Lake Lure Dam. Services for this project will be performed under the supervision of a Professional Engineer(s) licensed in the State of North Carolina. The scope of services for this portion of the project is described in detail below.

Task 01 – Construction Phase Services

The construction services scope of work proposed herein includes providing construction observation and documentation as will be required by the contract documents. In addition, Schnabel will provide contract administration services for the execution of the contract between the Owner (Town) and the selected Contractor. This is a unique project requiring a high level of engineering support and observation during construction since the work will be performed under near full head conditions (at or above the existing spillway gate sill elevation). As a result, Schnabel proposes to provide an on-site Resident Project Representative (RPR) to meet the quality assurance demands of the project. Our fees for this work order are based on the construction schedule provided by Morgan with their bid, which indicates a construction duration of 12 months. As indicated in the table below, we have assumed some construction activities will require full-time oversight by our RPR while other construction activities will only require periodic oversight by our RPR and/or engineering staff.

Roles and Responsibilities:

Schnabel's construction project team will consist of the following staff:

- Project Manager
- Project Engineer / Engineer-of-Record (EOR)
- Contract Administrator
- Resident Project Representative (RPR)
- Support Engineers to assist with construction observation, documentation, answer questions, confirm criteria, review submittals, respond to RFIs, review change orders, evaluate differing site conditions, etc.
- Construction Field Technicians, as necessary, to support the RPR with quality assurance observation and testing

The management of the project engineering team will be the responsibility of the Project Manager, and the Project Manager will also be the liaison with the Town. The Project Engineer / Engineer-of-Record (EOR) will be professionally responsible for evaluating the construction's conformance with the approved design documents. Our Project Engineer, Contract Administrator, and/or their designated representative(s) will make bi-weekly site visits and attend on-site progress meetings with the Town and the selected Contractor. We have allocated 24 hours per month on average for these site visits and meetings plus additional general coordination with our RPR and the selected Contractor and technical reviews. We have also allocated an additional 4 hours per week for routine project management activities.

Administrative issues pertaining to the Contract Documents, including Requests for Interpretation (RFIs), pay requests, work directives, change orders, shop drawings, submittals, and managing paperwork flow to the proper engineer review team, will be coordinated through and by the Contract Administrator. The Contract Administrator is budgeted for 8 hours per week for the duration of construction.

Support Engineers will be available to our project team to review submittals from the Contractor for items like dewatering, excavation, foundation anchors, reservoir drain gate/valve installation, concrete batching, concrete placement (steel tying, formwork, concrete pumping, and consolidation), reservoir drain gate/valve testing and commissioning, test data review, and other engineering aspects of the project.

Town of Lake Lure
Lake Lure Dam – Work Order No. 7A Proposal

Support engineering site visits are also anticipated to observe key aspects of construction and to assist the project team with unforeseen issues, clarify design intent, and resolve acceptability of questionable work. We have allocated 8 hours per week as a combined total for engineering support. In addition, we have included four shop inspections during fabrication, including one of the bulkhead, trash rack, knife gate valve, and jet flow gate valve.

Schnabel will also provide construction observation services to provide the selected Contractor with a clear understanding of the design approach and validate that activities are completed in a manner appropriate to the needs of the project. As a part of the quality assurance plan, Schnabel’s RPR will provide the following services:

- Attend project coordination and construction progress meetings.
- Observe construction layout of the project.
- Take pre-construction site photographs to validate site conditions prior to the initiation of contractor activities at the site.
- Observe the selected Contractor’s activities for compliance of work with the contract documents.
- Observe materials delivered to the site and compare to approved shop drawings and/or specification requirements.
- Assess performance of the work in relation to the project schedule.
- Maintain detailed log books; take photographs of all work in progress; document manpower and equipment on site; and prepare reports for concrete placements, structural modifications, and other activities at the sites.
- Provide regular contact and coordination with our EOR and designated personnel from the Town and other agencies.
- Coordinate site activities with the selected Contractor and review the selected Contractor’s monthly payment estimates before they are submitted to the Town for processing.
- Manage and/or perform the required quality assurance testing and sample preparation activities in coordination with local quality assurance technicians (see below) and the selected Contractor’s quality control personnel.
- Maintain record drawing information and coordinate Contractor record drawing information for use in developing complete record drawings of the projects.

Based on the construction schedule provided by Morgan, we have assumed the following level of oversight by our RPR:

Construction Activity	Estimated Duration	Assumed Level of Oversight
Access and Demolition	8 weeks	2 days per week
Excavation and Foundation Preparation	6 weeks	5 days per week
Phase 1 Concrete	13 weeks	3 days per week
Upstream/Underwater Work and Portal Penetration	6 weeks	5 days per week
Reservoir Drain Liner, Phase 2 Concrete, and Gate Installation	13 weeks	2 days per week
Electrical Service, Valve Commissioning, and Site Restoration	4 weeks	2 days per week

Town of Lake Lure
Lake Lure Dam – Work Order No. 7A Proposal

In addition to the RPR and engineering support through construction, Schnabel will subcontract with a local construction testing firm to perform field and laboratory quality assurance testing services for concrete. Based on our experience with similar projects, we have assumed that technician support will be required for up to 16 full-day site visits, primarily during Phase 1 and Phase 2 concrete construction.

Close-Out Documents:

Project close-out documents will include final record documents prepared by Schnabel and reservoir drain operation and maintenance instructions provided by the gate/valve manufacturer. The Contract Administrator will coordinate development of the Record Drawings. He or she will consolidate our records with those maintained by the Contractor and oversee development of a final set of Record Drawings. These Record Drawings will be approved and sealed by the EOR and provided to NCDEQ Dam Safety for approval. We have assumed that the Town will provide any construction approval fees required by NCDEQ Dam Safety.

Schnabel will also provide services for construction close-out including a final walk through with the Owner and Contractor, development of punch list(s), review of final pay application, and processing of Contractor closeout submittals.

EXCLUSIONS

Services not specifically identified above are not included in the scope of services under this agreement. The following services are specifically not included in our proposed scope:

- Payment of construction approval fees required by NCDEQ Dam Safety.
- Construction services other than those listed and beyond the durations discussed above.
- Preparation of a comprehensive Operation and Maintenance (O&M) Manual for the dam.
- Post-construction monitoring.

PROJECT FEES

The lump sum fee for these services is **\$797,493.22**. A detailed breakdown of this fee is included as Attachment 1. The fee for work requested beyond the scope of services included herein will be based on our current unit prices at the time the work is authorized or a negotiated lump sum. Our current Schedule of Personnel Fees is included as Attachment 2.

PAYMENTS

Invoices will be submitted monthly for services provided during the preceding month. A breakdown of labor hours and expenses will be provided with each invoice. Payment terms will be in accordance with the Professional Services Agreement between Schnabel and the Town (Attachment 3).

GENERAL

The Terms and Conditions of the Professional Services Agreement between Schnabel and the Town will apply to the services proposed herein. Your acceptance of this work order proposal by signing and returning one copy of this letter will form our agreement for these services. You may transmit your

Town of Lake Lure
Lake Lure Dam – Work Order No. 7A Proposal

acceptance of this proposal electronically with the understanding that the signature on the electronic document will be considered an original signature. This work order proposal is valid for 90 days from the date shown.

We appreciate the opportunity to submit our proposal for these services and look forward to continuing to work with the Town on this project. Please contact us if you have any questions regarding this proposal.

Sincerely,

SCHNABEL ENGINEERING SOUTH, P.C.



Jonathan M. Pittman, PE
Project Manager / Senior Vice President

BFS:JMP:CMJ

Attachments:

- (1) Detailed Fee Breakdown (1 sheet)
- (2) Schedule of Personnel Fees (1 sheet)
- (3) Professional Services Agreement and Terms and Conditions (5 sheets)

This work order proposal is:

ACCEPTED BY: _____ **TOWN OF LAKE LURE, NC**

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____ **DATE:** _____

ITEM	Senior Associate/ Senior Reviewer	Principal / Project Manager	Associate / Engineer of Record	Senior Engineer / Contract Administration and Engineering Support	Senior Staff Engineer / Engineering Support	Construction Resident / Senior RPR	Technician Support	TOTAL SE PERSONNEL TIME	TOTAL SE PERSONNEL COST	TRAVEL AND LIVING								Subtotal Travel Expense (\$31.14) with	Subtotal Travel Mileage (\$31.10) with	Subtotal Travel OTAs (\$31.13) with	TOTAL ALL TRAVEL & LIVING COSTS with	OUTSIDE LAB TESTING COSTS		TOTAL OUTSIDE LAB COSTS (\$21.01)	TOTAL IN-HOUSE EXPENSES with markups	TOTAL SUBCONTRACTED EXPENSES with markups	TOTALS
	Fischer	Pittman	Johnson	Smith, Khodair, Germann, Duke	TBD	TBD	Local Technician(s)			Hotel	Meals	Rental Car + Gas	Airfare	Per Diem RPR	Mileage from Greensboro (320 Miles Per Trip)	Per Diem Local Tech	Concrete Lab					with	with	with	with		
	2023 Greensboro Rates	275	303	244	205	157	140			75	130.00	35.00	75.00	800.00	157	0.655	59					10%	10%	10%	10%	Cost	
Task 01 - Construction Phase Services	280.0	242.0	460.0	1,060.0	160.0	1,490.0	160.0	3,852.00	\$ 725,586.00	36.0	48.0	18.0	9.0	149.0	37,440.0	16.0	\$ 16,401.00	\$ 26,975.52	\$ 26,770.70	\$ 70,147.22	1,600.0	-	\$ 1,760.00	\$ 70,147.22	\$ 1,760.00	\$ 797,493.22	
Initial Value Engineering Coordination with Morgan and the Town	8.0	16.0	12.0	12.0				48.0	\$ 12,436.00								\$ -	\$ -	\$ -	\$ -			\$ -	\$ -	\$ -	\$ 12,436.00	
Pre-Construction Meeting (includes minutes)			12.0	12.0				24.0	\$ 5,388.00		2.0				320.0		\$ 77.00	\$ 230.56	\$ -	\$ 307.56			\$ -	\$ 307.56	\$ -	\$ 5,695.56	
Contract Administration (8 hrs/week for 12 months)				420.0				420.0	\$ 86,100.00								\$ -	\$ -	\$ -	\$ -			\$ -	\$ -	\$ -	\$ 86,100.00	
Submittal Review (Bulkhead, Trash Rack, Knife & Jet Flow Valve, Others)	96.0		56.0	100.0				252.0	\$ 60,564.00								\$ -	\$ -	\$ -	\$ -			\$ -	\$ -	\$ -	\$ 60,564.00	
Shop Inspections (Bulkhead, Trash Rack, Knife Valve, Jet Flow Valve)	48.0		48.0	96.0				192.0	\$ 44,592.00	8.0	12.0	12.0	8.0				\$ 9,636.00	\$ -	\$ -	\$ 9,636.00			\$ -	\$ 9,636.00	\$ -	\$ 54,228.00	
Periodic Site Visits / Attendance at Progress Meetings by EOR and CA (24 hrs/month for 12 months)			140.0	140.0				280.0	\$ 62,860.00					3,840.0			\$ 2,178.00	\$ 2,766.72	\$ -	\$ 4,944.72			\$ -	\$ 4,944.72	\$ -	\$ 67,804.72	
Dam Penetration, Valve Install, Startup and Commissioning - Engineering Oversight	40.0		60.0	120.0				220.0	\$ 50,240.00	4.0	6.0	6.0	1.0		640.0		\$ 2,178.00	\$ 461.12	\$ -	\$ 2,639.12			\$ -	\$ 2,639.12	\$ -	\$ 52,879.12	
Construction Oversight - Access and Demo Activities (Assume 2 days/week for 8 weeks)						160.0		160.0	\$ 22,400.00				16.0	5,120.0			\$ -	\$ 3,688.96	\$ 2,763.20	\$ 6,452.16			\$ -	\$ 6,452.16	\$ -	\$ 28,852.16	
Construction Oversight - Excavation and Foundation Prep (Assume 5 days/week for 6 weeks)						300.0		300.0	\$ 42,000.00				30.0	1,920.0			\$ -	\$ 1,383.36	\$ 5,181.00	\$ 6,564.36			\$ -	\$ 6,564.36	\$ -	\$ 48,564.36	
Construction Oversight - Phase 1 Concrete (Assume 3 days/week for 13 weeks)						300.0		300.0	\$ 54,600.00				30.0	8,320.0			\$ -	\$ 5,994.56	\$ 6,735.30	\$ 12,729.86			\$ -	\$ 12,729.86	\$ -	\$ 67,329.86	
Construction Oversight - Upstream Work and Portal Penetration (Assume 5 days/week for 6 weeks)						300.0		300.0	\$ 42,000.00				30.0	1,920.0			\$ -	\$ 1,383.36	\$ 5,181.00	\$ 6,564.36			\$ -	\$ 6,564.36	\$ -	\$ 48,564.36	
Construction Oversight - Reservoir Drain Liner, Phase 2 Concrete, and Gate Installation (Assume 2 days/week for 13 weeks)						260.0		260.0	\$ 36,400.00				26.0	8,320.0			\$ -	\$ 5,994.56	\$ 4,490.20	\$ 10,484.76			\$ -	\$ 10,484.76	\$ -	\$ 46,884.76	
Construction Oversight - Electrical, Valve Commissioning, and Site Restoration (Assume 2 days/week for 4 weeks)						80.0		80.0	\$ 11,200.00				8.0	2,560.0			\$ -	\$ 1,844.48	\$ 1,381.60	\$ 3,226.08			\$ -	\$ 3,226.08	\$ -	\$ 14,426.08	
Construction Technician Support (Provided by Local Subconsultant - Assume 16 days on-site plus travel)						160.0		160.0	\$ 12,000.00						16.0		\$ -	\$ -	\$ 1,038.40	\$ 1,038.40	1,600.0	\$ 1,760.00	\$ 1,038.40	\$ 1,760.00	\$ -	\$ 14,798.40	
Engineering Office Review and Support (Avg 8 hrs/wk for 12 months)	80.0		100.0	120.0	120.0			420.0	\$ 89,840.00	12.0	12.0			3,840.0			\$ 2,178.00	\$ 2,766.72	\$ -	\$ 4,944.72			\$ -	\$ 4,944.72	\$ -	\$ 94,784.72	
Project Management (4 hrs/wk for 12 months)		210.0						210.0	\$ 63,630.00								\$ -	\$ -	\$ -	\$ -			\$ -	\$ -	\$ -	\$ 63,630.00	
Completion Walkthroughs / Punchlist (Assume 2 visits)				24.0				40.0	\$ 8,824.00		4.0			640.0			\$ 154.00	\$ 461.12	\$ -	\$ 615.12			\$ -	\$ 615.12	\$ -	\$ 9,439.12	
Construction Closeout and Record Documents	8.0	16.0	16.0	16.0	40.0			96.0	\$ 20,512.00								\$ -	\$ -	\$ -	\$ -			\$ -	\$ -	\$ -	\$ 20,512.00	
									\$ -								\$ -	\$ -	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -	
QUANTITY	280.0	242.0	460.0	1,060.0	160.0	1,490.0	160.0	3,852.00		36.0	48.0	18.0	9.0	149.0	37,440.0	16.0											
TOTAL COST	#####	\$ 73,326.00	\$ 112,240.00	\$ 217,300.00	\$ 25,120.00	\$ 208,600.00	\$ 12,000.00		\$ 725,586.00	\$ 4,680.00	\$ 1,680.00	\$ 1,350.00	\$ 7,200.00	\$ 23,393.00	\$ 24,523.20	\$ 944.00	\$ 16,401.00	\$ 26,975.52	\$ 26,770.70	\$ 70,147.22	\$ 1,600.00	\$ -	\$ 1,760.00	\$ 70,147.22	\$ 1,760.00	\$ 797,493.22	



SCHEDULE OF PERSONNEL FEES – GREENSBORO, NORTH CAROLINA
Effective until December 31, 2023

Senior Consultant	\$307.00/hr
Principal	303.00/hr
Senior Associate	275.00/hr
Associate	244.00/hr
Senior Engineer/Scientist	205.00/hr
Project Engineer/Scientist	177.00/hr
Construction Resident Engineer/Resident Project Representative	177.00/hr
Senior Staff Engineer/Scientist/Technologist	157.00/hr
Staff Engineer/Scientist/Technologist	136.00/hr
Senior Technician II/Construction Resident Technician (see note 4)	129.00/hr
Senior Technician I (see note 4)	109.00/hr
Technician III (see note 4)	95.00/hr
Technician II (see note 4)	79.00/hr
Technician I (see note 4)	70.00/hr
CADD III	145.00/hr
CADD II	131.00/hr
CADD I	110.00/hr
Clerical/Admin	84.00/hr

NOTES:

1. Personnel fees will be based upon the actual hours charged times the appropriate hourly rate.
2. Travel by auto to and from jobs will be charged at the current IRS prevailing rate, plus a markup of 15% to cover handling, insurance and overhead. Travel by air or rail, lodging and meal expenses for personnel in the field will be billed at cost plus a 15% markup.
3. Per Diem rates for out-of-town or overnight travel will be in accordance with U.S. General Services Administration rates published on website www.GSA.gov for the area in which the project is located.
4. Overtime for Technicians is time for work on Saturday, Sunday and federal holidays, time in excess of 8 hours per day, and time between the hours of 7:00 P.M. and 7:00 A.M. A surcharge of \$15/hr is added to the above rate for overtime.
5. Subcontractors and other non-labor project expenses are marked up 15% to cover the cost of handling, insurance and overhead.
6. Schedule of Fees will increase on January 1, 2024 and not less frequently than annually thereafter based on the Consumer Price Index as provided by the U.S. Department of Labor, Bureau of Labor Statistics – All Urban Consumers – U.S. City Average.

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement"), dated as of September 12, 2018 (the "Effective Date"), is by and between the **Town of Lake Lure** (hereinafter "Client"), with an office at 2948 Memorial Highway, Lake Lure, NC 28746 and **Schnabel Engineering South, P.C.** (hereinafter "Consultant") with an office at 11-A Oak Branch Drive, Greensboro, NC 27408 (hereinafter collectively "Parties").

This Agreement is specific to services ("Services") required to rehabilitate and/or upgrade Lake Lure Dam, its hydro-electric generating facility, and appurtenances to meet NCDEQ Dam Safety requirements and extend the service life of the facility ("Project"). Services may include review of existing documents, investigation of the existing condition of the structure, analysis of existing and proposed conditions, design of repairs or modifications, bidding support, construction administration and oversight, and related services. The work will be performed in phases, and the Scope of Work, fees and method of compensation, schedule, and deliverables of service will be presented in individual Task Order Proposals for each phase. Services provided under this Agreement will be performed under the supervision of a Professional Engineer licensed in the State of North Carolina.

In consideration of the mutual agreements herein expressed, the Parties contract, covenant, and agree as follows:

1. SCOPE OF SERVICES/COMPENSATION.

1.1 Consultant shall perform the Services set forth in individual Task Orders, which shall be governed by this Agreement. Each executed Task Order shall include the Scope of Work, fee compensation amounts and method of billing, the schedule of performance, and descriptions of the deliverables of Services..

1.2 Client shall pay Consultant for Services rendered under this Agreement on the basis set forth in each executed Task Order.

2. TERM OF AGREEMENT. Upon execution by the Parties, this Agreement shall have the Effective Date as set forth above and shall remain in force until all obligations related to the Services have been fulfilled, unless sooner terminated as provided herein.

3. ENTIRE AGREEMENT.

3.1 The Agreement between Consultant and Client consists of this Agreement, executed Task Orders, and any exhibits or attachments attached or incorporated herein. Together these elements will constitute the entire Agreement, superseding all prior written or oral negotiations, statements, representations, correspondence, and/or agreements. The Services to be provided by Consultant pursuant to this Agreement are described in each executed Task Order and include the Scope of Work. Both Client and Consultant must mutually acknowledge any changes to this Agreement in writing. All work performed by Consultant 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 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. Disputes concerning modifications to Scope of Work or compensation shall be resolved pursuant to Article 15, "Dispute Resolution."

4. STANDARD OF CARE, DISCLAIMER OF WARRANTIES.

4.1 Consultant shall perform Services under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. NO OTHER REPRESENTATION AND NO WARRANTY OR GUARANTEE, EITHER EXPRESS OR IMPLIED, IS INCLUDED OR INTENDED BY THIS AGREEMENT.

5. SITE ACCESS, SITE CONDITIONS, SAMPLES.

5.1 Client will provide rights of entry and access for Consultant to perform its Services.

5.2 Consultant will take reasonable precautions to avoid damage or injury to subterranean structures or utilities in the prosecution of his work. Client agrees to advise Consultant of known or

suspected underground features in the area of the work, and Consultant will not be responsible for damage to below grade features not brought to its attention, or incorrectly shown on plans provided.

5.3 Client shall promptly pay and be responsible for the removal and lawful disposal of contaminated samples and cuttings, and hazardous substances, unless other arrangements are mutually agreed in writing.

6. OWNERSHIP OF DOCUMENTS, RESTRICTIONS ON REUSE.

6.1 All documents, including opinions, conclusions, certificates, reports, drawings and specifications and other documents, prepared or furnished by Consultant and Consultant's independent professional consultants pursuant to this Agreement (collectively "Documents") are instruments of Service. Consultant retains all ownership and property interests in the Documents, including all common law, statutory and other reserved rights, including copyrights, whether or not the Project is completed. Consultant will provide signed and sealed versions of the final deliverables to the Client in both hard copy and electronic format. Client may make and retain copies of them for information and reference in connection with permitting, financing, bidding and construction of renovations and facility improvements relating to the Lake Lure Dam, Hydro-electric Plant and appurtenances as addressed by this Project; however, such copies are not intended or represented to be suitable for reuse by others, and may not be used on other projects or for additions to this Project outside the Scope of the Work.

6.2 At Client's request, Client may negotiate with Consultant to acquire ownership of Documents for a mutually agreed amount. If Client acquires ownership of Documents prepared by Consultant, Client agrees: a) that any subsequent reuse or modification of them by Client or any party obtaining them through Client will be at Client's sole risk and without liability to Consultant, and b) Client will defend, indemnify and hold harmless Consultant from and against any claims, damages, and liabilities arising from or related to any use, reuse or modification of Documents by Client or any party obtaining them through Client. Client agrees that Consultant may retain copies of all documents for its files.

6.3 Electronic communications and CADD data transferred by Email, websites or computer disks (collectively "E- Data") are provided only as an accommodation by Consultant for the benefit of Client. Signed paper prints of documents constitute the contract deliverables. Client assumes the risk that E-Data may differ from the paper deliverables. Client agrees to indemnify and hold harmless Consultant from and against claims, damages, and liabilities for defects or inappropriate use of E-Data created or transmitted by Consultant.

7. THIRD PARTY RELIANCE UPON DOCUMENTS.

7.1 Consultant's performance of the Services, as set forth in this Agreement, is intended solely and exclusively for the Client's benefit and use. No party may claim under this Agreement as a third party beneficiary. Client agrees not to distribute, publish or otherwise disseminate Consultant's Documents, without first obtaining Consultant's prior written consent.

7.2 No third party may rely upon Consultant's Documents including, but not limited to, opinions, conclusions, certificates, reports, drawings and specifications unless Consultant has agreed to such reliance in advance and in writing.

8. ASSIGNMENT, SUBCONTRACTING.

8.1 Neither Client nor Consultant 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 party.

8.2 Notwithstanding Section 8.1, Consultant may subcontract subsurface exploration, testing, and other supplemental services without notification or consent of Client.

9. TERMINATION, SUSPENSION.

9.1 Termination for Convenience. The Client may terminate this Agreement for its convenience upon twenty-one (21) days written notice to Consultant. In the event of termination for convenience, Consultant shall be compensated for all services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously compensated. Consultant shall not be reimbursed for anticipatory profits.

9.2 Termination for Cause. The Client may terminate this Agreement upon fourteen (14) days written notice may terminate this Agreement if Consultant fails to substantially perform through no fault of Client and does not commence correction of such performance within five (5) days of written notice and

diligently complete the correction thereafter. In the event of termination for fault, Consultant shall be compensated for all services satisfactorily performed and costs incurred up to effective date of termination for which Consultant has not been previously compensated. All costs and charges incurred by Client to complete the Services beyond the total compensation available under this Agreement when terminated shall be deducted from any compensation due or which may become due to Consultant, and to the extent such deduction is insufficient to cover such costs and charges to Client, Consultant shall be and remain liable to pay Client the amount of such excess.

9.3 Client's Failure to Pay. In the event of any failure of payment by Client when due, Consultant shall have the right to suspend work on the Project and may retain any and all work products whether prepared by Consultant or submitted to Consultant by others, until payment has been brought current. In such event, Consultant shall have no liability for any damages or losses that may result from any delay associated the suspension of work or for the withholding of work products. If Client's failure to pay continues for more than sixty (60) days, Consultant may terminate this Agreement effective upon written notice to Client.

10. ALLOCATION OF RISK.

10.1 Consultant's total cumulative liability to Client (including, but not limited to, attorneys' fees and costs awarded under this Agreement) irrespective of the form of action in which such liability is asserted by Client or others, shall not exceed the total compensation received by Consultant under this Agreement or \$3,000,000, whichever is greater.

10.2 Client and Consultant agree to limit each's liability to the other in the following respects: Neither party will have liability to the other for any special, consequential, incidental, exemplary, or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of the other party's property or facility, shutdowns or service interruptions, loss of use, lost profits or revenue, inventory or use, charges or cost of capital or claims of the other party's customer.

10.3 The limitations of liability of this Agreement shall survive the expiration or termination of this Agreement.

11. INSURANCE.

11.1 Consultant shall procure and maintain for the duration of the Project and three years following, with insurance carriers reasonably acceptable to the Client, the following insurance coverage:

- (a) Commercial General Liability on an occurrence form, including coverage for premises and completed operations/products, Contractual Liability, General Aggregate per Project, "xcu" coverages
 - \$1,000,000 each occurrence
 - \$ 10,000 Medical Expenses
 - \$1,000,000 Personal and Advertising Injury
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
- (b) Automobile Liability - Including coverage for Owned, Hired, and Non-Owned Autos
 - \$1,000,000 Combined Single Limit
- (c) Workers Compensation and Employer's Liability
 - Statutory Limits for Workers Compensation
 - \$500,000 each accident
 - \$500,000 each occurrence by disease
 - \$500,000 by disease - policy limit
- (d) Umbrella Liability – applying over all above-referenced policies
 - \$10,000,000 each occurrence
- (e) Professional Liability
 - \$3,000,000 each claim
 - \$3,000,000 annual aggregate

11.2 Additional Insured. Except for Workers Compensation and Professional Liability, policies shall include Client as Additional Insured on a primary and noncontributory basis, to include ongoing and completed operations.

12. INDEMNIFICATION.

12.1 Indemnification of Client. Subject to the provisions and limitations of this Agreement and to the extent allowable by law, Consultant agrees to indemnify and hold harmless Client, its shareholders, 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 Consultant's negligent performance of its Services under this Agreement.

12.2 Indemnification of Consultant. Subject to the provisions and limitations of this Agreement and to the extent allowable by law, Client agrees to defend, indemnify and hold harmless Consultant from and against any and all claims by third parties related to services provided by Consultant under this Agreement, and against any and all Losses to the extent caused by the negligence of Client, its employees, agents and contractors. In addition, except to the extent caused by Consultant's sole negligence, Client expressly agrees to defend, indemnify and hold harmless Consultant from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material.

13. INVOICES, PAYMENTS.

13.1 Payment is due without retainage upon presentation of invoice and is past due thirty (30) days from invoice date, and will not be contingent upon receipt of funds from third parties. Client agrees to pay a service charge of one percent (1%) per month or fraction thereof on past due payments under this Agreement.

13.2 It is further agreed that in the event a lien or suit is filed to enforce overdue payments under this Agreement, Consultant will be reimbursed by Client for all costs of such lien or suit and reasonable Attorney's fees in addition to accrued service charges, where the court of appropriate jurisdiction enters a finding in favor of Consultant.

14. 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:

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

Consultant: Schnabel Engineering South, P.C.
11-A Oak Branch Drive
Greensboro, NC 27407

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.

15. DISPUTE RESOLUTION.

15.1 Claims, disputes, and other matters in controversy between Consultant and Client 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.

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

16. FORCE MAJEURE.

16.1 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.

17. SEVERABILITY.

17.1 This Agreement reflects the entire agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. 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 first above written.

CONSULTANT:

Schnabel Engineering South, PC

By: [Signature]

Name: Jonathan Pittman
(print)

Title: Senior Vice President

Date: September 15, 2018

CLIENT:

Town of Lake Lure

By: [Signature]

Name: Kurtis J. Conkey
(print)

Title: Mayor

Date: September 15, 2018

Exhibits:

None
Rev 2018-08

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: May 24, 2023**

SUBJECT: Ruby-Collins GMP Update

AGENDA INFORMATION:

Item Number: V
Department: Sewer
Contact: Michael Dydula, Project Manager
Presenter: Michael Dydula, Project Manager

BRIEF SUMMARY:

Ruby-Collins is in the process of reviewing and updating their GMP based on the knowledge that the Town will not be able to utilize the reservoir drain valves during the upcoming lake drawdown period. While Ruby-Collins holistically reviews and updates the full GMP, Town staff contacted Ruby-Collins with a list of key questions in which Ruby-Collins promptly answered. The questions and answers are provided as an attachment for review.

ATTACHMENTS:

Questions and Answers Regarding the Status of the GMP

Do you all have time for a phone call/zoom meeting today.

I need an update on where you are at in revising the GMP. **Trying to have something by the end of next week.**
We have a Council Work Session meeting next Wednesday the 24th from 8:30am – 11:30am.
They will need an status update.
Brian will be attending to help answer technical questions.

Things I want to go over now:

1. Schedule – 3 month or 5 month drawdown schedule. They want to vote on this next Wednesday so they can communicate to the town. **If its just a 3 month draw down then there is no reason to consider much work beyond some more bores remaining in Sunset Cove is my opinion. The 5 month draw down gives us a better chance to maybe install some pipe in Sunset Cove but we're still working through those details.**
2. How we will handling storm events and work from -12' to -20' since the reservoir drain valves only release @ 1300cfs. **Gary and I discussed this earlier this week and he can explain our stance. I agree with his allowance approach.**
3. Boats/Boat Houses – Will you know ahead of time what boats will need to be removed **We have decided to let the boats remain in place for as long as a release waiver is provided for us by the property Owner.**
4. Schedule for revised GMP – Do you want to submit only for 23/24 season or split up and have one GMP for 23/24 and another for 24/25 season. **We will give a 23/24 and beyond with a caveat that pricing beyond 23/24 should be considered budgetary only and will need to be revisited each year.**
5. I am hearing the Council thinks HDD is off the table based on my last conversation with them last week. **We will follow the group's lead on that.**

Hope that helps.

Thanks,

Michael Dydula, PE

Project Manager

2948 Memorial Hwy

Lake Lure, NC 28746

Office: 828-625-9983, Ext. 115

Cell: 919-398-8565

Web: townoflakelure.com



**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: May 24, 2023**

SUBJECT: Discuss Lake Drawdown Schedule

AGENDA INFORMATION:

Item Number: VI
Department: Administration
Contact: Hank Perkins, Town Manager
Presenter: Hank Perkins, Town Manager

BRIEF SUMMARY:

Staff requests Council discussion in regard to the upcoming lake drawdown schedule. It is anticipated that the drawdown schedule be adopted in the month of June.

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: May 24, 2023**

SUBJECT: Discuss Sunset Cove Meeting

AGENDA INFORMATION:

Item Number: VII
Department: Administration
Contact: Hank Perkins, Town Manager
Presenter: Hank Perkins, Town Manager

BRIEF SUMMARY:

The Town will hold a meeting with Sunset Cove residents in regard to the sewer project. Council and staff will discuss meeting details and communicate plans with Sunset Cove residents accordingly.

LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: May 24, 2023

SUBJECT: Review Schnabel Partial Work Order No. 9A, Field Investigation Services for Replacement of Lake Lure Dam

AGENDA INFORMATION:

Item Number: VIII
Department: Dam
Contact: Michael Dydula, Project Manager
Presenter: Michael Dydula, Project Manager

BRIEF SUMMARY:

Schnabel Engineering submitted a proposal for Work Order No. 9A for performance of field investigations to inform the design of a replacement for Lake Lure Dam. This work order proposal covers the portion of the field investigation services covered by FEMA Rehabilitation of High Hazard Potential Dams (HHPD) program Grant funding, which includes Task 1 – Investigation Planning, and topographic and bathymetric survey, foundation geologic mapping, geophysical investigations, and geotechnical investigations (partial) under Task 2 – Field Investigations. The remainder of the proposed field investigation services under Task 2 – Field Investigations, Task 3 – Laboratory Testing, and Task 4 – Geotechnical Data Report and Design Considerations Memorandum are required to complete this phase of work and will be included under a separate work order proposal (Partial Work Order No. 9B). The lump sum for Work Order 9A is \$655,263.

ATTACHMENTS:

Proposed Schnabel Work Order No. 9A

June 15, 2021
Revised October 25, 2021
Revised December 29, 2021
Revised May 15, 2023

Laura Krejci
Town of Lake Lure
2948 Memorial Highway
Lake Lure, NC 28746

Subject: 18P21021.05, Partial Work Order No. 9A, Field Investigation Services for Replacement of Lake Lure Dam, Lake Lure, North Carolina

Dear Ms. Krejci:

SCHNABEL ENGINEERING SOUTH, P.C. (Schnabel) is pleased to submit this work order proposal for performance of field investigations to inform the design of a replacement for Lake Lure Dam for the Town of Lake Lure (Town). This work order proposal covers the portion of the field investigation services covered by FEMA Rehabilitation of High Hazard Potential Dams (HHPD) program Grant funding, which includes Task 1 – Investigation Planning, and topographic and bathymetric survey, foundation geologic mapping, geophysical investigations, and geotechnical investigations (partial) under Task 2 – Field Investigations. The remainder of the proposed field investigation services under Task 2 – Field Investigations, Task 3 – Laboratory Testing, and Task 4 – Geotechnical Data Report and Design Considerations Memorandum are required to complete this phase of work and will be included under a separate work order proposal (Partial Work Order No. 9B).

BACKGROUND

On February 9, 2021, the Town adopted a policy for proceeding towards construction of a replacement dam as the preferred dam rehabilitation alternative. During the same meeting, the Town adopted a timeline to construct the replacement dam within about 10 years. This timeline was submitted to NCDEQ Dam Safety on February 19, 2021, for review and approval.

On February 26, 2021, the Town was informed that FEMA has some additional grant funding available for FY 2021 through their HHPD program. As a result, the Town requested that Schnabel provide a scope of work for initial tasks required for the replacement dam design. Schnabel provided a scope of work for conceptual design for a replacement dam on March 5, 2021. The Town subsequently requested that Schnabel provide a scope of work to complete a geotechnical investigation and related field investigations for the replacement dam, to be submitted under the FY 2022 HHPD program.

SCOPE OF SERVICES

As indicated above, the objectives of our services proposed under this work order are to prepare, plan, perform, and report the results of a geotechnical investigation and related field investigations within the proposed footprint of the replacement dam. We have assumed that the replacement dam will consist of a roller compacted concrete (RCC) gravity dam constructed immediately downstream of the existing dam and designed to meet NCDEQ Dam Safety requirements. We understand the replacement dam will not include hydroelectric facilities at this time, but the Town may want to consider adding hydroelectric facilities to the dam in the future.

Services for this project will be performed under the supervision of Professional Engineer(s) and Professional Geologist(s) licensed in the State of North Carolina. The scope of services for this phase of the project is described in detail in the following paragraphs.

Task 1 – Investigation Planning

General Planning and Coordination

Schnabel will provide consistent communication with the Town throughout the planning process and during execution of the investigation program. Coordination will include periodic update meetings, and may include presentations to the Town Council, etc. For budgeting purposes, we have assumed six conference calls and two face-to-face meetings with the Town and/or other stakeholders over the duration of the investigations described herein.

Site Access Planning and Design

We plan to access the proposed replacement dam site from the existing paved access road on the right abutment downstream of the existing dam. In order for the drill rigs to access the proposed borings downstream of the existing dam as shown in the Boring Location Plan included herein as Attachment 1, temporary site access improvements must be made. Access improvements must include access across the existing outlet channel (tailrace), through the existing boulder field downstream of the existing dam (including temporary relocation of some boulders), and to locations in the replacement dam footprint downstream of the existing gated spillway. We understand the access road and river crossing will be installed by a contractor as part of the reservoir drain construction project which is expected to begin in June 2023. Design and installation of the access road and river crossing installation are not included as part of this proposal.

Our drilling subcontractor will perform localized clearing, grading, and installation of erosion and sediment control measures at boring locations. In addition, temporary stone working platforms will be installed on an as-needed basis to allow the drill rig to access and safely drill the borings. Upon completion of the drilling investigation, the temporary working platforms will be removed.

Environmental Permitting and Planning

Environmental permitting will be required to construct the temporary access road, river crossing, and working platforms for the drill rig. Our environmental subconsultant, Mogensen Mitigation, has submitted the necessary permitting documents to the USACE and NCDWR Water Quality in February 2023, and we

understand these features have been approved by FEMA as a part of the HHPD grant process. Permit approvals from the USACE and NCDWR are expected within the next several weeks.

As part of this proposal, Schnabel will prepare an Erosion and Sediment Control (ESC) Plan for boring access. We will limit the disturbance to the extent possible and relocate borings considering practical access.

Work Plans and Personnel Safety Trainings

Schnabel will prepare a work plan for the subsurface investigations. The Work Plan will include our general scope of work, geophysical investigation details, geotechnical investigation details, proposed laboratory testing, and an outline for our Geotechnical Data Report (GDR). The scope of work discussion will include necessary project details such as site access, proposed subcontractors and equipment, a field investigation sequence and schedule, and health and safety details. Technical details regarding the investigation approach and processes will also be provided to guide the field staff. While this Work Plan is meant to provide guidance for the staff, variations to the investigation program are likely as data becomes available.

We will prepare a Health and Safety (H&S) Plan for the field investigations. H&S plans from our subcontractors and subconsultants will be incorporated into Schnabel's H&S Plan. The H&S Plan will include a summary of risks associated with the project, a project communication tree (with emergency contact information), directions to the nearest care centers, and step-by-step directions for staff action in the case of an emergency. Additional details will include required PPE, procedures for identifying and working in the vicinity of any site utilities, and a breakdown of the anticipated hazards by work task. We will coordinate the development of the H&S Plan with the Town's emergency management coordinator.

Project Scheduling

Schnabel has developed a draft schedule (major schedule milestones presented later in this proposal) and will update the schedule as the investigation planning and field work progress or as new items or unknowns have been identified that affect the schedule. We will coordinate our workload and staffing to keep the investigation on schedule as much practical considering the unknowns that may be uncovered and accounted for during the investigation. Our goal will be to work with the Town to keep delays to a minimum and communicate schedule changes in a timely manner.

Task 2 – Field Investigations

Foundation Geologic Mapping

Preliminary geologic field mapping was performed by Schnabel in 2018 to characterize the condition of the existing dam foundation and to measure geologic structures, including rock foliation and joints, in the vicinity of the existing dam. During this phase of investigation, exposed rock outcrops within 50 feet of the proposed replacement dam footprint will be geologically mapped. Geologic mapping will include scaled plan view map(s) that illustrate the contacts of geologic units and changes in the engineering geology properties of the exposed rock such as Geological Strength Index (GSI), weathering, fracturing, strength, and joint descriptions.

Rock descriptions from the ground surface will be used in collaboration with data derived from the geotechnical borings (rock core, in-situ testing, and downhole geophysical results) to synthesize a conceptual geological model for the site, which will be critical during design of the replacement dam.

Geophysical Investigation

We propose a limited surface geophysical program that consists of seismic refraction lines on both abutments. Seismic refraction data will be used to evaluate the depth to top of rock in the abutment sections of the replacement RCC dam section. This work will be performed by Schnabel geophysicists.

Seismic refraction provides information between borings to assist in estimating excavation grades, rock removal quantities, and generally helps to improve the accuracy of cost estimating for earthwork activities. Seismic refraction will be conducted in the abutments where drilling access is questionable. We will select the location and alignment of the seismic refraction lines (traverses) based on a preliminary replacement dam layout and existing site conditions. The extent of the traverses will be selected such that they are within the vicinity of one or more test borings to allow for correlation of the data. We have assumed that some hand clearing of vegetation along the proposed lines will be required to allow for collection of data. We estimate the seismic refraction data collection field program will take two to three field days to complete.

Geotechnical Investigation

As discussed above, a geotechnical investigation work plan will be prepared prior to execution of the investigation. Putting together such a work plan provides several benefits to the investigation team. First, the work plan requires the investigation team to think through the program details to identify potential problems and to better prepare the team, including the drilling subcontractor, before arriving on site. Second, it allows for the Owner to have a better understanding of the objectives of the program.

Prior to drilling of each of the proposed geotechnical borings, the immediate area around each of the borings will be cleared of utilities. In addition, the project area, including the proposed temporary access road location(s), will be investigated for above ground surface features which may indicate the presence of underground utilities. If utilities are discovered, electronic designating and locating will be performed to map the utilities.

Town of Lake Lure
Lake Lure Dam – Partial Work Order No. 9A Proposal

Borings along the proposed replacement dam centerline and spillway outlet channel will be performed at generally even spacings with selected holes upstream and downstream of the centerline. Planned locations will be a function of the selected geometric configuration for the replacement dam. See Attachment 1 for a Boring Location Plan. Select borings will be extended into the foundation soils and rock to a depth of up to twice the height of the proposed replacement dam. Drilling of the borings will be performed by our drilling subcontractor, S&ME of Knoxville, TN. We will provide a geologist or geotechnical engineer to observe and log the drilling of the borings, in-situ testing, instrumentation installation, and collect soil and rock samples.

The exploration will include:

- 21 borings in the footprint or abutments of the proposed replacement dam;
- Installation of four piezometers within select replacement dam footprint borings and post-investigation monitoring of the piezometers, as needed;
- Soil sampling using a split-spoon sampler through the Standard Penetration Test (SPT) and relatively undisturbed sampling using a thin-walled (Shelby) tube sampler (see table below);
- Hydraulic conductivity (packer) testing in rock in select borings;
- Downhole geophysics in select borings to map discontinuities and other geologic features and estimate various engineering properties of the foundation bedrock. Downhole geophysical methods may include borehole caliper, acoustic televiewer, and downhole seismic testing;
- Abandonment of non-piezometer borings with grout upon completion;
- Site restoration limited to spreading of site cuttings, repair of ruts, and seeding and mulching of disturbed areas.

A portion of the geotechnical investigation cost is included in this proposal (see section on Fees below). The remaining portion will be included under a separate Work Order proposal.

Survey

Based on review of existing topography, alternative replacement dam alignments may be a more cost-effective solution than a north-south alignment parallel to the existing dam and will therefore be further evaluated. For planning purposes, we have shown a conceptual dam alignment on Attachment 1. The original topographic survey covered the majority of the anticipated footprint for a replacement dam downstream; however, some additional topographic survey on the left abutment and bathymetry downstream of the existing dam and in the river and tailrace will be necessary to design the replacement dam.

The approximate area to be surveyed by our survey subcontractor, McKim & Creed, P.A. (M&C), is approximately one acre and is shown on Attachment 2. We have assumed the Town will be responsible for providing access to the survey areas as required. Property owner contact information will be provided to survey field personnel and this information will be used when approached by property owners or representatives of those parcels of land not owned by the Town.

In addition to the topographic surveys described above, M&C will survey the as-drilled boring locations and beginning and end of the geophysical seismic refraction lines.

Town of Lake Lure
Lake Lure Dam – Partial Work Order No. 9A Proposal

M&C will utilize existing survey control points at the site, and the survey will be performed under the direct supervision of a North Carolina Licensed Land Surveyor.

Final survey deliverables will include:

- Electronic file in AutoCAD format reflecting the topographic features, project area, and existing utilities within the survey limits.
- Electronic file of the Triangular Network for the model (TIN).
- Text file containing the survey points used in the creation of the final mapping.
- Signed and sealed topographic survey.

EXCLUSIONS

Services not specifically identified above are not included in the scope of services under this agreement. The following services are specifically not included in our proposed scope:

- Other Task 2 – Field Investigation services (to be included under a separate work order proposal).
- Task 3 – Laboratory Testing (to be included under a separate work order proposal).
- Task 4 – Geotechnical Data Report and Design Considerations Memorandum (to be included under a separate work order proposal).
- Survey services beyond those described under Task 02 above.
- Evaluation of design alternatives.
- Permit fees.
- Funding acquisition support.

PROJECT FEES

Our fees are summarized by task in the table below and are for the specific scope of services detailed herein. A detailed breakdown of our fee is included as Attachment 3. The fee for work requested beyond the scope of services included herein will be based on our current unit prices at the time the work is authorized or a negotiated lump sum. Our current Schedule of Personnel Fees is included as Attachment 4.

Task	Fee Type	Fee
Task 1 - Investigation Planning	Lump Sum	\$53,165
Task 2 - Field Investigations – Foundation Geologic Mapping, Geophysical Investigation, Geotechnical Investigation, and Surveying (Topographic, Bathymetric, and Boring Location)	Lump Sum	\$602,098
Total Lump Sum Fee:		\$655,263

SCHEDULE

We anticipate beginning Investigation Planning and Permitting (Task 1) within two weeks of receiving a signed agreement and written notice-to-proceed. We anticipate the following durations for each task outlined above in accordance with the schedule below.

Task	Anticipated Duration (months)
Task 1 - Investigation Planning and Permitting	2-3
Task 2 - Field Investigations – Foundation Geologic Mapping, Geophysical Investigation, Geotechnical Investigation, and Surveying (Topographic, Bathymetric, and Borings)	2-3
Total	4-6

Overlap between tasks is anticipated and will be performed to minimize the overall project schedule.

PAYMENTS

Invoices will be submitted monthly as a percentage of completion of the lump sum fee. Payment terms will be in accordance with the Professional Services Agreement between Schnabel and the Town (Attachment 5).

GENERAL

The Terms and Conditions of the Professional Services Agreement between Schnabel and the Town will apply to the services proposed herein. Your acceptance of this work order proposal by signing and returning one copy of this letter will form our agreement for these services. You may transmit your acceptance of this proposal electronically with the understanding that the signature on the electronic document will be considered an original signature. This work order proposal is valid for 90 days from the date shown.

We appreciate the opportunity to submit our proposal for these services and look forward to continuing to work with the Town on this project. Please contact us if you have any questions regarding this proposal.

Sincerely,

SCHNABEL ENGINEERING SOUTH, P.C.



Jonathan M. Pittman, PE
Project Manager / Senior Vice President

BFS:JMP

Town of Lake Lure
Lake Lure Dam – Partial Work Order No. 9A Proposal

Attachments:

- (1) Boring Location Plan (1 sheet)
- (2) Survey Limits (1 sheet)
- (3) Detailed Fee Breakdown (1 sheet)
- (4) Schedule of Personnel Fees (1 sheet)
- (5) Professional Services Agreement and Terms and Conditions (5 sheets)

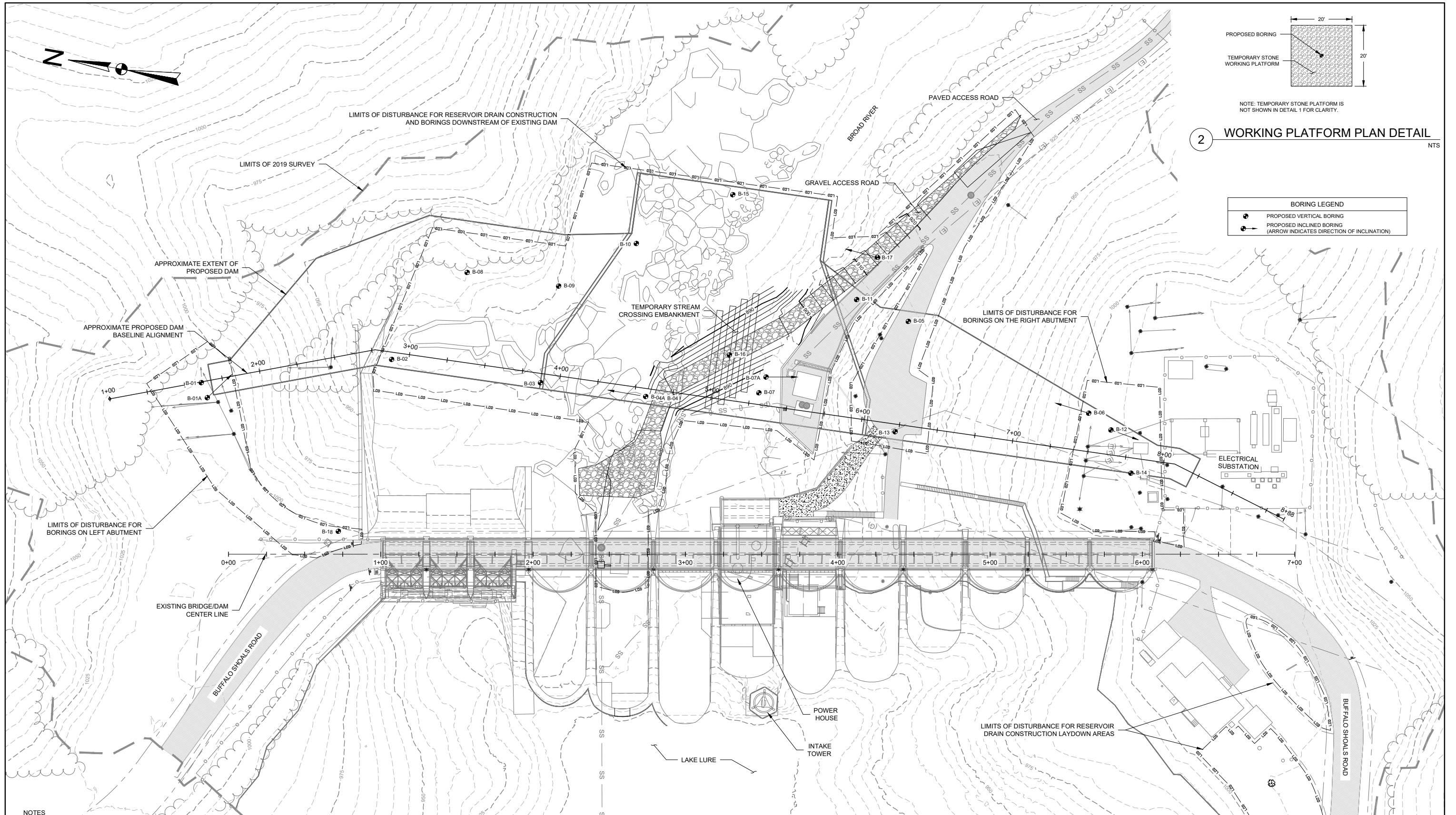
This work order proposal is:

ACCEPTED BY: _____ **TOWN OF LAKE LURE, NC**

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____ **DATE:** _____



2 WORKING PLATFORM PLAN DETAIL NTS

BORING LEGEND	
	PROPOSED VERTICAL BORING
	PROPOSED INCLINED BORING (ARROW INDICATES DIRECTION OF INCLINATION)

1 BORING LOCATION PLAN



NOTES

- EXISTING TOPOGRAPHY AND SITE FEATURES ARE BASED ON SURVEY PERFORMED BED HOLMES AND ASSOCIATES LAND SURVEYORS, PA DATED JANUARY 9TH, 2019. TOPOGRAPHY OUTSIDE THE SURVEY LIMITS DERIVED FROM 2015 LIDAR DATA OBTAINED FROM THE KENTUCKY DIVISION OF GEOGRAPHIC INFORMATION.
- HORIZONTAL LOCATIONS OF CONTOURS AND SITE FEATURES ARE PLOTTED IN U.S. SURVEY FEET WITH RESPECT TO THE NORTH AMERICAN DATUM OF 1983 (NAD 83) AND THE NORTH CAROLINA STATE PLANE COORDINATE SYSTEM (FIPS 3200). ELEVATIONS ARE REPORTED IN U.S. SURVEY FEET WITH RESPECT TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).
- LOCATIONS OF UTILITIES SHOWN ON THIS SURVEY WERE DETERMINED BY OBSERVED EVIDENCE. LOCATION OF ABOVE GROUND UTILITY APPURTENANCES, GIS INFORMATION AND UTILITY MARKINGS (PAINT, ETC.) PROVIDED BY ED HOLMES & ASSOCIATES. THESE MARKINGS WERE OBSERVED DURING THE COURSE OF THIS SURVEY, WERE FIELD LOCATED, ARE SHOWN FOR INFORMATIONAL PURPOSES, AND SHOULD BE FIELD VERIFIED IF CRITICAL. UNDERGROUND UTILITIES NOT SHOWN, MAY EXIST. STORM SEWER AND SANITARY SEWER DATA HAS BEEN COLLECTED FROM THE RIM OF THE MANHOLE WITHOUT ENTERING THE STRUCTURE. PIPE SIZES AND TYPES SHOULD BE CONSIDERED APPROXIMATE AND BE FIELD VERIFIED IF CRITICAL.

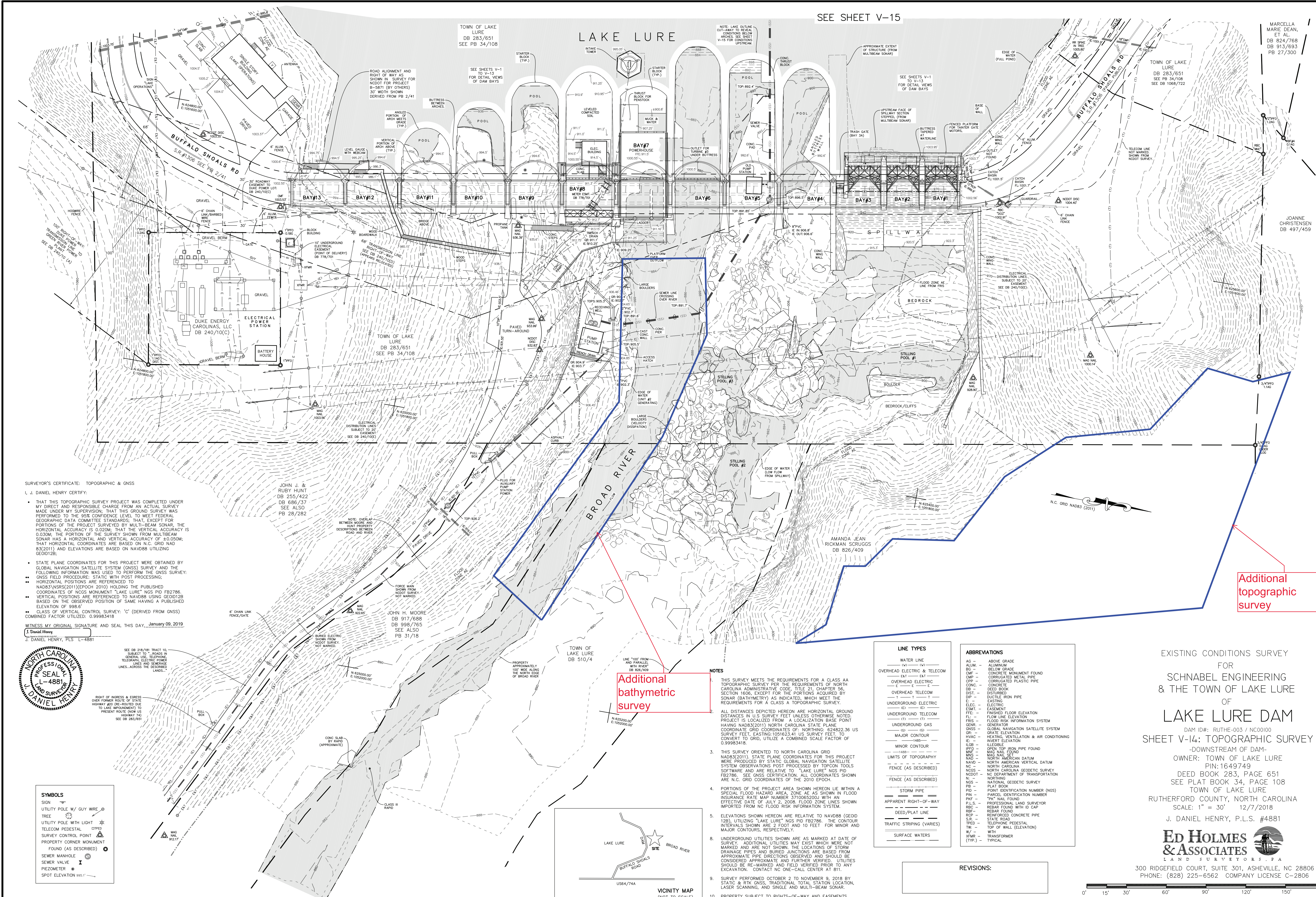


LAKE LURE DAM
TOWN OF LAKE LURE
RUTHERFORD COUNTY, NORTH CAROLINA
PROJECT NO. 18C21024.020

BORING LOCATION PLAN

ATTACHMENT 1

LAKE LURE



SURVEYOR'S CERTIFICATE: TOPOGRAPHIC & GNSS

I, J. DANIEL HENRY CERTIFY:

- THAT THIS TOPOGRAPHIC SURVEY PROJECT WAS COMPLETED UNDER MY DIRECT AND RESPONSIBLE CHARGE FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION; THAT THIS GROUND SURVEY WAS PERFORMED TO THE 95% CONFIDENCE LEVEL TO MEET FEDERAL GEOGRAPHIC DATA COMMITTEE STANDARDS; THAT, EXCEPT FOR PORTIONS OF THE PROJECT SURVEYED BY MULTI-BEAM SONAR, THE HORIZONTAL ACCURACY IS 0.020M; THAT THE VERTICAL ACCURACY IS 0.030M; THE PORTION OF THE SURVEY SHOWN FROM MULTIBEAM SONAR HAS A HORIZONTAL AND VERTICAL ACCURACY OF ±0.050M; THAT HORIZONTAL COORDINATES ARE BASED ON N.C. GRID NAD 83(2011) AND ELEVATIONS ARE BASED ON NAVD88 UTILIZING GEOID12B.
- STATE PLANE COORDINATES FOR THIS PROJECT WERE OBTAINED BY GLOBAL NAVIGATION SATELLITE SYSTEM (GNSS) SURVEY AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE GNSS SURVEY:
 - GNSS FIELD PROCEDURE: STATIC WITH POST PROCESSING;
 - HORIZONTAL POSITIONS ARE REFERENCED TO NAD83/NRS(2011)EPOCH 2010 HOLDING THE PUBLISHED COORDINATES OF NCCS MONUMENT "LAKE LURE" NGS PID FB2786;
 - VERTICAL POSITIONS ARE REFERENCED TO NAVD88 USING GEOID12B BASED ON THE OBSERVED POSITION OF SAME HAVING A PUBLISHED ELEVATION OF 998.61'
 - CLASS OF VERTICAL CONTROL SURVEY: "C" (DERIVED FROM GNSS) COMBINED FACTOR UTILIZED: 0.99983418

WITNESS MY ORIGINAL SIGNATURE AND SEAL THIS DAY, January 09, 2019

J. Daniel Henry
J. DANIEL HENRY, PLS L-4881



Additional bathymetric survey

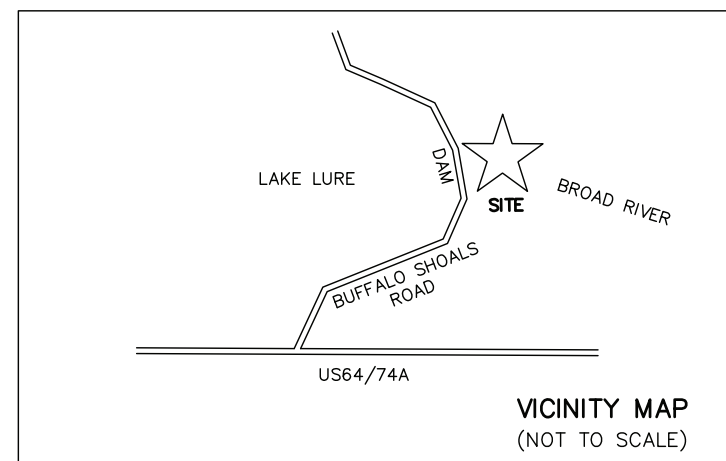
Additional topographic survey

- NOTES
- THIS SURVEY MEETS THE REQUIREMENTS FOR A CLASS AA TOPOGRAPHIC SURVEY PER THE REQUIREMENTS OF NORTH CAROLINA ADMINISTRATIVE CODE, TITLE 21, CHAPTER 36, SECTION 1606, EXCEPT FOR THE PORTIONS ACQUIRED BY SONAR (BATHYMETRY) AS INDICATED, WHICH MEET THE REQUIREMENTS FOR A CLASS A TOPOGRAPHIC SURVEY.
 - ALL DISTANCES DEPICTED HEREON ARE HORIZONTAL GROUND DISTANCES IN U.S. SURVEY FEET UNLESS OTHERWISE NOTED. PROJECT IS LOCALIZED FROM A LOCALIZATION BASE POINT HAVING NAD83(2011) NORTH CAROLINA STATE PLANE COORDINATE GRID COORDINATES OF: NORTING: 624822.36 US SURVEY FEET, EASTING: 1054621.41 US SURVEY FEET, TO CONVERT TO GRID, UTILIZE A COMBINED SCALE FACTOR OF 0.99983418.
 - THIS SURVEY ORIENTED TO NORTH CAROLINA GRID NAD83(2011). STATE PLANE COORDINATES FOR THIS PROJECT WERE PRODUCED BY STATIC GLOBAL NAVIGATION SATELLITE SYSTEM OBSERVATIONS POST PROCESSED BY TOPCON TOOLS SOFTWARE AND ARE RELATIVE TO LAKE LURE' NGS PID FB2786. SEE GNSS CERTIFICATION, ALL COORDINATES SHOWN ARE N.C. GRID COORDINATES OF THE 2010 EPOCH.
 - PORTIONS OF THE PROJECT AREA SHOWN HEREON LIE WITHIN A SPECIAL FLOOD HAZARD AREA, ZONE AE AS SHOWN IN FLOOD INSURANCE RATE MAP NUMBER 371006200J WITH AN EFFECTIVE DATE OF JULY 26, 2008. FLOOD ZONE LINES SHOWN IMPORTED FROM NC FLOOD RISK INFORMATION SYSTEM.
 - ELEVATIONS SHOWN HEREON ARE RELATIVE TO NAVD88 (GEOID 12B), UTILIZING "LAKE LURE" NGS PID FB2786. THE CONTOUR INTERVALS SHOWN ARE 2 FOOT AND 10 FOOT FOR MINOR AND MAJOR CONTOURS, RESPECTIVELY.
 - UNDERGROUND UTILITIES SHOWN ARE AS MARKED AT DATE OF SURVEY. ADDITIONAL UTILITIES MAY EXIST WHICH WERE NOT MARKED AND ARE NOT SHOWN. THE LOCATIONS OF STORM DRAINAGE PIPES AND BURIED JUNCTIONS ARE BASED FROM APPROXIMATE PIPE DIRECTIONS OBSERVED AND SHOULD BE CONSIDERED APPROXIMATE AND FURTHER VERIFIED. UTILITIES SHOULD BE RE-MARKED AND FIELD VERIFIED PRIOR TO ANY EXCAVATION. CONTACT NC ONE-CALL CENTER AT 811.
 - SURVEY PERFORMED OCTOBER 2 TO NOVEMBER 9, 2018 BY STATIC & RTK GNSS, TRADITIONAL TOTAL STATION LOCATION, LASER SCANNING, AND SINGLE AND MULTI-BEAM SONAR.
 - PROPERTY SUBJECT TO RIGHTS-OF-WAY AND EASEMENTS, BOTH RECORDED AND UNRECORDED, IN ADDITION TO THOSE SHOWN HEREON.

LINE TYPES	ABBREVIATIONS
WATER LINE	AG - ABOVE GRADE
OVERHEAD ELECTRIC & TELECOM	ALUM - ALUMINUM
OVERHEAD ELECTRIC	BG - BELOW GRADE
OVERHEAD TELECOM	CMF - CONCRETE MONUMENT FOUND
UNDERGROUND ELECTRIC	CMP - CORRUGATED METAL PIPE
UNDERGROUND TELECOM	CONC - CONCRETE
UNDERGROUND GAS	CR - CORRUGATED PLASTIC PIPE
MAJOR CONTOUR	DB - DEED BOOK
MINOR CONTOUR	DIP - DISTURBED
LIMITS OF TOPOGRAPHY	E - EASTING
APPARENT RIGHT-OF-WAY	ESMT - EASEMENT
DEED/PLAT LINE	FTE - FINISHED FLOOR ELEVATION
TRAFFIC STRIPING (VARIES)	FRIS - FLOOD RISK INFORMATION SYSTEM
SURFACE WATERS	GENS - GENERATOR
	GNSS - GLOBAL NAVIGATION SATELLITE SYSTEM
	HVAC - HEATING, VENTILATION & AIR CONDITIONING
	INVERT - INVERT ELEVATION
	ILGB - ILLEGIBLE
	IRP - OPEN TOP IRON PIPE FOUND
	MNF - MAG NAIL FOUND
	MAF - MAG NAIL FOUND
	NAD - NORTH AMERICAN DATUM
	NAV8 - NORTH AMERICAN VERTICAL DATUM
	NC - NORTH CAROLINA
	NCGS - NORTH CAROLINA GEOLOGIC SURVEY
	NC DOT - NC DEPARTMENT OF TRANSPORTATION
	NORTHING - NORTHING
	NCS - NATIONAL GEOLOGIC SURVEY
	PIB - POINT IDENTIFICATION NUMBER (NGS)
	PLAT BOOK - PLAT BOOK
	PLS - PROFESSIONAL LAND SURVEYOR
	RF - REBAR FOUND WITH ID CAP
	RF - REBAR FOUND
	S.R. - STATE ROAD
	SPD - SIDEWALK PEDESTAL
	TW - TOP OF WALL (ELEVATION)
	W - WITH
	WTR - TRANSFORMER
	(TYP) - TYPICAL

SYMBOLS

SIGN	UTILITY POLE W/ GUY WIRE
TREE	UTILITY POLE WITH LIGHT
TELECOM PEDESTAL	SURVEY CONTROL POINT
PROPERTY CORNER MONUMENT	FOUND (AS DESCRIBED)
SEWER MANHOLE	SEWER VALVE
PIEZOMETER	SPOT ELEVATION 105.1'



EXISTING CONDITIONS SURVEY FOR SCHNABEL ENGINEERING & THE TOWN OF LAKE LURE OF LAKE LURE DAM

DAM ID#: RUTHE-003 / NC00100

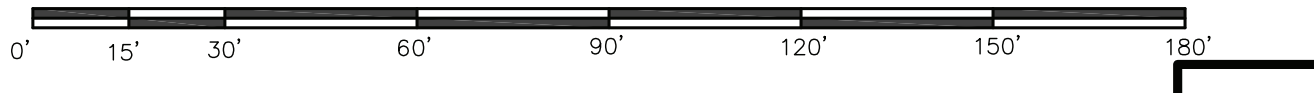
SHEET V-14: TOPOGRAPHIC SURVEY -DOWNSTREAM OF DAM-

OWNER: TOWN OF LAKE LURE
PIN: 1649749
DEED BOOK 283, PAGE 651
SEE PLAT BOOK 34, PAGE 108
TOWN OF LAKE LURE
RUTHERFORD COUNTY, NORTH CAROLINA
SCALE: 1" = 30' 12/7/2018

J. DANIEL HENRY, P.L.S. #4881

Ed Holmes & Associates
LAND SURVEYORS P.A.

300 RIDGEFIELD COURT, SUITE 301, ASHEVILLE, NC 28806
PHONE: (828) 225-6562 COMPANY LICENSE C-2806





SCHEDULE OF PERSONNEL FEES – GREENSBORO, NORTH CAROLINA
Effective until December 31, 2023

Senior Consultant	\$307.00/hr
Principal	303.00/hr
Senior Associate	275.00/hr
Associate	244.00/hr
Senior Engineer/Scientist	205.00/hr
Project Engineer/Scientist	177.00/hr
Construction Resident Engineer/Resident Project Representative	177.00/hr
Senior Staff Engineer/Scientist/Technologist	157.00/hr
Staff Engineer/Scientist/Technologist	136.00/hr
Senior Technician II/Construction Resident Technician (see note 4)	129.00/hr
Senior Technician I (see note 4)	109.00/hr
Technician III (see note 4)	95.00/hr
Technician II (see note 4)	79.00/hr
Technician I (see note 4)	70.00/hr
CADD III	145.00/hr
CADD II	131.00/hr
CADD I	110.00/hr
Clerical/Admin	84.00/hr

NOTES:

1. Personnel fees will be based upon the actual hours charged times the appropriate hourly rate.
2. Travel by auto to and from jobs will be charged at the current IRS prevailing rate, plus a markup of 15% to cover handling, insurance and overhead. Travel by air or rail, lodging and meal expenses for personnel in the field will be billed at cost plus a 15% markup.
3. Per Diem rates for out-of-town or overnight travel will be in accordance with U.S. General Services Administration rates published on website www.GSA.gov for the area in which the project is located.
4. Overtime for Technicians is time for work on Saturday, Sunday and federal holidays, time in excess of 8 hours per day, and time between the hours of 7:00 P.M. and 7:00 A.M. A surcharge of \$15/hr is added to the above rate for overtime.
5. Subcontractors and other non-labor project expenses are marked up 15% to cover the cost of handling, insurance and overhead.
6. Schedule of Fees will increase on January 1, 2024 and not less frequently than annually thereafter based on the Consumer Price Index as provided by the U.S. Department of Labor, Bureau of Labor Statistics – All Urban Consumers – U.S. City Average.

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement"), dated as of September 12, 2018 (the "Effective Date"), is by and between the **Town of Lake Lure** (hereinafter "Client"), with an office at 2948 Memorial Highway, Lake Lure, NC 28746 and **Schnabel Engineering South, P.C.** (hereinafter "Consultant") with an office at 11-A Oak Branch Drive, Greensboro, NC 27408 (hereinafter collectively "Parties").

This Agreement is specific to services ("Services") required to rehabilitate and/or upgrade Lake Lure Dam, its hydro-electric generating facility, and appurtenances to meet NCDEQ Dam Safety requirements and extend the service life of the facility ("Project"). Services may include review of existing documents, investigation of the existing condition of the structure, analysis of existing and proposed conditions, design of repairs or modifications, bidding support, construction administration and oversight, and related services. The work will be performed in phases, and the Scope of Work, fees and method of compensation, schedule, and deliverables of service will be presented in individual Task Order Proposals for each phase. Services provided under this Agreement will be performed under the supervision of a Professional Engineer licensed in the State of North Carolina.

In consideration of the mutual agreements herein expressed, the Parties contract, covenant, and agree as follows:

1. SCOPE OF SERVICES/COMPENSATION.

1.1 Consultant shall perform the Services set forth in individual Task Orders, which shall be governed by this Agreement. Each executed Task Order shall include the Scope of Work, fee compensation amounts and method of billing, the schedule of performance, and descriptions of the deliverables of Services..

1.2 Client shall pay Consultant for Services rendered under this Agreement on the basis set forth in each executed Task Order.

2. TERM OF AGREEMENT. Upon execution by the Parties, this Agreement shall have the Effective Date as set forth above and shall remain in force until all obligations related to the Services have been fulfilled, unless sooner terminated as provided herein.

3. ENTIRE AGREEMENT.

3.1 The Agreement between Consultant and Client consists of this Agreement, executed Task Orders, and any exhibits or attachments attached or incorporated herein. Together these elements will constitute the entire Agreement, superseding all prior written or oral negotiations, statements, representations, correspondence, and/or agreements. The Services to be provided by Consultant pursuant to this Agreement are described in each executed Task Order and include the Scope of Work. Both Client and Consultant must mutually acknowledge any changes to this Agreement in writing. All work performed by Consultant 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 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. Disputes concerning modifications to Scope of Work or compensation shall be resolved pursuant to Article 15, "Dispute Resolution."

4. STANDARD OF CARE, DISCLAIMER OF WARRANTIES.

4.1 Consultant shall perform Services under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. NO OTHER REPRESENTATION AND NO WARRANTY OR GUARANTEE, EITHER EXPRESS OR IMPLIED, IS INCLUDED OR INTENDED BY THIS AGREEMENT.

5. SITE ACCESS, SITE CONDITIONS, SAMPLES.

5.1 Client will provide rights of entry and access for Consultant to perform its Services.

5.2 Consultant will take reasonable precautions to avoid damage or injury to subterranean structures or utilities in the prosecution of his work. Client agrees to advise Consultant of known or

suspected underground features in the area of the work, and Consultant will not be responsible for damage to below grade features not brought to its attention, or incorrectly shown on plans provided.

5.3 Client shall promptly pay and be responsible for the removal and lawful disposal of contaminated samples and cuttings, and hazardous substances, unless other arrangements are mutually agreed in writing.

6. OWNERSHIP OF DOCUMENTS, RESTRICTIONS ON REUSE.

6.1 All documents, including opinions, conclusions, certificates, reports, drawings and specifications and other documents, prepared or furnished by Consultant and Consultant's independent professional consultants pursuant to this Agreement (collectively "Documents") are instruments of Service. Consultant retains all ownership and property interests in the Documents, including all common law, statutory and other reserved rights, including copyrights, whether or not the Project is completed. Consultant will provide signed and sealed versions of the final deliverables to the Client in both hard copy and electronic format. Client may make and retain copies of them for information and reference in connection with permitting, financing, bidding and construction of renovations and facility improvements relating to the Lake Lure Dam, Hydro-electric Plant and appurtenances as addressed by this Project; however, such copies are not intended or represented to be suitable for reuse by others, and may not be used on other projects or for additions to this Project outside the Scope of the Work.

6.2 At Client's request, Client may negotiate with Consultant to acquire ownership of Documents for a mutually agreed amount. If Client acquires ownership of Documents prepared by Consultant, Client agrees: a) that any subsequent reuse or modification of them by Client or any party obtaining them through Client will be at Client's sole risk and without liability to Consultant, and b) Client will defend, indemnify and hold harmless Consultant from and against any claims, damages, and liabilities arising from or related to any use, reuse or modification of Documents by Client or any party obtaining them through Client. Client agrees that Consultant may retain copies of all documents for its files.

6.3 Electronic communications and CADD data transferred by Email, websites or computer disks (collectively "E- Data") are provided only as an accommodation by Consultant for the benefit of Client. Signed paper prints of documents constitute the contract deliverables. Client assumes the risk that E-Data may differ from the paper deliverables. Client agrees to indemnify and hold harmless Consultant from and against claims, damages, and liabilities for defects or inappropriate use of E-Data created or transmitted by Consultant.

7. THIRD PARTY RELIANCE UPON DOCUMENTS.

7.1 Consultant's performance of the Services, as set forth in this Agreement, is intended solely and exclusively for the Client's benefit and use. No party may claim under this Agreement as a third party beneficiary. Client agrees not to distribute, publish or otherwise disseminate Consultant's Documents, without first obtaining Consultant's prior written consent.

7.2 No third party may rely upon Consultant's Documents including, but not limited to, opinions, conclusions, certificates, reports, drawings and specifications unless Consultant has agreed to such reliance in advance and in writing.

8. ASSIGNMENT, SUBCONTRACTING.

8.1 Neither Client nor Consultant 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 party.

8.2 Notwithstanding Section 8.1, Consultant may subcontract subsurface exploration, testing, and other supplemental services without notification or consent of Client.

9. TERMINATION, SUSPENSION.

9.1 Termination for Convenience. The Client may terminate this Agreement for its convenience upon twenty-one (21) days written notice to Consultant. In the event of termination for convenience, Consultant shall be compensated for all services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously compensated. Consultant shall not be reimbursed for anticipatory profits.

9.2 Termination for Cause. The Client may terminate this Agreement upon fourteen (14) days written notice may terminate this Agreement if Consultant fails to substantially perform through no fault of Client and does not commence correction of such performance within five (5) days of written notice and

diligently complete the correction thereafter. In the event of termination for fault, Consultant shall be compensated for all services satisfactorily performed and costs incurred up to effective date of termination for which Consultant has not been previously compensated. All costs and charges incurred by Client to complete the Services beyond the total compensation available under this Agreement when terminated shall be deducted from any compensation due or which may become due to Consultant, and to the extent such deduction is insufficient to cover such costs and charges to Client, Consultant shall be and remain liable to pay Client the amount of such excess.

9.3 Client's Failure to Pay. In the event of any failure of payment by Client when due, Consultant shall have the right to suspend work on the Project and may retain any and all work products whether prepared by Consultant or submitted to Consultant by others, until payment has been brought current. In such event, Consultant shall have no liability for any damages or losses that may result from any delay associated the suspension of work or for the withholding of work products. If Client's failure to pay continues for more than sixty (60) days, Consultant may terminate this Agreement effective upon written notice to Client.

10. ALLOCATION OF RISK.

10.1 Consultant's total cumulative liability to Client (including, but not limited to, attorneys' fees and costs awarded under this Agreement) irrespective of the form of action in which such liability is asserted by Client or others, shall not exceed the total compensation received by Consultant under this Agreement or \$3,000,000, whichever is greater.

10.2 Client and Consultant agree to limit each's liability to the other in the following respects: Neither party will have liability to the other for any special, consequential, incidental, exemplary, or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of the other party's property or facility, shutdowns or service interruptions, loss of use, lost profits or revenue, inventory or use, charges or cost of capital or claims of the other party's customer.

10.3 The limitations of liability of this Agreement shall survive the expiration or termination of this Agreement.

11. INSURANCE.

11.1 Consultant shall procure and maintain for the duration of the Project and three years following, with insurance carriers reasonably acceptable to the Client, the following insurance coverage:

- (a) Commercial General Liability on an occurrence form, including coverage for premises and completed operations/products, Contractual Liability, General Aggregate per Project, "xcu" coverages
 - \$1,000,000 each occurrence
 - \$ 10,000 Medical Expenses
 - \$1,000,000 Personal and Advertising Injury
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
- (b) Automobile Liability - Including coverage for Owned, Hired, and Non-Owned Autos
 - \$1,000,000 Combined Single Limit
- (c) Workers Compensation and Employer's Liability
 - Statutory Limits for Workers Compensation
 - \$500,000 each accident
 - \$500,000 each occurrence by disease
 - \$500,000 by disease - policy limit
- (d) Umbrella Liability – applying over all above-referenced policies
 - \$10,000,000 each occurrence
- (e) Professional Liability
 - \$3,000,000 each claim
 - \$3,000,000 annual aggregate

11.2 Additional Insured. Except for Workers Compensation and Professional Liability, policies shall include Client as Additional Insured on a primary and noncontributory basis, to include ongoing and completed operations.

12. INDEMNIFICATION.

12.1 Indemnification of Client. Subject to the provisions and limitations of this Agreement and to the extent allowable by law, Consultant agrees to indemnify and hold harmless Client, its shareholders, 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 Consultant's negligent performance of its Services under this Agreement.

12.2 Indemnification of Consultant. Subject to the provisions and limitations of this Agreement and to the extent allowable by law, Client agrees to defend, indemnify and hold harmless Consultant from and against any and all claims by third parties related to services provided by Consultant under this Agreement, and against any and all Losses to the extent caused by the negligence of Client, its employees, agents and contractors. In addition, except to the extent caused by Consultant's sole negligence, Client expressly agrees to defend, indemnify and hold harmless Consultant from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material.

13. INVOICES, PAYMENTS.

13.1 Payment is due without retainage upon presentation of invoice and is past due thirty (30) days from invoice date, and will not be contingent upon receipt of funds from third parties. Client agrees to pay a service charge of one percent (1%) per month or fraction thereof on past due payments under this Agreement.

13.2 It is further agreed that in the event a lien or suit is filed to enforce overdue payments under this Agreement, Consultant will be reimbursed by Client for all costs of such lien or suit and reasonable Attorney's fees in addition to accrued service charges, where the court of appropriate jurisdiction enters a finding in favor of Consultant.

14. 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:

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

Consultant: Schnabel Engineering South, P.C.
11-A Oak Branch Drive
Greensboro, NC 27407

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.

15. DISPUTE RESOLUTION.

15.1 Claims, disputes, and other matters in controversy between Consultant and Client 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.

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

16. FORCE MAJEURE.

16.1 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.

17. SEVERABILITY.

17.1 This Agreement reflects the entire agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. 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 first above written.

CONSULTANT:

Schnabel Engineering South, PC

By: [Signature]

Name: Jonathan Pittman
(print)

Title: Senior Vice President

Date: September 15, 2018

CLIENT:

Town of Lake Lure

By: [Signature]

Name: Kurtis J. Conkey
(print)

Title: Mayor

Date: September 15, 2018

Exhibits:

None
Rev 2018-08

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM**

Meeting Date: May 24, 2023

SUBJECT: Review Schnabel Partial Work Order No. 9B, Field Investigation Services for Replacement of Lake Lure Dam

AGENDA INFORMATION:

Item Number: IX
Department: Dam
Contact: Michael Dydula, Project Manager
Presenter: Michael Dydula, Project Manager

BRIEF SUMMARY:

Schnabel Engineering submitted a proposal for Work Order No. 9A for performance of field investigations to inform the design of a replacement for Lake Lure Dam. This proposal includes geotechnical investigations (partial) and surveying (partial) under Task 2 – Field Investigations, Task 3 – Laboratory Testing, and Task 4 – Geotechnical Data Report and Design Considerations Memorandum. Task 1 – Investigation Planning, and the remainder of the proposed field investigation services under Task 2 – Field Investigations, which are required to complete this phase of work, are included under a separate work order proposal (Partial Work Order No. 9A). The lump sum for Work Order 9A is \$456,586.

ATTACHMENTS:

Proposed Schnabel Work Order No. 9B

June 15, 2021
Revised October 25, 2021
Revised December 29, 2021
Revised May 19, 2023

Laura Krejci
Town of Lake Lure
2948 Memorial Highway
Lake Lure, NC 28746

Subject: 18P21021.05, Partial Work Order No. 9B, Field Investigation Services for Replacement of Lake Lure Dam, Lake Lure, North Carolina

Dear Ms. Krejci:

SCHNABEL ENGINEERING SOUTH, P.C. (Schnabel) is pleased to submit this work order proposal for performance of field investigations to inform the design of a replacement for Lake Lure Dam for the Town of Lake Lure (Town). This proposal includes geotechnical investigations (partial) and surveying (partial) under Task 2 – Field Investigations, Task 3 – Laboratory Testing, and Task 4 – Geotechnical Data Report and Design Considerations Memorandum. Task 1 – Investigation Planning, and the remainder of the proposed field investigation services under Task 2 – Field Investigations, which are required to complete this phase of work, are included under a separate work order proposal (Partial Work Order No. 9A). Scope and fees for the Field Investigation were separated into two work order proposals per your request for FEMA HHPD Grant funding purposes.

BACKGROUND

On February 9, 2021, the Town adopted a policy for proceeding towards construction of a replacement dam as the preferred dam rehabilitation alternative. During the same meeting, the Town adopted a timeline to construct the replacement dam within about 10 years. This timeline was submitted to NCDEQ Dam Safety on February 19, 2021, for review and approval.

On February 26, 2021, the Town was informed that FEMA has some additional grant funding available for FY 2021 through their Rehabilitation of High Hazard Potential Dams (HHPD) program. As a result, the Town requested that Schnabel provide a scope of work for initial tasks required for the replacement dam design. Schnabel provided a scope of work for conceptual design for a replacement dam on March 5, 2021. The Town subsequently requested that Schnabel provide a scope of work to complete a geotechnical investigation and related field investigations for the replacement dam, to be submitted under the FY 2022 HHPD program.

SCOPE OF SERVICES

As indicated above, the objectives of our services proposed under this work order are to prepare, plan, perform, and report the results of a geotechnical investigation and related field investigations within the proposed footprint of the replacement dam. We have assumed that the replacement dam will consist of a roller compacted concrete (RCC) gravity dam constructed immediately downstream of the existing dam and designed to meet NCDEQ Dam Safety requirements. We understand the replacement dam will not include hydroelectric facilities at this time, but the Town may want to consider adding hydroelectric facilities to the dam in the future.

Partial Work Order No. 9A included the following scope items:

- Task 1 – Investigation Planning
- Task 2 – Field Investigations including geologic mapping, geophysical investigation, geotechnical investigation (partial), and additional topographic, bathymetric, and boring location surveys.

This proposal, Partial Work Order No. 9B, includes the following scope items:

- Task 2 – Field Investigations, including geotechnical investigation (partial) and a parcel boundary survey
- Task 3 – Laboratory Testing
- Task 4 – Geotechnical Data Report and Design Considerations Memorandum

Services for this project will be performed under the supervision of Professional Engineer(s) and Professional Geologist(s) licensed in the State of North Carolina. The scope of services for this phase of the project is described in detail in the following paragraphs.

Task 2 – Field Investigations

Geotechnical Investigation

As discussed in Partial Work Order No. 9A, a geotechnical investigation work plan will be prepared prior to execution of the investigation. Putting together such a work plan provides several benefits to the investigation team. First, the work plan requires the investigation team to think through the program details to identify potential problems and to better prepare the team, including the drilling subcontractor, before arriving on site. Second, it allows for the Owner to have a better understanding of the objectives of the program.

Prior to drilling of each of the proposed geotechnical borings, the immediate area around each of the borings will be cleared of utilities. In addition, the project area will be investigated for above ground surface features which may indicate the presence of underground utilities. If utilities are discovered, electronic designating and locating will be performed to map the utilities.

Town of Lake Lure
Lake Lure Dam – Partial Work Order No. 9B Proposal

Borings will be drilled within the footprint or abutments of the proposed replacement dam. Planned locations will be a function of the selected geometric configuration for the replacement dam. Preliminary boring locations are presented in the Boring Location Plan included as Attachment 1. Please note that boring names have changed and some boring locations have been modified from those shown on a similar Boring Location Plan presented in Partial Work Order No. 9A.

Borings will be drilled along the proposed replacement dam crest alignment, within the spillway outlet channel, along the toe of the dam, and at other key features of the proposed replacement dam. Spatial distribution of borings will be balanced with constraints imposed by limited access and existing features. A limited number of inclined borings will be used to target areas that are relatively inaccessible.

Select borings will be extended into the foundation soils and rock. Depths will vary between borings, but are expected to range from about 50 feet to 150 feet. Drilling of the borings will be performed by our drilling subcontractor, S&ME of Knoxville, TN. We will provide a geologist or geotechnical engineer to observe and log the drilling of the borings, in-situ testing, instrumentation installation, and collect soil and rock samples.

The exploration will include:

- 21 borings totaling approximately 1,850 linear feet of drilling, most of which is expected to be in rock. (See Boring Summary Table on the following page);
- Installation of four piezometers within select replacement dam footprint borings and post-investigation monitoring of the piezometers, as needed;
- Soil sampling using a split-spoon sampler through the Standard Penetration Test (SPT) and relatively undisturbed sampling using a thin-walled (Shelby) tube sampler;
- Hydraulic conductivity (packer) testing in rock in select borings;
- Downhole geophysics in select borings to map discontinuities and other geologic features and estimate various engineering properties of the foundation bedrock. Downhole geophysical methods may include borehole caliper, acoustic televiewer, and downhole seismic testing;
- Abandonment of non-piezometer borings with grout upon completion;
- Site restoration limited to spreading of site cuttings, repair of ruts, and seeding and mulching of disturbed areas.

A portion of the geotechnical investigation cost is included in this proposal (see section on Project Fees below). The remaining portion is included under Partial Work Order No. 9A.

Boring Summary Table

Boring	Location	Planned Depth (ft)	Inclination / Direction
B-01	Left Abutment	100	Vertical
B-01A	Left Abutment	100	Inclined 30 degrees southeast
B-02	Proposed Dam Crest, Left Side of Dam	150	Vertical
B-03	Proposed Dam Crest, Left Side of Spillway	150	Vertical
B-04	Proposed Dam Crest, Center of Spillway	150	Vertical
B-04A	Proposed Dam Crest, Center of Spillway	100	Inclined 15 degrees north
B-05	Proposed Dam Crest, Right Side of Spillway	150	Vertical
B-06	Right Abutment	50	Vertical
B-07	Mid-slope of Proposed Downstream Dam Face, Left Side of Dam	50	Vertical
B-08	Mid-slope of Proposed Downstream Dam Face, Left Side of Spillway	50	Vertical
B-09	Mid-slope of Proposed Downstream Dam Face, Center of Spillway	75	Vertical
B-10	Mid-slope of Proposed Downstream Dam Face, Right Side of Spillway	100	Vertical
B-11	Mid-slope of Proposed Downstream Dam Face, Right Side of Dam	50	Vertical
B-12	Right Abutment	100	Inclined 30 degrees north
B-12A	Right Abutment	50	Inclined 15 degrees south
B-13	Toe of Spillway, Left Side	50	Vertical
B-14	Toe of Spillway, Center	50	Vertical
B-15	Toe of Spillway, Right Side	50	Inclined 30 degrees north
B-16	Toe of Proposed Dam, Right Side	75	Vertical
B-17	Toe of Proposed Dam, Right Side	100	Vertical
B-18	Left Abutment of Existing Dam	100	Vertical

Survey

Surveying services will include a delineation of select parcel boundaries. The survey will be performed by our survey subcontractor, McKim & Creed, P.A. (M&C). The parcels whose boundaries are to be surveyed are shown on the Parcel Map included as Attachment 2. We have assumed the Town will be responsible for providing access to the survey areas as required. Property owner contact information will be provided to survey field personnel and this information will be used when approached by property owners or representatives of those parcels of land not owned by the Town. M&C will utilize existing survey control points at the site, and the survey will be performed under the direct supervision of a North Carolina Licensed Land Surveyor. Additional topographic, bathymetric, and boring location surveys are included in Partial Word Order No. 9A.

Final survey deliverables will include:

- Electronic file in AutoCAD format reflecting the boundaries of the selected parcels.
- Text file containing the survey points used in the creation of the final mapping.
- Signed and sealed boundary survey.

Task 3 – Laboratory Testing

Laboratory Testing of Soil

A suite of standard soil tests will be performed on selected soil samples collected from the abutment borings during the investigation program. A summary of the proposed testing is included in the table below.

Test Name	Estimated No. of Tests
Moisture Content (ASTM D2216)	20
Atterberg Limits (ASTM D4318)	12
Grain-Size Distribution (ASTM D422)	8
Grain-Size Distribution with Hydrometer (ASTM D4318)	4
Specific Gravity (ASTM D854)	4
Standard Proctor (ASTM D698)	2

Laboratory Testing of Rock

A suite of rock laboratory strength testing will be performed on rock core samples collected during the investigation program. A summary of the proposed testing is included in the table below.

Test Name	Estimated No. of Tests
Unconfined Compressive Strength (UCS) (ASTM D7012C)	16
Elastic Moduli of Rock in Triaxial Compression (ASTM D7012B)	4
USC with Young's Modulus and Poisson's Ratio (ASTM D7012D)	8
Direct Shear Strength of Rock Joints (ASTM D5607)	8
Direct Tensile Strength (ASTM D2936)	4
Cerchar Abrasivity Index (CAI) (ASTM D7625)	6
Thin-Section Petrographic Analysis	4
Unit Weight and Moisture Content of Rock	16

Task 4 – Geotechnical Data Report and Design Considerations Memorandum

A Geotechnical Data Report (GDR) will be prepared to document the geotechnical investigations in support of the future design, bidding, and construction of the project. The GDR will include the data collected during our subsurface exploration and laboratory testing program, a description of the local geology, and descriptions of the conditions encountered during the exploration.

We will also prepare a memorandum summarizing the key geologic and geotechnical design considerations for a replacement dam based on the results of the investigations described herein. These considerations may include dam and foundation stability, dam foundation preparation and treatment, seepage control and cutoff considerations, etc. The contents of this memorandum will be used to support the future analyses and design for the replacement dam.

EXCLUSIONS

Services not specifically identified above are not included in the scope of services under this agreement. The following services are specifically not included in our proposed scope:

- Task 1 – Investigation Planning (included under Partial Work Order No. 9A).
- Other Task 2 – Field Investigation services including geologic mapping, geophysical investigation, and additional topographic and bathymetric surveys (included under Partial Work Order No. 9A).
- Survey services beyond those described under Task 2 above.
- Evaluation of design alternatives.
- Permit fees.
- Funding acquisition support.

PROJECT FEES

Our fees are summarized by task in the table below and are for the specific scope of services detailed herein. A detailed breakdown of our fee is included as Attachment 3. The fee for work requested beyond the scope of services included herein will be based on our current unit prices at the time the work is authorized or a negotiated lump sum. Our current Schedule of Personnel Fees is included as Attachment 4.

Task	Fee Type	Fee
Task 2 - Field Investigations –Geotechnical Investigation (Partial) and Boundary Survey	Lump Sum	\$266,771
Task 3 - Laboratory Testing	Lump Sum	\$38,083
Task 4 - Geotechnical Data Report and Design Consideration Memorandum	Lump Sum	\$151,732
Total Lump Sum Fee:		\$456,586

Please note that fees included herein for Task 2 are a partial cost for this task. The remaining portion of Task 2 costs are included in Partial Work Order 9A.

SCHEDULE

We anticipate the following durations for each task outlined above in accordance with the schedule below. All tasks associated with the field investigation (i.e., Tasks 1 through 4) are included for reference.

Task	Anticipated Duration (months)
Task 1 - Investigation Planning	2-3
Task 2 - Field Investigations – Foundation Geologic Mapping, Geophysical Investigation, Geotechnical Investigation, and Surveying (Topographic, Bathymetric, Borings, and Boundary)	2-3
Task 3 - Laboratory Testing	2
Task 4 - GDR and Design Consideration Memorandum	2
Total	8-10

Town of Lake Lure
Lake Lure Dam – Partial Work Order No. 9B Proposal

As stated in Partial Work Order No. 9A, we anticipate beginning Investigation Planning (Task 1) within two weeks of receiving a signed agreement for Partial Work Order No 9A and Partial Work Order No. 9B, and written notice-to-proceed. We anticipate beginning Task 3 and Task 4 within one week of completion of the geotechnical investigation portion of Task 2. Overlap between tasks is anticipated and will be performed to minimize the overall project schedule. For example, portions of the Task 4 - Geotechnical Data Report can be prepared before completion of Task 3 - Laboratory Testing.

PAYMENTS

Invoices will be submitted monthly as a percentage of completion of the lump sum fee. Payment terms will be in accordance with the Professional Services Agreement between Schnabel and the Town (Attachment 5).

GENERAL

The Terms and Conditions of the Professional Services Agreement between Schnabel and the Town will apply to the services proposed herein. Your acceptance of this work order proposal by signing and returning one copy of this letter will form our agreement for these services. You may transmit your acceptance of this proposal electronically with the understanding that the signature on the electronic document will be considered an original signature. This work order proposal is valid for 90 days from the date shown.

We appreciate the opportunity to submit our proposal for these services and look forward to continuing to work with the Town on this project. Please contact us if you have any questions regarding this proposal.

Sincerely,

SCHNABEL ENGINEERING SOUTH, P.C.



Jonathan M. Pittman, PE
Project Manager / Senior Vice President

BFS:JMP

Attachments:

- (1) Boring Location Plan (1 sheet)
- (2) Parcel Map (1 sheet)
- (3) Detailed Fee Breakdown (1 sheet)
- (4) Schedule of Personnel Fees (1 sheet)
- (5) Professional Services Agreement and Terms and Conditions (5 sheets)

Town of Lake Lure
Lake Lure Dam – Partial Work Order No. 9B Proposal

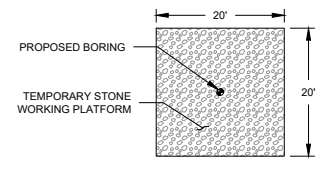
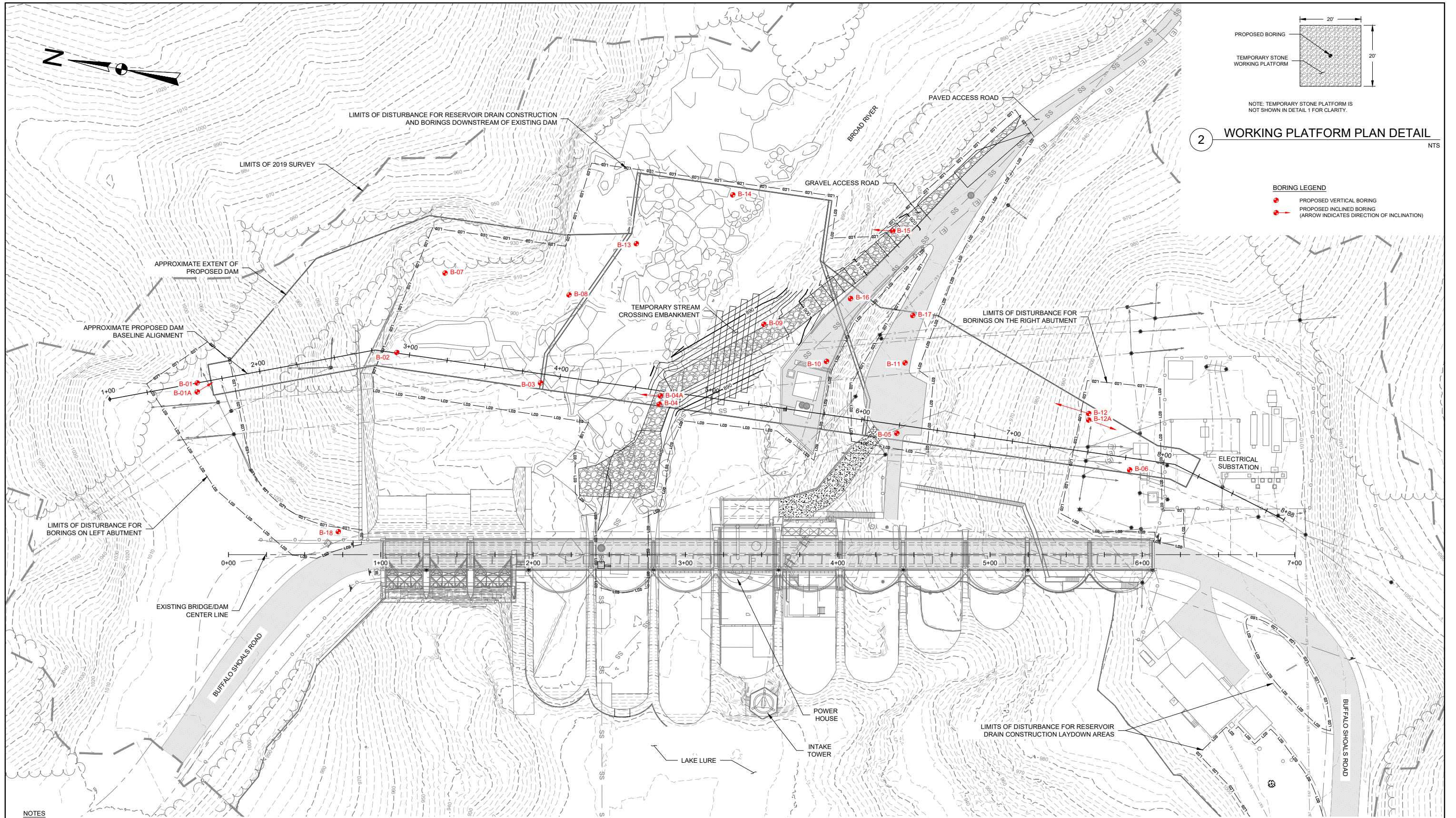
This work order proposal is:

ACCEPTED BY: _____ TOWN OF LAKE LURE, NC _____

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____ DATE: _____



NOTE: TEMPORARY STONE PLATFORM IS NOT SHOWN IN DETAIL 1 FOR CLARITY.

2 WORKING PLATFORM PLAN DETAIL NTS

BORING LEGEND
 ● PROPOSED VERTICAL BORING
 ●→ PROPOSED INCLINED BORING (ARROW INDICATES DIRECTION OF INCLINATION)

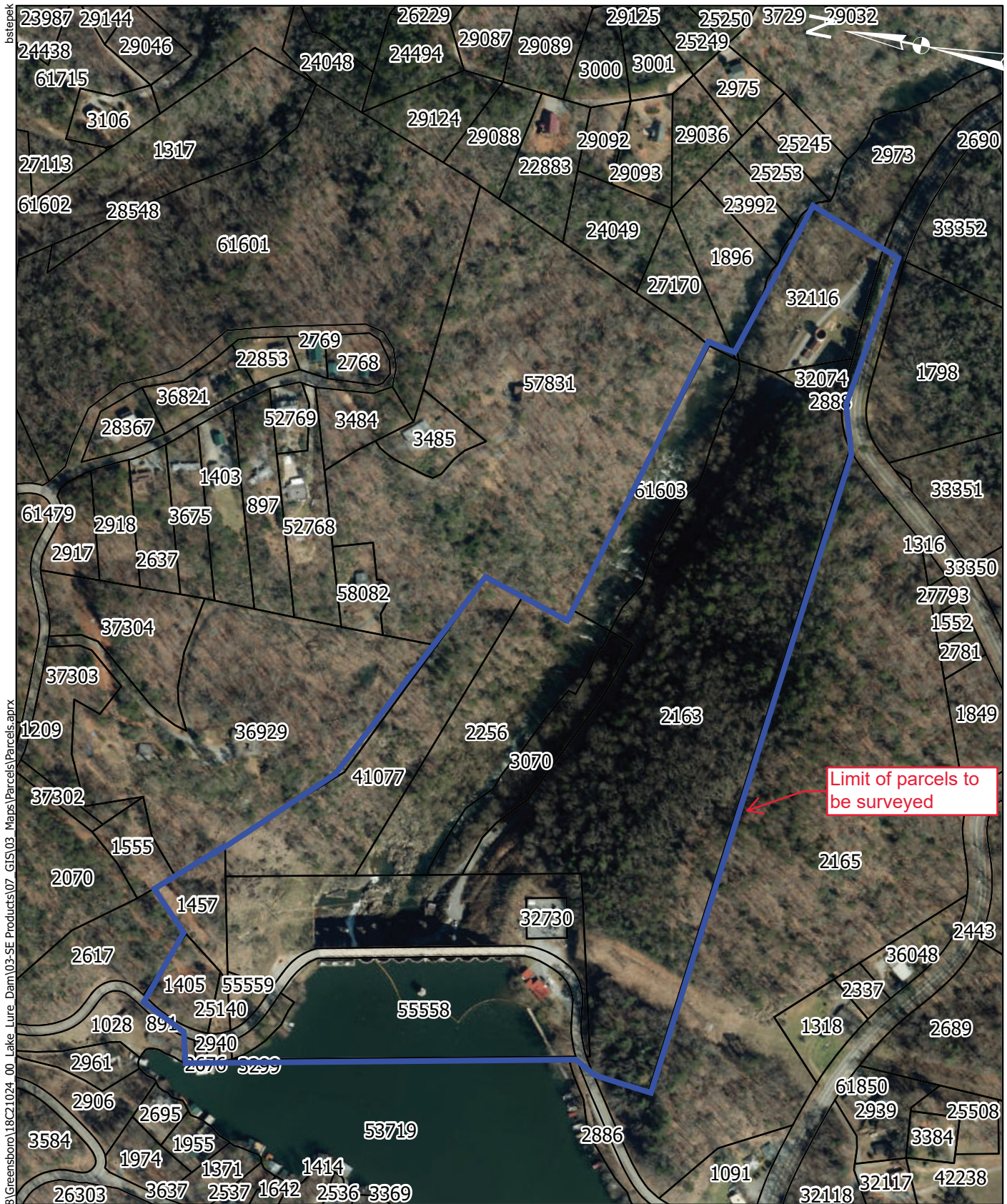
1 BORING LOCATION PLAN



	LAKE LURE DAM TOWN OF LAKE LURE RUTHERFORD COUNTY, NORTH CAROLINA PROJECT NO. 18C21024.020	BORING LOCATION PLAN
	ATTACHMENT 1	

- NOTES**
- EXISTING TOPOGRAPHY AND SITE FEATURES ARE BASED ON SURVEY PERFORMED BED HOLMES AND ASSOCIATES LAND SURVEYORS, PA DATED JANUARY 9TH, 2019. TOPOGRAPHY OUTSIDE THE SURVEY LIMITS DERIVED FROM 2015 LIDAR DATA OBTAINED FROM THE KENTUCKY DIVISION OF GEOGRAPHIC INFORMATION.
 - HORIZONTAL LOCATIONS OF CONTOURS AND SITE FEATURES ARE PLOTTED IN U.S. SURVEY FEET WITH RESPECT TO THE NORTH AMERICAN DATUM OF 1983 (NAD 83) AND THE NORTH CAROLINA STATE PLANE COORDINATE SYSTEM (FIPS 3200). ELEVATIONS ARE REPORTED IN U.S. SURVEY FEET WITH RESPECT TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).
 - LOCATIONS OF UTILITIES SHOWN ON THIS SURVEY WERE DETERMINED BY OBSERVED EVIDENCE. LOCATION OF ABOVE GROUND UTILITY APPURTENANCES, GIS INFORMATION AND UTILITY MARKINGS (PAINT, ETC.) PROVIDED BY ED HOLMES & ASSOCIATES. THESE MARKINGS WERE OBSERVED DURING THE COURSE OF THIS SURVEY, WERE FIELD LOCATED, ARE SHOWN FOR INFORMATIONAL PURPOSES, AND SHOULD BE FIELD VERIFIED IF CRITICAL. UNDERGROUND UTILITIES NOT SHOWN, MAY EXIST. STORM SEWER AND SANITARY SEWER DATA HAS BEEN COLLECTED FROM THE RIM OF THE MANHOLE WITHOUT ENTERING THE STRUCTURE. PIPE SIZES AND TYPES SHOULD BE CONSIDERED APPROXIMATE AND BE FIELD VERIFIED IF CRITICAL.

Last Saved By: BS TERREK SaveDate: 5/17/2023 1:33 PM PldDate: 5/17/2023 1:33 PM
 File Name: \\grees-ifs-proj\2021\18C21024\18C21024_00_Lake_Lure_Dam\05-SE Product\05-CAD\DRAWINGS\04-REPORTS\03-Investigation\Proposal\BORING LOCATION PLAN.dwg
 Layout: BORING LOCATION PLAN



5/10/2023 \\gree-fs\projects\2018\Greensboro\18C21024_00_Lake Lure Dam\03-SE Products\07 GIS\03_Maps\Parcels\Parcels.aprx

Source: NC CGIA, Maxar
Spatial Reference PCS: WGS 1984 Web Mercator Auxiliary Sphere

0 210 420 840 US Feet
Scale: 1:5,000 1 inch equals 417 feet



LAKE LURE DAM
TOWN OF LAKE LURE
RUTHERFORD COUNTY, NC
PROJECT NO. 18C21024

PARCEL MAP

Attachment 2

ATTACHMENT 3

Lake Lure Dam, WO No. 98, Partial Field Investigations for Replacement Dam, Lake Lure, NC, 18P21021.05

ITEM	PRINCIPAL (11)	ASSOC. SCI. (33)	SENIOR ENG. (41)	PROJECT ENG. (51)	PROJECT SCI. (53)	SR. STAFF ENG. (61)	SR. STAFF SCI. (63)	STAFF ENG. (71)	STAFF SCI. (73)	CADD III (87)	CLERICAL / ADMIN (95)	TOTAL SE PERSONNEL TIME	TOTAL SE PERSONNEL COST		Subtotal Travel Mileage	Subtotal Travel OTAs	TOTAL ALL TRAVEL & LIVING COSTS	IN-HOUSE EQUIPMENT COSTS	TOTAL EQUIPMENT COST \$ (501.50)	SCHNABEL LAB TESTING COSTS	TOTAL SCHNABEL LAB COSTS (\$91.30)	TOTAL OUTSIDE LAB COSTS (\$21.01)	DRILLING SUBS	TOTAL DRILLER COSTS (\$21.02)	OTHER SUBCONTRACTORS	TOTAL OTHER SUB COSTS (\$21.03)	TOTAL IN-HOUSE EXPENSES	TOTAL SUBCONTRACTED EXPENSES	TOTALS																
													Mileage	OTAs																(531.10) with	(531.13) with	with	with	with	with	with	with	with	with	with	with	with	with	with	with
													\$ 0.560 Mile	\$ 185.00 Day																10% markup	10% markup	10% markup	Input \$ Below Cost	10% markup	Input \$ Below Cost	0% markup	Input \$ Below Cost	10% markup	Input \$ Below Cost	10% markup	Input \$ Below Cost	10% markup	Input \$ Below Cost	10% markup	Input \$ Below Cost
2023 Greensboro Rates UNIT or COST as shown in column heading																																													
Task 01 - Investigation Planning																																													
E&S Plan																																													
Access Improvements Coordination (includes one site visit)																																													
Project Management and Stakeholder Coordination (Schnabel) (includes two meetings and six conference calls)																																													
Work Plan Development and Sub-Task Orders (Schnabel)																																													
Task 02 - Field Investigations																																													
Private Utility Clearance (TBD)																																													
Surface Geophysics - Seismic Refraction (Schnabel)																																													
Drilling and Downhole Geophysics (S&ME)																																													
Investigation Oversight (Schnabel) (includes site visits by EOR and geotech)																																													
Geologic Mapping of Exposed Bedrock (2 geologists 3 days on site)																																													
Supplemental Surveys - Parcel Boundary (McKim & Creed)																																													
Project Management																																													
Task 03 - Laboratory Testing																																													
Laboratory Test Assignments, Shipping of Samples, and Testing Coordination																																													
Soil Laboratory Testing (Blacksburg)																																													
Rock Laboratory Testing (TBD)																																													
Review and QA																																													
Project Management																																													
Task 04 - Geotechnical Data Report and Design Considerations Memo																																													
Review, Interpretation, and QC of Field and Lab Data																																													
Boring Logs																																													
GDR Tables, Figures, and Other Appendices																																													
GDR Text																																													
Address Review Comments																																													
Design Considerations Memo																																													
Review and QA																																													
Project Management																																													
QUANTITY																																													
TOTAL COST																																													



SCHEDULE OF PERSONNEL FEES – GREENSBORO, NORTH CAROLINA
Effective until December 31, 2023

Senior Consultant	\$307.00/hr
Principal	303.00/hr
Senior Associate	275.00/hr
Associate	244.00/hr
Senior Engineer/Scientist	205.00/hr
Project Engineer/Scientist	177.00/hr
Construction Resident Engineer/Resident Project Representative	177.00/hr
Senior Staff Engineer/Scientist/Technologist	157.00/hr
Staff Engineer/Scientist/Technologist	136.00/hr
Senior Technician II/Construction Resident Technician (see note 4)	129.00/hr
Senior Technician I (see note 4)	109.00/hr
Technician III (see note 4)	95.00/hr
Technician II (see note 4)	79.00/hr
Technician I (see note 4)	70.00/hr
CADD III	145.00/hr
CADD II	131.00/hr
CADD I	110.00/hr
Clerical/Admin	84.00/hr

NOTES:

1. Personnel fees will be based upon the actual hours charged times the appropriate hourly rate.
2. Travel by auto to and from jobs will be charged at the current IRS prevailing rate, plus a markup of 15% to cover handling, insurance and overhead. Travel by air or rail, lodging and meal expenses for personnel in the field will be billed at cost plus a 15% markup.
3. Per Diem rates for out-of-town or overnight travel will be in accordance with U.S. General Services Administration rates published on website www.GSA.gov for the area in which the project is located.
4. Overtime for Technicians is time for work on Saturday, Sunday and federal holidays, time in excess of 8 hours per day, and time between the hours of 7:00 P.M. and 7:00 A.M. A surcharge of \$15/hr is added to the above rate for overtime.
5. Subcontractors and other non-labor project expenses are marked up 15% to cover the cost of handling, insurance and overhead.
6. Schedule of Fees will increase on January 1, 2024 and not less frequently than annually thereafter based on the Consumer Price Index as provided by the U.S. Department of Labor, Bureau of Labor Statistics – All Urban Consumers – U.S. City Average.

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement"), dated as of September 12, 2018 (the "Effective Date"), is by and between the **Town of Lake Lure** (hereinafter "Client"), with an office at 2948 Memorial Highway, Lake Lure, NC 28746 and **Schnabel Engineering South, P.C.** (hereinafter "Consultant") with an office at 11-A Oak Branch Drive, Greensboro, NC 27408 (hereinafter collectively "Parties").

This Agreement is specific to services ("Services") required to rehabilitate and/or upgrade Lake Lure Dam, its hydro-electric generating facility, and appurtenances to meet NCDEQ Dam Safety requirements and extend the service life of the facility ("Project"). Services may include review of existing documents, investigation of the existing condition of the structure, analysis of existing and proposed conditions, design of repairs or modifications, bidding support, construction administration and oversight, and related services. The work will be performed in phases, and the Scope of Work, fees and method of compensation, schedule, and deliverables of service will be presented in individual Task Order Proposals for each phase. Services provided under this Agreement will be performed under the supervision of a Professional Engineer licensed in the State of North Carolina.

In consideration of the mutual agreements herein expressed, the Parties contract, covenant, and agree as follows:

1. SCOPE OF SERVICES/COMPENSATION.

1.1 Consultant shall perform the Services set forth in individual Task Orders, which shall be governed by this Agreement. Each executed Task Order shall include the Scope of Work, fee compensation amounts and method of billing, the schedule of performance, and descriptions of the deliverables of Services..

1.2 Client shall pay Consultant for Services rendered under this Agreement on the basis set forth in each executed Task Order.

2. TERM OF AGREEMENT. Upon execution by the Parties, this Agreement shall have the Effective Date as set forth above and shall remain in force until all obligations related to the Services have been fulfilled, unless sooner terminated as provided herein.

3. ENTIRE AGREEMENT.

3.1 The Agreement between Consultant and Client consists of this Agreement, executed Task Orders, and any exhibits or attachments attached or incorporated herein. Together these elements will constitute the entire Agreement, superseding all prior written or oral negotiations, statements, representations, correspondence, and/or agreements. The Services to be provided by Consultant pursuant to this Agreement are described in each executed Task Order and include the Scope of Work. Both Client and Consultant must mutually acknowledge any changes to this Agreement in writing. All work performed by Consultant 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 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. Disputes concerning modifications to Scope of Work or compensation shall be resolved pursuant to Article 15, "Dispute Resolution."

4. STANDARD OF CARE, DISCLAIMER OF WARRANTIES.

4.1 Consultant shall perform Services under this Agreement in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. NO OTHER REPRESENTATION AND NO WARRANTY OR GUARANTEE, EITHER EXPRESS OR IMPLIED, IS INCLUDED OR INTENDED BY THIS AGREEMENT.

5. SITE ACCESS, SITE CONDITIONS, SAMPLES.

5.1 Client will provide rights of entry and access for Consultant to perform its Services.

5.2 Consultant will take reasonable precautions to avoid damage or injury to subterranean structures or utilities in the prosecution of his work. Client agrees to advise Consultant of known or

suspected underground features in the area of the work, and Consultant will not be responsible for damage to below grade features not brought to its attention, or incorrectly shown on plans provided.

5.3 Client shall promptly pay and be responsible for the removal and lawful disposal of contaminated samples and cuttings, and hazardous substances, unless other arrangements are mutually agreed in writing.

6. OWNERSHIP OF DOCUMENTS, RESTRICTIONS ON REUSE.

6.1 All documents, including opinions, conclusions, certificates, reports, drawings and specifications and other documents, prepared or furnished by Consultant and Consultant's independent professional consultants pursuant to this Agreement (collectively "Documents") are instruments of Service. Consultant retains all ownership and property interests in the Documents, including all common law, statutory and other reserved rights, including copyrights, whether or not the Project is completed. Consultant will provide signed and sealed versions of the final deliverables to the Client in both hard copy and electronic format. Client may make and retain copies of them for information and reference in connection with permitting, financing, bidding and construction of renovations and facility improvements relating to the Lake Lure Dam, Hydro-electric Plant and appurtenances as addressed by this Project; however, such copies are not intended or represented to be suitable for reuse by others, and may not be used on other projects or for additions to this Project outside the Scope of the Work.

6.2 At Client's request, Client may negotiate with Consultant to acquire ownership of Documents for a mutually agreed amount. If Client acquires ownership of Documents prepared by Consultant, Client agrees: a) that any subsequent reuse or modification of them by Client or any party obtaining them through Client will be at Client's sole risk and without liability to Consultant, and b) Client will defend, indemnify and hold harmless Consultant from and against any claims, damages, and liabilities arising from or related to any use, reuse or modification of Documents by Client or any party obtaining them through Client. Client agrees that Consultant may retain copies of all documents for its files.

6.3 Electronic communications and CADD data transferred by Email, websites or computer disks (collectively "E- Data") are provided only as an accommodation by Consultant for the benefit of Client. Signed paper prints of documents constitute the contract deliverables. Client assumes the risk that E-Data may differ from the paper deliverables. Client agrees to indemnify and hold harmless Consultant from and against claims, damages, and liabilities for defects or inappropriate use of E-Data created or transmitted by Consultant.

7. THIRD PARTY RELIANCE UPON DOCUMENTS.

7.1 Consultant's performance of the Services, as set forth in this Agreement, is intended solely and exclusively for the Client's benefit and use. No party may claim under this Agreement as a third party beneficiary. Client agrees not to distribute, publish or otherwise disseminate Consultant's Documents, without first obtaining Consultant's prior written consent.

7.2 No third party may rely upon Consultant's Documents including, but not limited to, opinions, conclusions, certificates, reports, drawings and specifications unless Consultant has agreed to such reliance in advance and in writing.

8. ASSIGNMENT, SUBCONTRACTING.

8.1 Neither Client nor Consultant 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 party.

8.2 Notwithstanding Section 8.1, Consultant may subcontract subsurface exploration, testing, and other supplemental services without notification or consent of Client.

9. TERMINATION, SUSPENSION.

9.1 Termination for Convenience. The Client may terminate this Agreement for its convenience upon twenty-one (21) days written notice to Consultant. In the event of termination for convenience, Consultant shall be compensated for all services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously compensated. Consultant shall not be reimbursed for anticipatory profits.

9.2 Termination for Cause. The Client may terminate this Agreement upon fourteen (14) days written notice may terminate this Agreement if Consultant fails to substantially perform through no fault of Client and does not commence correction of such performance within five (5) days of written notice and

diligently complete the correction thereafter. In the event of termination for fault, Consultant shall be compensated for all services satisfactorily performed and costs incurred up to effective date of termination for which Consultant has not been previously compensated. All costs and charges incurred by Client to complete the Services beyond the total compensation available under this Agreement when terminated shall be deducted from any compensation due or which may become due to Consultant, and to the extent such deduction is insufficient to cover such costs and charges to Client, Consultant shall be and remain liable to pay Client the amount of such excess.

9.3 Client's Failure to Pay. In the event of any failure of payment by Client when due, Consultant shall have the right to suspend work on the Project and may retain any and all work products whether prepared by Consultant or submitted to Consultant by others, until payment has been brought current. In such event, Consultant shall have no liability for any damages or losses that may result from any delay associated the suspension of work or for the withholding of work products. If Client's failure to pay continues for more than sixty (60) days, Consultant may terminate this Agreement effective upon written notice to Client.

10. ALLOCATION OF RISK.

10.1 Consultant's total cumulative liability to Client (including, but not limited to, attorneys' fees and costs awarded under this Agreement) irrespective of the form of action in which such liability is asserted by Client or others, shall not exceed the total compensation received by Consultant under this Agreement or \$3,000,000, whichever is greater.

10.2 Client and Consultant agree to limit each's liability to the other in the following respects: Neither party will have liability to the other for any special, consequential, incidental, exemplary, or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of the other party's property or facility, shutdowns or service interruptions, loss of use, lost profits or revenue, inventory or use, charges or cost of capital or claims of the other party's customer.

10.3 The limitations of liability of this Agreement shall survive the expiration or termination of this Agreement.

11. INSURANCE.

11.1 Consultant shall procure and maintain for the duration of the Project and three years following, with insurance carriers reasonably acceptable to the Client, the following insurance coverage:

- (a) Commercial General Liability on an occurrence form, including coverage for premises and completed operations/products, Contractual Liability, General Aggregate per Project, "xcu" coverages
 - \$1,000,000 each occurrence
 - \$ 10,000 Medical Expenses
 - \$1,000,000 Personal and Advertising Injury
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
- (b) Automobile Liability - Including coverage for Owned, Hired, and Non-Owned Autos
 - \$1,000,000 Combined Single Limit
- (c) Workers Compensation and Employer's Liability
 - Statutory Limits for Workers Compensation
 - \$500,000 each accident
 - \$500,000 each occurrence by disease
 - \$500,000 by disease - policy limit
- (d) Umbrella Liability – applying over all above-referenced policies
 - \$10,000,000 each occurrence
- (e) Professional Liability
 - \$3,000,000 each claim
 - \$3,000,000 annual aggregate

11.2 Additional Insured. Except for Workers Compensation and Professional Liability, policies shall include Client as Additional Insured on a primary and noncontributory basis, to include ongoing and completed operations.

12. INDEMNIFICATION.

12.1 Indemnification of Client. Subject to the provisions and limitations of this Agreement and to the extent allowable by law, Consultant agrees to indemnify and hold harmless Client, its shareholders, 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 Consultant's negligent performance of its Services under this Agreement.

12.2 Indemnification of Consultant. Subject to the provisions and limitations of this Agreement and to the extent allowable by law, Client agrees to defend, indemnify and hold harmless Consultant from and against any and all claims by third parties related to services provided by Consultant under this Agreement, and against any and all Losses to the extent caused by the negligence of Client, its employees, agents and contractors. In addition, except to the extent caused by Consultant's sole negligence, Client expressly agrees to defend, indemnify and hold harmless Consultant from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material.

13. INVOICES, PAYMENTS.

13.1 Payment is due without retainage upon presentation of invoice and is past due thirty (30) days from invoice date, and will not be contingent upon receipt of funds from third parties. Client agrees to pay a service charge of one percent (1%) per month or fraction thereof on past due payments under this Agreement.

13.2 It is further agreed that in the event a lien or suit is filed to enforce overdue payments under this Agreement, Consultant will be reimbursed by Client for all costs of such lien or suit and reasonable Attorney's fees in addition to accrued service charges, where the court of appropriate jurisdiction enters a finding in favor of Consultant.

14. 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:

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

Consultant: Schnabel Engineering South, P.C.
11-A Oak Branch Drive
Greensboro, NC 27407

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.

15. DISPUTE RESOLUTION.

15.1 Claims, disputes, and other matters in controversy between Consultant and Client 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.

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

16. FORCE MAJEURE.

16.1 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.

17. SEVERABILITY.

17.1 This Agreement reflects the entire agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. 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 first above written.

CONSULTANT:

Schnabel Engineering South, PC

By: [Signature]

Name: Jonathan Pittman
(print)

Title: Senior Vice President

Date: September 15, 2018

CLIENT:

Town of Lake Lure

By: [Signature]

Name: Kurtis J. Conkey
(print)

Title: Mayor

Date: September 15, 2018

Exhibits:

None
Rev 2018-08

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: May 24, 2023**

SUBJECT: Discuss TDA Lease Amendment

AGENDA INFORMATION:

Item Number: X
Department: Administration
Contact: Hank Perkins, Town Manager
Presenter: Hank Perkins, Town Manager

BRIEF SUMMARY:

Town Council approved the lease between the Town and the Rutherford County Tourism Development Authority (TDA) during the April 11th regular meeting. The TDA required that the lease be approved by their executive board. The TDA's executive board recently reviewed the lease and proposed minor changes. Town Attorney William Morgan has reviewed the amendments to the lease and determined that the amendments are acceptable, and will not require advertisement because the amendments are minor and do not change the substantive terms of the lease. Town staff recommends that Council review the proposed amendments and approve the amendments under consent agenda at the regular June meeting.

ATTACHMENTS:

TDA Lease with Proposed Amendments

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

LEASE AND AGREEMENT
With
**The Rutherford County Tourism Development
Authority**

THIS LEASE AGREEMENT (the "Lease"), made and entered into as of the ____ day of _____, 2023 by and between the TOWN OF LAKE LURE, a municipal corporation, party of the first part, "Landlord", (hereinafter also referred to as the "Town"); and the RUTHERFORD COUNTY TOURISM DEVELOPMENT AUTHORITY, party of the second party, "Tenant" (hereinafter also referred to as the "TDA").

WITNESSETH

Whereas, the Town is a municipal corporation established under the laws of the State of North Carolina; and TDA is a political subdivision of the State of North Carolina charged with developing tourism throughout Rutherford County, including in and for the Town of Lake Lure; and

Whereas, TDA, in fulfilling its mission to promote the growth of tourism for and in Rutherford County in accordance with N.C. Session Law 2011-115, desires to operate a facility, located in the Town, for the express purposes of: providing a location for TDA to **fulfill** this mission and for such other related purposes as TDA feels is in the best interest of fulfilling this mission (the "Visitor Center"); and

Whereas, the Town agrees with this goal of developing tourism and desires to lease space to TDA for the purpose of TDA operating such a Visitor Center; and

Lease Agreement

Page 2

NOW, THEREFORE, for and in consideration of their mutual covenants, the Town hereby leases to the TDA, and the TDA hereby leases from the Town, the building commonly known as the Community Center, situated at 2932 Memorial Highway, Lake Lure, NC 28746 (hereinafter the "Premises"), for the express purpose of operating a Visitor Center and an office for TDA, upon the terms, conditions and covenants as set forth herein:

1. Term of Lease. This Lease is for a term commencing on _____, 2023, and ending on _____, 2024, unless sooner terminated as hereinafter provided (the "Term"). If at any time the Visitor Center remains closed and unavailable to the public for a period of thirty (30) consecutive days, the same shall be considered a breach of this agreement and the Town shall send written notice to the TDA, as provided hereinbelow, of the breach, upon receipt after which the TDA shall have thirty (30) days to cure the breach by opening the Visitor Center on the Premises (the "Cure Period"). If the TDA fails to open the Visitor Center during the Cure Period, then this Lease shall terminate ten (10) days after the Cure Period.

2. Rent. Beginning on the first day of the Term and then on the first day of July of each year subsequent, the TDA will be obligated to pay to the Town annual rent in the amount of \$1.00 (one dollar and zero cents). In the event TDA fails to pay the rent as provided herein, the Town shall send Notice of the breach to TDA as provided hereinbelow, and TDA shall have thirty (30) days to pay said rent. Should TDA continue to be in breach of this provision after the thirty (30) days have expired, then this Lease shall be considered terminated, and the Town may send notice to vacate the Premises to TDA at any time in its sole and complete discretion.

3. Option to Renew. The Tenant and Town shall have the option to renew this lease agreement for nine (9) additional terms of one (1) year (the "Option"), for a total potential term of this Lease of ten (10) years. The Option will be deemed exercised automatically unless either party delivers written notice as provided hereinbelow to the other party of its decision not to exercise or agree to the Option. This decision not to exercise or agree to the Option shall be sent to the other party no later than one

Lease Agreement

Page 3

hundred eighty (180) days prior to the termination of the original Term.- Either party, so long as that party is not in breach of this Lease, has the right to elect to not exercise the Option as provided herein, with or without cause.

4. Operation of the Visitor Center

(a) TDA agrees to operate the Visitor Center in accordance with the Visitor Center Mission and Vision Statements, which are as follows:

Mission & Purpose

The mission of the ~~Hickory Nut Gorge Visitor Center~~ Rutherford County Visitor Center is to accommodate the needs of our visitors in cooperation with surrounding communities by:

- promoting the area
- showcasing our history and heritage
- highlighting our family-oriented destinations
- sharing our welcoming spirit

Vision Statement

The ~~Hickory Nut Gorge~~ Rutherford County Visitor Center is an attractive and engaging destination that provides information regarding attractions, accommodations, restaurants and other things to see and do. This fosters overnight stays, encourages return visits and invites potential residents. As a result, social, cultural and economic vitality is enhanced ~~not only in the Hickory Nut Gorge, but also~~ throughout Rutherford County and the region.

(b) Information provided in the Visitor Center on tourist amenities like attractions, lodging and dining, will not be limited solely to Rutherford County businesses.

(c) TDA will utilize their established branding and signage, which is subject to modification by the TDA. Currently, this includes "Lake Lure, Chimney Rock & The Blue Ridge Foothills" and the "Front Porch of the Blue Ridge" campaign. ~~In signs and references to the Visitor Center, the TDA will include the reference "Serving the Hickory Nut Gorge."~~

~~(d) TDA shall maintain a regular forum for area tourism businesses to provide feedback and recommendations on Visitor Center services through the TDA's Visitor Information Network (VIN) subcommittee. TDA shall appoint two (2) members of the Hickory Nut Gorge Chamber of Commerce to the VIN~~

5. Utilities

(a) TDA shall pay all of the monthly charges for electricity attributable to the premises.

(b) The Town shall provide water and sewer utility service at no charge to TDA.

(c) The Town shall make available a fiber optic broadband internet connection for use at no cost by TDA. TDA shall be responsible for the purchase of any equipment necessary for this connection.

(d) The Town shall make available voice-over-IP telephone services for use at no cost by TDA. TDA shall be responsible for the purchase of phones and any necessary networking equipment.

(e) The Town shall, from time to time, upon request from TDA, join in the granting of such utility easements as may be reasonably necessary to service TDA's requirements on the Premises.

6. Repairs, Maintenance and Cleaning.

(a) TDA shall be responsible for the maintenance of the interior of the building on the Premises and shall keep said interior in good condition and ordinary repair as when received, ordinary wear and tear excepted. Said interior maintenance shall include regular custodial servicing and cleaning and pest control.

(b) TDA shall be responsible for all repairs to permanent leasehold improvements, including, but not limited to, structural, mechanical, HVAC, exterior including doors, foundation repairs and repairs to the roof, as well as repairs as required because of water entering the Premises from the roof of other parts of the building or from other causes not under the control of the Town.

(c) TDA shall each make all necessary repairs and replacements of the portions of the Premises which they are required to maintain and repair as aforesaid, and all repairs and replacements shall be diligently commenced and completed.

(d) The Town shall be responsible for snow removal and parking lot maintenance.

7. Insurance.

Lease Agreement

Page 5

(a) TDA shall carry throughout the Term, at its own expense, an Owners, Landlords, and Tenants General Public Liability Policy covering both the Town and the TDA with minimum limits of \$1,000,000 for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of \$1,000,000. Certificate evidencing such as insurance shall be furnished to the Town, and TDA will deliver to the Town certificates of renewal of such policy not less than ten (10) days in advance of the expirations thereof; such policy shall not be subject to cancellation without at least ten (~~10~~) days prior written notice to the Town.

The TDA shall cooperate and carry throughout the Term, a Policy for flood insurance covering both the Town and the TDA with minimum limits sufficient to cover the cost of replacing the Visitor Center in the event of a flood. TDA will obtain the policy on behalf of the Town and TDA. Certificate evidencing such insurance shall be furnished to the Town, and TDA will deliver to the Town certificates of renewal of such policy not less than ten (10) days in advance of the expirations thereof, at which time Town shall reimburse TDA for one-half (1/2) of the cost of the said policy; such policy shall not be subject to cancellation without at least ten (10) days prior written notice to the Town.

(b) TDA shall maintain and keep in force all employers' compensation insurance required under the laws of the State of North Carolina, and such other insurance as may be necessary to protect the Town against any other liability to person or property arising hereunder by operation of law, whether such law be now in force or adopted subsequent to the execution thereof.

(c) Should the TDA fail to keep in effect and pay for such insurance as it is in this section required to do, the Town may do so, in which event the Town may send receipt of the insurance premiums paid by the Town to TDA at the address shown under the Notice section herein, and such premiums paid shall become immediately due and payable by TDA to the Town. Failure of TDA to reimburse such insurance premiums within thirty (30) days shall constitute a breach of this Lease.

Lease Agreement

Page 6

(d) TDA shall secure appropriate fire, theft and casualty insurance coverage on any and all of its contents situated upon said Premises and any and all improvements it makes to said Premises.

(e) The Town shall maintain and carry, throughout the Term at its own expense, hazard insurance on the Premises insuring against loss or damage by fire, earthquake, vandalism, and other perils in the amount of the replacement value of the Premises and any leasehold improvements thereto. The TDA shall be named as an additional insured as to any leasehold improvements made by the TDA, if any, pursuant to the terms of this Lease Agreement.

8. Fixtures

TDA shall have the right to remove Town-authorized improvements that it makes and fixtures that it adds to the Premises at such time as the Lease, or any renewal or extension thereof, concludes or is terminated; provided, however, that:

(a) The Premises are left in as good a state as when received, reasonable wear and tear and damage by fire or other casualty excepted;

(b) No portion of the Community Center shall be demolished or removed by TDA without the prior, express written consent of the Town; and

(c) Such removal shall be performed in a satisfactory manner and not weaken or impair the structural strength of the Community Center or any portion of the Premises.

Failure to remove such improvements or fixtures on or before the final day TDA holds possession of the Premises shall not be deemed a holding over under the terms of this Lease but shall be deemed an abandonment of the improvements or fixtures, and TDA shall not then incur any costs for the removal thereof. Nothing in this paragraph 8 shall permit TDA to seek or compel reimbursement from the Town for the Project but is intended by the parties hereto to permit TDA to remove and take its equipment and personal property whether or not attached to the Visitor Center.

9. Assignment. TDA shall not assign or in any manner transfer this Lease or any estate, interest or benefit therein or sublet the Premises or any part thereof or permit

the use of the same or any part thereof not anyone without the prior written consent of the Town.

10. Damage to Premises

(a) If the improvements on the Premises shall be damaged or destroyed by fire or by any other hazard insured by hazard insurance, then the party responsible for such damage through insurance coverage as set forth in paragraph 7 above shall work with such insurance company to effect such repairs or restore said improvements to substantially the same condition which existed before such damage or destruction.

(b) Since the annual rent is \$1.00, in the event that any damage from the causes aforesaid shall render the Premises totally or partially unusable for TDA's purposes under this Lease shall not be abated in proportion to the loss of effective use of the Premises.

If the destruction or damage amounts to more than seventy-five percent (75%) of the insurable value of the Premises, then either party may terminate this Lease by written notice to the other party within thirty (30) days after the date of such occurrence. Provided, however, that this Lease shall not thereby terminate if the damage shall have resulted from a hazard included in standard fire and extended coverage insurance and if TDA shall, within said thirty (30) day period, or within ten (10) days after notice of termination by the Town, send the Town written notice of its election to continue this Lease commencing four (4) weeks after the date that restoration by the Town shall be completed and available to the TDA for the conduct of its business. In the event of any termination under this paragraph (c), this Lease shall terminate as of the date of the occurrence, and the rent and all other payments owing or already paid by the TDA shall be adjusted as of said date.11.

Indemnification of Town.

TDA during the term hereof shall indemnify the Town against all claims and demands, whether for injuries to persons, loss of life, or damage to property occurring with the Premises and arising out of the use and occupancy of the Premises by TDA,

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Lease Agreement

Page 8

excepting, however, such claims and demands caused by acts or omissions of the Town. Nothing contained in this section

shall, however, detract from TDA's rights to protection under the liability insurance policy to be paid for by TDA as specified in paragraph 7 hereof.

12. Default.

If at any time during the term or extensions of this Lease there shall be a default within the provisions of this Agreement, except as stated in paragraph 1 and if TDA fails to cure such default within the Cure Period, then the Town may remedy or attempt to remedy any such default or other noncompliance and expend any sums necessary therefore at the cost and expense of TDA, and the sums so expected shall be payable to the Town on demand with lawful interest thereon and may be added by the Town to any rents or other sums due or to become due hereunder. On termination, the Town may recover from TDA all damages proximately resulting from the breach, including the worth of the balance of the Lease over the reasonable rental value for the Premises for the remainder of the Lease term, which such shall be immediately due the Town from TDA.

13. Notice.

It is agreed that all notices regarding this Lease shall be sent by certified or registered mail to:

If to Town:
The Town of Lake
Lure

If to TDA:
Rutherford County Tourism Dev. Auth.

Either party may designate by written notice to the other party a change in address to which notices may be directed to said party.

14. Other Matters.

(a) The failure by the Town to insist upon the strict performance of any agreement, term, or condition of this Lease or to exercise any right or remedy consequent upon an unremedied breach thereof, and the acceptance of full or partial rent during the continuance of any unremedied breach, shall not constitute a waiver of any such unremedied breach or the performance of such agreement, term, or condition of this Lease to be performed or complied with by TDA, and no unremedied breach thereof shall be deemed waived, altered, or modified except by written instrument executed by the Town. The waiver of any breach shall not affect or alter this Lease, but each and every agreement, term or condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

(b) Each right and remedy of the Town provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise and the exercise or beginning of the exercise by the Town of any one or more of the rights or remedies provided for in this Lease as now or hereafter existing at law or in equity, by statute or otherwise, shall be precluded the simultaneous or later exercise by the Town of any or all other rights or remedies for any then existing breach which has not then been remedied or in the course of being remedied provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

(c) In the event of default, the Town shall use its best efforts to mitigate damages.

(d) All parties hereto agree that in no event shall either the Town or the TDA be liable or responsible to each other, or to other persons, due to any stoppage or delay in operation of the Visitor Center or in any work contemplated by the Project, where such stoppages or delays result from acts of God, fire, war, legal, or equitable proceeding,

pandemic, or any other cause which is outside the control of either party hereto.

(e) It is agreed by the parties hereto that visitors and TDA volunteers and employees to the Visitor Center shall have the right to park in parking lots owned by the Town. The Town will be solely responsible for maintenance of any said parking lots.

14. No Waiver of Immunity. No portion of this Lease shall be deemed to constitute a waiver of any immunities which the Town or the TDA or their officers or employees may possess, nor shall any portion of this Lease be deemed to have created a duty of care on the part of either party to any persons not a party to this Lease.

15. Non-Appropriation.

No portion of this Agreement shall be deemed to create an obligation on the part of TDA or Town to expend funds not otherwise appropriated in each succeeding year.

16. Entire Agreement.

This Lease sets forth all the promises, agreements, conditions, and undertakings between the Town and TDA relative to the Premises, and there are not promises, agreements, conditions, undertakings, warranties or representations, oral or written expressed or implied, between them varying the terms of this Lease.

17. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this Agreement is for any reason held or decided to be invalid or unconstitutional, such a decision shall not affect the validity of the remaining portions. The parties hereto declare that they would have entered into this Agreement and each and every section, subsection, paragraph, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, or phrases might be declared to be unconstitutional or invalid.

18. Amendments and Termination.

This Lease shall be modified, altered, amended, or changed, only by written instrument executed by all the parties hereto. The parties hereto may agree to terminate this Lease at any time by written instrument executed by all the parties

Lease Agreement

Page 11

hereto.

19. Obligations and Successors.

The Town and TDA agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors, and assigns.

20. Expiration of Lease.

Upon termination or expiration of this Lease or the Option period, as appropriate, or any extension or renewal thereof, TDA shall deliver to the Town physical possession of the Premises in as good condition as the Premises are at the commencement of the Term, ordinary wear and tear and damage by fire or other casualty excepted. The Town acknowledges it is contemplated by the Lease that alterations may be made to the Premises as set forth herein.

21. Governing Law.

This contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina. TDA shall comply with all applicable federal, State, and local laws, statutes, ordinances and regulations including, but not limited to, the Omnibus Transportation Act of 1991 and its implementing regulations.

SIGNATURE PAGE FOLLOWS:

Lease Agreement
Page 12

IN WITNESS WHEREOF, said parties have hereunto executed this Agreement and Lease, in duplicate, the day and year first above written.

TOWN OF LAKE LURE

By: _____
Carol Pritchett, Mayor

ATTEST:

Olivia Stewman
Town Clerk

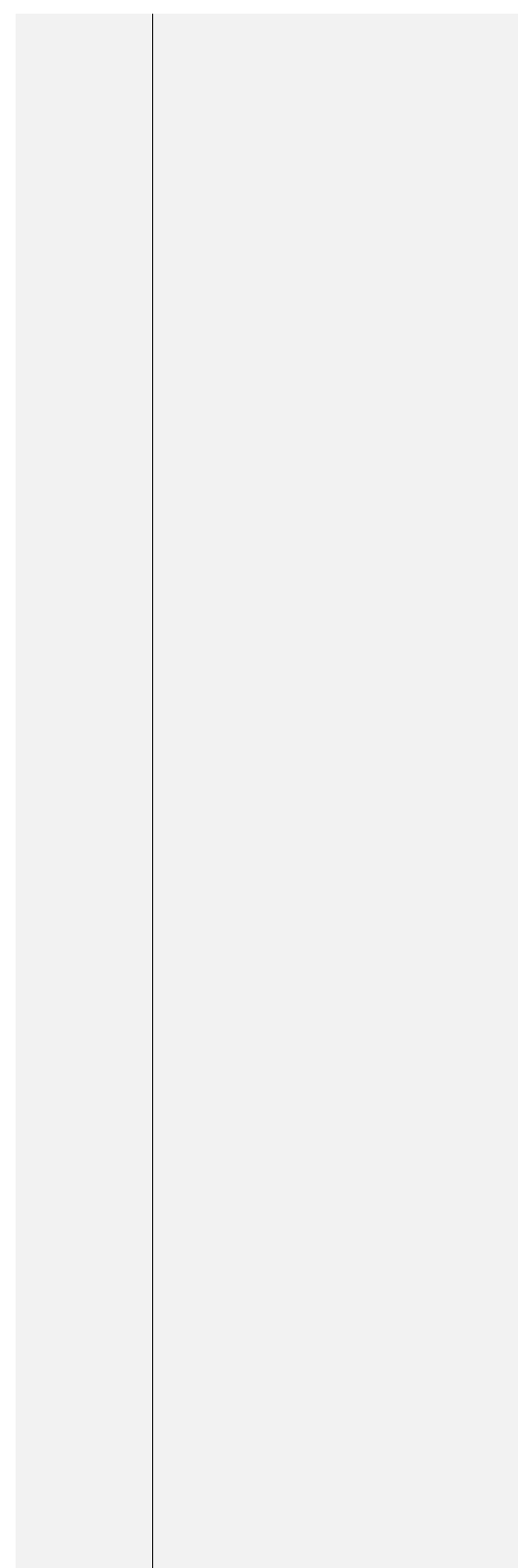
APPROVED AS TO FORM:

William C. Morgan, Jr.
Town Attorney

RUTHERFORD COUNTY TOURISM
DEVELOPMENT AUTHORITY

By: _____

By: _____



**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: May 24, 2023**

SUBJECT: Project Updates

AGENDA INFORMATION:

Item Number: XI
Department: Project Management
Contact: Mike Dydula, Project Manager
Presenter: Mike Dydula, Project Manager

BRIEF SUMMARY:

Project Manager Mike Dydula will provide Council with an update in regard to ongoing major projects.

ATTACHMENTS:

Project Manager Progress Report should be available at the time of the meeting

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: May 24, 2023**

SUBJECT: Town Manager Updates

AGENDA INFORMATION:

Item Number: XII
Department: Administration
Contact: Hank Perkins, Town Manager
Presenter: Hank Perkins, Town Manager

BRIEF SUMMARY:

Town Manager Hank Perkins will provide Council with any updates that are not included on the meeting agenda. Council will also have the opportunity to ask any questions.

XIII
ADJOURNMENT