AGREEMENT TO FURNISH PROFESSIONAL ENGINEERING SERVICES

TOWN OF STONEVILLE, NORTH CAROLINA
SANITARY SEWER SYSTEM REHABILITATION PROJECT

CDBG INFRASTRUCTURE GRANT

This AGREEMENT made this _____ day of _____, 2018, by and between the TOWN OF STONEVILLE, NORTH CAROLINA, hereinafter called the OWNER, and LKC ENGINEERING, PLLC, hereinafter called the ENGINEER.

WHEREAS, the Owner intends to construct the Sanitary Sewer System Rehabilitation Project as described in Stoneville's Community Development Block Grant (CDBG No. 17-I-2970) for Infrastructure. Application, hereinafter called the PROJECT; and

NOW, THEREFORE, the OWNER and ENGINEER, for the consideration hereinafter named, agree as follows:

The ENGINEER agrees to perform the following tasks obligated under this Agreement:

SECTION I- PRELIMINARY ENGINEERING REPORT

a) Engineer shall complete the Preliminary Engineering Report in accordance with CDBG Guidelines as established by NCDEQ for the program.

b) Coordinate necessary meetings with Owner and NCDEQ Staff as required to gain approval of Preliminary Engineering Report.

c) Assist Project Administrator in completion of the Environmental Review Record in conjunction with completion of the Preliminary Engineering Report.

d) Assist Project Administrator in meeting milestones as listed in the **Letter of Intent to Fund** from NCDEQ dated May 14, 2018 (see Exhibit "A" – Project Milestones).

The ENGINEER'S services shall not include (1) preparation of detailed wetlands or biological surveys or assessments, (2) preparation of an environmental assessment or environmental review document, (3) design and construction administration of the electrical upgrades, (4) negotiations with property owners for real property or easement acquisition, (5) payment of permit fees, (6) design of electrical upgrades or additions. These services, if required, may be arranged for and furnished by the Engineer and separately paid for by the Owner for a price to be subsequently agreed upon if the need for these services arises.

PAYMENT

The OWNER agrees to pay the ENGINEER for services noted in Sections I above for the following not to exceed fees:

I)	PRELIMINARY ENGINEERING REPORT	TWELVE THOUSAND FIVE HUNDRED DOLLARS ($12,500)

It is agreed by the parties hereto that the appropriate adjustments in any fixed and/or lump sum payments shall be made in the event that the physical scope of the PROJECT, time for completion, or services required are materially increased or decreased beyond that contemplated at this time.

The ENGINEER shall receive progress payments based on monthly estimates as submitted to the OWNER by the ENGINEER.

Should the ENGINEER be required to render "additional services" in connection with related work upon which the work scope does not apply, the ENGINEER shall receive additional compensation for such additional services at the hourly rates as specified on the fee schedule attached hereto as Exhibit "B" for the hours actually worked by the appropriate classification of employee.

TERM OF SERVICE

The Term of Service shall be defined as the length of time elapsed between the execution of this Agreement by all parties and the Final Certification of the construction and the closeout of the project with the Community Development Block Grant program.

TERMINATION

This Agreement may be terminated by either party on the basis of performance or for convenience. The terminating party shall notify the terminated party in writing a minimum of 30 days before the date of termination. Upon termination, the Engineer shall turn over all records, files, and other pertinent information to the Owner, and the Engineer shall be fairly compensated for services provided prior to termination.

The following Contract Provisions shall be referenced in Exhibit “C” as part of this Agreement:

- Conflict of Interest
- Legal Remedies and Termination
- Nondiscrimination
- Age Discrimination
- Section 504 of the Rehabilitation Act (Handicap Discrimination)
- Section 3
- Access to Records and Record Retainage
- Lobbying

The OWNER and ENGINEER hereby agree to the full performance of the covenants contained within this Agreement with Exhibits A, B and C herein.

IN WITNESS HEREOF, they have executed this Agreement, the day and the year first above written, which is the effective date of this Agreement.

LKC ENGINEERING, PLLC

By:_____
Bill Lester, Jr., P.E.
Member/Manager

Witness:_____
Sharon McDuffie

(SEAL)

TOWN OF STONEVILLE

By:_____
Town Manager

Attest: _____
Town Clerk

(SEAL)

Preaudit Certificate:

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

_____
Finance Officer- Town of Stoneville

EXHIBIT A

PROJECT MILESTONES

Milestone	**Date**
Attendance at EA/ER Workshop	May 17 or June 7, 2018
Attendance at the Compliance Workshop	May 16 or June 6, 2018
Contract with DWI Executed	June 22, 2018
Engineering Report Submitted	October 26, 2018
Environmental Doc & Req for Release of Funds Submitted	March 22, 2019
Funding Approval Conditions Submitted	March 22, 2019
Environmental Doc & Req for Release of Funds Approved	April 5, 2019
Engineering Report Approved	March 1, 2019
Bid and Design Package Submitted	September 2, 2019
Bid and Design Package Approved	January 3, 2020
Submit Itemized Bid Tabulation	March 6, 2020
Execute Construction Contracts	April 10, 2020

Compliance Plans

Adopted Equal Opportunity and Procurement Plan	October 22, 2018
Adopted Language Access Plan	October 22, 2018
Adopted Section 3 Plan	October 22, 2018
Section 504 Self-Evaluation & Adopted Grievance Procedures	October 22, 2018
Adopted Residential Anti-Displacement/Relocation Assistance	October 22, 2018
Adopted Citizen Participation Plan	October 22, 2018
Excessive Force Provision	October 22, 2018
Floodplain Certification – Map	October 22, 2018
Adopted Assessment of Fair Housing	March 22, 2019

EXHIBIT B

HOURLY RATE STRUCTURE

LKC ENGINEERING offers a competitive rate structure to provide the highest quality of engineering services with controlled overhead. The rates below cover all expenses including travel time.

MANAGING PARTNER	$120.00/HOUR
PROJECT MANAGER	$ 90.00/HOUR
PROJECT ENGINEER	$ 80.00/HOUR
SENIOR DESIGNER	$ 80.00/HOUR
DESIGNER	$ 70.00/HOUR
SENIOR CONSTRUCTION MANAGER	$ 80.00/HOUR
CONSTRUCTION MANAGER	$ 70.00/HOUR
FUNDING ADMINISTRATOR	$ 70.00/HOUR
ADMINISTRATOR	$ 50.00/HOUR

EXHIBIT C

CDBG CONTRACT PROVISIONS

CONFLICT OF INTEREST (2 CFR Part §200.318 General procurement standards)
Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials. No member, officer, or employee of the recipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The recipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.

LEGAL REMEDIES AND TERMINATION - As stated in 24 CFR Part 85.36 (2 CFR Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) - Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

FOR CAUSE. If, through any cause, the ENGINEER shall fail to fulfill in timely and proper manner his obligations under this Agreement, then the OWNER shall thereupon have the right to terminate this Agreement by giving written notice to the ENGINEER of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the ENGINEER under this Agreement shall, at the option of the OWNER become its property and the ENGINEER shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

WITHOUT CAUSE. The OWNER, by written notice, may terminate this contract, in whole or in part, at its discretion upon providing the ENGINEER a 30 day written notice of termination. If this contract is terminated, the OWNER shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the ENGINEER under this Agreement shall, at the option of the OWNER, become its property and the ENGINEER shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

<u>NONDISCRIMINATION CLAUSE</u> - Section 109, Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this title.

<u>AGE DISCRIMINATION CLAUSE</u>, as amended - Nondiscrimination on the Basis of Age

No qualified person shall on the basis of age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

<u>SECTION 504 OF THE REHABILITATION ACT OF 1973</u>, as amended - Nondiscrimination on the Basis of Disability

No qualified disabled person shall on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

<u>SECTION 3</u>

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications

for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

ACCESS TO RECORDS AND RECORD RETAINAGE CLAUSE

In general, all official project records and documents must be maintained during the operation of this project and for a period of three years following closeout in compliance with 24 CFR §570.490. The North Carolina Department of the Treasurer, U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and the NC Department of Environmental Quality, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Administering Agency which are pertinent to the execution of this agreement, for the purpose of making audits, examinations, excerpts and transcriptions in compliance with the above Rule.

LOBBYING CLAUSE

Required by Section 1352, Title 31, U.S. Code

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee

of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative, agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2) If any funds other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

   This is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.