

Form 16
Contract for ACEDP Engineering Services

This Agreement, made this 18th day of Aug, 2009 by and between
(Calendar day) (Month) (Year)

City of Jonesboro, Arkansas, hereinafter referred to as the OWNER and
(Name of

W. William Graham, Jr., Inc., hereinafter referred to as the ENGINEER:

The OWNER intends to construct rail spur improvements to serve the new Nordex Facility
hereinafter called the Project in Craighead County, State of Arkansas for which the ENGINEER
shall perform the various professional engineering services as included in Sections 1 through 6 of this
Agreement.

Witnesseth:

That for and in consideration of the mutual covenants between the parties hereto, it is hereby agreed:

SECTION 1

BASIC ENGINEERING SERVICES

PHASE I

- 1.1 During the Project Start-Up Phase, the ENGINEER shall
 - 1.1.1 Complete, if necessary, all surveying (except for boundary and easements) for the purpose of establishing permanent benchmarks for horizontal and vertical control as so located on the plans.
 - 1.1.2 Prepare a preliminary site plan location or plat map indicating the location of proposed improvements within the OWNER'S jurisdiction. This map will show the general location of needed construction easements and permanent easements and the land to be acquired.

- 1.2 During the Final Design Phase, the ENGINEER shall
 - 1.2.1 Prepare topographic maps (scale appropriate to plan design).
 - 1.2.2 Prepare Plans.
 - 1.2.3 Prepare specifications and contract documents specifying name of manufacturer, model number, size, color, style, and all other information necessary for the contractor to easily price and secure the products specified. Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard;

and any material, article or equipment of other manufacturers and vendors which will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the ENGINEER, of equal substance and function.

- 1.2.4 Define or provide to the OWNER and the Contractor all references to standards specified.
- 1.2.5 Prepare the cost estimates with such accuracy and detail as is necessary to compare with bids for determining whether they are reasonable and not in excess of costs generally prevailing for comparable construction work. The breakdown will include
 - 1.2.5.1 Estimated quantities for the various items of construction
 - 1.2.5.2 Estimated unit costs for each item
 - 1.2.5.3 Total estimated costs for each deductible item that will be taken in the bidding process. **Deductive Alternates are required on all projects.**
 - 1.2.5.4 These cost estimates are probable costs and are included to represent the best judgment of the ENGINEER. It is understood that the ENGINEER cannot and does not guarantee that proposals, bids, or actual project or construction cost will not vary from opinions of probable cost prepared by him.
- 1.2.6 Provide assistance to the OWNER who will submit the contract documents for review to the required State and Federal agencies.
- 1.2.7 Prior to the advertisement for bids, the ENGINEER will provide for each construction contract, a sufficient number of copies for the required approvals. He/she will also provide contract documents for use by the OWNER, and appropriate Federal, State, and local agencies from whom approval of the project must be obtained. The cost of such drawings, specifications, and contract documents shall be included in the basic compensation paid to the ENGINEER.
- 1.2.8 The drawings prepared by the ENGINEER shall be in sufficient detail to permit the location of the proposed improvements on the ground.

PHASE II

- 1.3 During the Construction Phase, the ENGINEER shall
 - 1.3.1 Organize and attend a pre-bid conference, if it is deemed necessary by the OWNER
 - 1.3.2 Advertise, secure bids, answer all questions, prepare and dispense addenda in a timely manner, recommend to the OWNER selection of the lowest qualified bidder and award of construction contract
 - 1.3.3 The ENGINEER will furnish additional copies of the drawings, specifications and contract documents as required by prospective bidders, material suppliers, and other interested parties, but may charge them for the reasonable cost of such copies. Upon award of each contract, the ENGINEER will furnish to the OWNER five sets of the contract documents for execution. The cost of these sets shall be included in the basic compensation paid to the ENGINEER. Original documents, survey notes, tracings, and the like, except those furnished to the ENGINEER by the OWNER, are and shall remain the property of the ENGINEER.
 - 1.3.4 Consult with and advise the OWNER as to the acceptability of substitute materials and equipment proposed by the contractor as a substitute as allowed in Section 1.2.4 of this contract.
 - 1.3.5 If the lowest qualified bid, less all deductive alternates, exceeds the appropriated amount, the OWNER shall, in accordance with State law, determine whether to 1) increase the budgeted funds, 2) authorize negotiating or rebidding the Project, 3) revise the scope of the project, or a combination of the above. The ENGINEER shall, without additional charges, modify the contract documents, as necessary to bring the construction cost within the limits of the appropriated funds.
- 1.4 During construction, the ENGINEER shall
 - 1.4.1 Arrange and attend preconstruction conference(s)
 - 1.4.2 Establish reference points, base lines and field control surveys for locating the work as shown in the contract documents
 - 1.4.3 Make periodic visits to the project to observe the progress and quality of work and to determine if the work is proceeding according to the contract documents and according to the construction time schedule. The ENGINEER will reject work that does not conform to the contract documents. The ENGINEER will not guarantee the performance of the contractor.
 - 1.4.4 Provide a Resident Project Representative to be on site during all construction work on this project (See Section 3, Duties,

Responsibilities and Limitations of Authority of Resident Project Representative)

- 1.4.5 Consult and advise the OWNER and issue all instructions to the contractor requested by the OWNER
- 1.4.6 Prepare change orders.
- 1.4.7 Provide the contractor with two copies of all reviewed submittals, shop drawings, laboratory tests, samples and the resident project representative with one copy and the OWNER with one copy of all shop drawings
- 1.4.8 Prepare monthly pay estimates, for the OWNER'S approval, and verify that the work is complete. Pay estimates are to be submitted by the 25th of each month unless a more suitable date is set and recorded at the preconstruction conference. The final pay estimate will be prepared when all work is verified complete and in accordance with the contract documents by the ENGINEER, as evidenced by submittal of a Certificate of Substantial Completion.
- 1.4.9 Document, and provide in writing to the OWNER, the outcome of all meetings

PHASE III

- 1.5 During project closeout, the ENGINEER shall
 - 1.5.1 Notify the OWNER in writing that the project is complete, acceptable, and ready for final payment
 - 1.5.2 Conduct, in company with the OWNER, AEDC and any other interested parties, a final inspection. Verify that all punch list items are completed. Issue Certificate(s) of Substantial Completion.
 - 1.5.3 Prepare a set of half-size photo reproductions for submission to the OWNER of the project as constructed. (Record drawings)
 - 1.5.4 Drawings will be based upon construction records provided by the contractor and the resident project representative's reports.
 - 1.5.5 Provide all services to the OWNER that will assist in obtaining a complete project.
 - 1.5.6 Furnish engineering services and consultations necessary to correct unforeseen project operation difficulties for one year after the date of substantial completion of the project. These services will include instruction of the OWNER in initial project operation and maintenance but will not include supervision of normal operation.
 - 1.5.7 Conduct and attend an end-of-year warranty inspection during the eleventh month after the date of substantial completion, make recommendations to the OWNER, record and verify that deficiencies are corrected
 - 1.5.8 Attend and represent the OWNER at all specified meetings which will be agreed upon by the OWNER and the ENGINEER
 - 1.5.9 Cooperate and work closely with State and Federal representatives throughout the project
 - 1.5.10 Obtain and maintain, at the ENGINEER'S expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death or property damage which may arise from the performance by the ENGINEER or by the ENGINEER'S employees of the ENGINEER'S functions and services required under this Agreement.
 - 1.5.11 Complete final construction drawings, specifications and documents and submit for approval of the OWNER and all State and Federal regulatory agencies within 60 calendar days from the date of this agreement unless otherwise agreed to by both parties
 - 1.5.12 If the above is not accomplished within the time period specified, this Agreement may be terminated by the OWNER. The time for completion will be extended by the OWNER for a reasonable time if completion is delayed due to unforeseeable causes beyond the control and without the fault or negligence of the ENGINEER.

1.5.13 Meet all requirements of the grant agreement as provided by the OWNER

SECTION 2

OWNER'S RESPONSIBILITIES

- 2.1 The OWNER shall
 - 2.1.1 Provide all criteria and full information as to the OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and budgetary limitations; and furnish copies of all design and construction standards which the OWNER will require to be included in the Drawings and Specifications.
 - 2.1.2 Assist the ENGINEER by placing at his disposal all available information pertinent to the project, including previous reports and any other data relative to design or construction of the project
 - 2.1.3 Furnish to the ENGINEER any available property boundary, easements, rights-of-way, topographic and utility surveys, property descriptions, zoning, deed, and other land use restrictions
 - 2.1.4 Arrange for access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services
 - 2.1.5 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the ENGINEER; obtain advice of an attorney, insurance counselor and other consultants as the OWNER deems appropriate for such examination; and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER
 - 2.1.6 Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any development that affects the scope or timing of the ENGINEER'S services, or any defect in the work of contractor(s).
 - 2.1.7 Bear all costs incidental to compliance with the requirements of Section 2 of this contract.
 - 2.1.8 If the OWNER designates one person to represent him at the project site who is not the ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of this person, and the effect on the duties and responsibilities of the ENGINEER, under this Agreement will be set forth in an amendment that is to be identified, attached to and made a part of this Agreement, before such services begin.
 - 2.1.9 Provide accounting, advertising, auditing, insurance counseling and legal services that the OWNER may require and the ENGINEER may recommend in conjunction with this project.
 - 2.1.10 Provide, with the assistance of the ENGINEER, all permits and approvals from all local, State and Federal agencies, as required.

- 2.1.11 Notify the ENGINEER, the contractor, the Arkansas Economic Development Commission and other interested parties of the end of year warranty inspection.
- 2.1.12 Provide the ENGINEER with a copy of the grant agreement, for which the project work is being completed.

SECTION 3

DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE

- 3.1 During the Construction Phase, the Resident Project Representative shall
 - 3.1.1 Be designated before construction begins by the ENGINEER at the Preconstruction Conference. The Resident Project Representative is an employee of, and responsible to the ENGINEER. He will represent the ENGINEER on the site. The ENGINEER should notify the OWNER, in writing, seven days prior to any replacement of the Resident Project Representative, except in the events of bad health or conduct not becoming the project.
 - 3.1.2 Be on the construction site during all working hours of the contractor
 - 3.1.3 Review submittals, shop drawings, laboratory tests, samples and require that the contractor use these materials
 - 3.1.4 Prepare daily records and weekly progress reports to include, but not be limited to, entries of activities, time worked, weather conditions etc., and shall make them available for review by OWNER and the Arkansas Economic Development Commission
 - 3.1.5 Be responsible for recording and reporting to the ENGINEER days when the weather was unsuitable for the work of the contractor to be performed
 - 3.1.6 Observe the work in progress and quality of construction to safeguard the OWNER against defects or omissions in the work
 - 3.1.7 Not be responsible for supervision of the contractor or his employees, or determination of the contractors methods, techniques, sequences, procedures or safety precautions
 - 3.1.8 Be paid in accordance with Section 4, Compensation for Engineering Services

SECTION 4

COMPENSATION FOR ENGINEERING SERVICES

4.1 The OWNER shall compensate the ENGINEER an amount not to exceed the total contract amount of \$ 225,000.00, subject to satisfactory performance and other conditions contained in this contract.

4.2 Schedule of Payments

4.2.1 Payments shall be made to the ENGINEER based on the work performed, provided however, the amount requested does not exceed the percentages based on project progress listed below. The OWNER shall make all payments to the ENGINEER within 30 days of receiving a written statement from the ENGINEER. If the ENGINEER does not receive compensation for completed work within 30 days, an additional amount, consistent with State law, may be charged to the OWNER.

4.2.2 The ENGINEER may receive up to 25 percent of the total contract amount prior to the required submission of the plans and specifications to all funding and regulatory agencies.

$$25\% \times \$ \underline{225,000.00} = \$ \underline{56,250.00}$$

4.2.3 The ENGINEER may receive up to an additional 10 percent of the total contract amount after plans and specifications are approved by all funding agencies. (A maximum cumulative amount of 35 percent of the total contract may be paid to the ENGINEER at this time.)

$$10\% \times \$ \underline{225,000.00} = \$ \underline{22,500.00}$$

4.2.4 The ENGINEER may receive up to an additional 15 percent of the total contract amount after bids have been opened, if and only if the bids came in within the budget available to award the contract. (A maximum cumulative amount of 50 percent may be paid to the ENGINEER at this time.)

$$15\% \times \$ \underline{225,000.00} = \$ \underline{33,750.00}$$

4.2.5 The ENGINEER may receive up to an additional 10 percent of the total contract amount after the preconstruction conference. (A maximum cumulative amount of 60 percent of the total contract may be paid to the ENGINEER at this time.)

$$10\% \times \$ \underline{225,000.00} = \$ \underline{22,500.00}$$

4.2.6 The ENGINEER will receive not more than 30 percent of the total contract amount to include the Resident Project Representative's salary, to be calculated on the basis of actual work performed during the construction of the project. (A maximum cumulative amount of 90 percent of the total contract may be paid to the ENGINEER at this time.)

$$30\% \times \$ \underline{225,000.00} = \$ \underline{67,500.00}$$

4.2.7 The ENGINEER will receive the final 10 percent of the total contract amount upon submission and approval of an executed Certificate(s) of Substantial Completion.

$$10\% \times \$ \underline{225,000.00} = \$ \underline{22,500.00}$$

4.2.2 \$ 56,250.00

+ 4.2.3 \$ 22,500.00

+ 4.2.4 \$ 33,750.00

+ 4.2.5 \$ 22,500.00

+ 4.2.6 \$ 67,500.00

+ 4.2.7 \$ 22,500.00

= \$ 225,000.00 Total Contract Amount

SECTION 5

SPECIAL PROVISIONS

5.1 Indemnification

The ENGINEER shall comply with the requirements of all applicable laws, rules, and regulations, and shall exonerate, indemnify, and hold harmless the OWNER and its agency members from and against them, and shall assume full responsibility for payments of Federal, State and local taxes or contributions imposed or required under the social security, workman's compensation, and income tax laws.

5.2 Access to Records

The OWNER, the Arkansas Economic Development Commission, the joint Legislative Audit Division of the State of Arkansas, the Department of Housing and Urban Development (HUD), the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the ENGINEER doing work under this Contract which are directly pertinent to the project funded by the Arkansas Economic Development Commission for the purpose of making audit, examination, excerpts, and transcriptions.

5.3 Miscellaneous Provisions

5.3.1 This Agreement shall be constructed under and in accordance with the laws of the State of Arkansas.

5.3.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

5.3.3 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

5.3.4 This Agreement may be amended by the mutual agreement of the parties hereto and in writing to be attached to and incorporated into this Agreement.

5.4 Personnel

- 5.4.1 The ENGINEER represents that it has, or will secure at its own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the OWNER.
- 5.4.2 All the services required hereunder will be performed by the ENGINEER or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.
- 5.4.3 No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.
- 5.4.4 None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the OWNER. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

5.5 Assignability

The ENGINEER shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the OWNER thereto: Provided, however, that claims for money by the ENGINEER from the OWNER under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the OWNER.

5.6 Reports and Information

The ENGINEER, at such times and in such forms as the OWNER may require, shall furnish the OWNER such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

5.7 Records and Audits

The ENGINEER shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract. The ENGINEER shall also provide any other records as may be deemed necessary by the OWNER, to assure proper accounting for all project funds, both Federal and non-Federal shares. These records will be made available for audit purposes to the OWNER or any authorized representative, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted by the OWNER, after consultation with the Arkansas Economic Development Commission.

- 5.8 Findings Confidential
All of the reports, information, data, etc., prepared or assembled by the ENGINEER under this Contract are confidential and the ENGINEER agrees that they shall not be made available to any individual or organization without the prior written approval of the OWNER.
- 5.9 Copyright
No reports, maps, or other documents produced in whole or in part under this Contract shall be subject of an application for copyright by or on behalf of the ENGINEER.
- 5.10 Compliance with State and Local Laws.
The ENGINEER shall comply with all applicable laws, ordinances and codes of the State and local governments, and the ENGINEER shall save the OWNER harmless with respect to any damages arising from any tort committed in performing any of the work embraced by this Contract.
- 5.11 Civil Rights Act/Equal Employment Opportunity
During the performance of this Contract, the ENGINEER agrees as follows:
- 5.11.1 The ENGINEER shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, age, handicap, veteran status or national origin. The ENGINEER will take affirmative steps to ensure that applicants are employed, and, that employees are treated during employment, without regard to their race, creed, sex, color, age, handicap, veteran status or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The ENGINEER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the OWNER setting forth the provisions of this non-discrimination clause.
- 5.11.2 The ENGINEER shall, in all solicitations or advertisements for employees placed by or on behalf of the ENGINEER, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, age, handicap, veteran status or national origin.
- 5.11.3 The ENGINEER shall cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

- 5.11.4 The ENGINEER shall comply with Executive Order (EO) 11246, entitled "Equal Employment Opportunity", as amended by EO 11375, and as supplemented by Department of Labor regulations 4 CFR 6(D).
- 5.12 "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities. The ENGINEER covenants that
- 5.12.1 The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from HUD through the Arkansas Economic Development Commission and is subject to the requirements of Section 3 of the HUD Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the area of the project.
- 5.12.2 It shall comply with the provisions of Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The ENGINEER certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.
- 5.12.3 It shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- 5.12.4 It shall include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the OWNER, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5.13 Section 503 Handicapped

Affirmative Steps for Handicapped Workers

5.13.1 The ENGINEER shall not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which he is qualified. The ENGINEER agrees to take affirmative steps to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all

employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

5.13.2 The ENGINEER agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

5.13.3 In the event of the Engineer's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

5.13.4 The ENGINEER agrees to post notices in conspicuous places, available to employees and applicants for employment. Such notices shall state the Engineer's obligation under the law to take affirmative steps to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

5.13.5 The ENGINEER shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the ENGINEER is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative steps to employ and advance in employment physically and mentally handicapped individuals.

5.13.6 The ENGINEER will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon subcontractor with respect to any subcontract or purchase order as the Director of the Offices of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

- 5.14 Interest of other Local Public Officials and/or Members of the Locality
No member of the governing body of the locality, and no other officer, employee, or agent of the locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program shall have any personal financial interest, direct or indirect, in this Contract; and the ENGINEER shall take appropriate steps to assure compliance.
- 5.15 Interest of ENGINEER and Employees
- 5.15.1 The ENGINEER covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the project area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The ENGINEER further covenants that in the performance of this Contract, no person having any such interest shall be employed.
- 5.15.2 The ENGINEER will comply with all requirements and regulations of HUD and the Arkansas Economic Development Commission pertaining to reporting patent line omitted demonstration work with respect to any discovery or invention which arises or is developed in the course of this Contract. The ENGINEER will also comply with HUD and Arkansas Economic Development Commission requirements and regulations pertaining to copyrights and rights in data.
- 5.16 Termination
- 5.16.1 Termination of Contract for Cause
If, through any cause, the ENGINEER shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the ENGINEER shall violate any of the covenants, agreements or stipulations of this Contract, the OWNER shall thereupon have the right to terminate this contract 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, and reports prepared by the ENGINEER under this Contract shall, at the option of the OWNER, become its property, and the ENGINEER shall be compensated based on the costs as allowed under this Contract, for any satisfactory work completed on such documents.
Notwithstanding the above, the ENGINEER shall not be relieved of liability to the OWNER for damages sustained by the OWNER by virtue of any breach of the Contract by the ENGINEER, and the OWNER may withhold any payments to the ENGINEER until such time as the exact amount of damages due to the OWNER from the ENGINEER is determined.

5.16.2 Termination for Convenience of OWNER

The OWNER may terminate this Contract any time by giving at least five days notice in writing from the OWNER to the ENGINEER. If the contract is terminated by the OWNER as provided herein, the ENGINEER will receive equitable compensation based on costs as allowed under this Contract less payments of compensation previously made; provided, however, that if less than sixty percent of the services covered by this Contract have been performed upon the effective date of such termination, the ENGINEER shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the ENGINEER during the contract period which are directly attributable to the portion of the service covered by this Contract. If this Contract is terminated due to the fault of the ENGINEER, Section 5.16.1 hereof relative to the termination shall apply.

SECTION 6

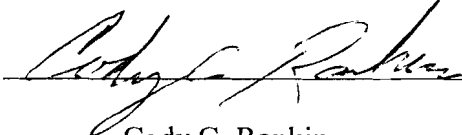
AGREEMENT

- 6.1 This agreement consists of Sections 1 through 6 and Attachment 1, and constitutes the entire agreement between the OWNER and the ENGINEER.
- 6.2 This agreement shall become effective after review by an authorized representative of the Arkansas Economic Development Commission.
- 6.3 This agreement may be amended or modified by a duly executed written instrument signed by the OWNER and the ENGINEER and approved by the Arkansas Economic Development Commission. Justifiable examples necessitating an amendment to this Agreement will include but not be limited to additional engineering services necessitated by: Acts of God, default by the Contractor, and/or work requested by the OWNER beyond the limits of the scope of work for the CDBG grant.
- 6.4.1.1 The OWNER and ENGINEER may elect to settle any dispute arising from this agreement in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association

6.5 (SEAL)



ATTEST:

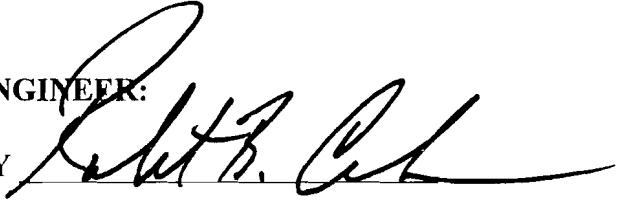


Cody C. Rankin
(Typed Name)

Design Engineer
(Title)

ENGINEER:

BY



Robert B. Graham
(Typed Name)

President
(Title)

W. William Graham, Jr., Inc.

Special Conditions

1. Detailed description of any item not specifically included in Sections 1 through 6, including a map if applicable.

Section 3.1.2 – Our firm is not going to be on the job every day. During the sub grade portion of the work there will be densities taken to ensure the quality of the compaction. There will be weekly inspections made by the Engineer. The fee schedule has been adjusted to half of the maximum percentage for the observation.

- 1.1 Basis for compensation for items not specifically included in Sections 1 through 6. Describe each additional service and justify why service(s) is not part of standard contract defined in Sections 1 through 6 above. *(Any additional services must be approved by the Arkansas Economic Development Commission PRIOR to contract execution.)*

There will be a geotechnical engineering firm used for the quality assurance during the sub grade portion of the project. The geotech fee is based on 15 weeks of sub grade construction.

Total Items not specifically included in Sections 1 through 6 will not exceed
\$ 40,000.00

Adjusted Contract Amount: \$ 265,000.00

2. Project Area

3. Meetings

4. Resident Project Representative

