

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES  
CITY OF JONESBORO  
JONESBORO, ARKANSAS  
Project No. 11017150**

This is an agreement made as of September 13, 2011, between the City of Jonesboro, hereinafter called "Owner" and Garver, LLC, hereinafter called the "Engineer".

The Owner intends to make the following improvements:

*Repairs to the Bridge Street Bridge including the bridge deck, bridge joints, bearing replacement, and spall repair.*

The Engineer will provide engineering services related to these improvements as described herein.

The Owner and the Engineer in consideration of the mutual covenants in this contract agree in respect of the performance of professional engineering services by the Engineer and the payment for those services by the Owner as set forth below. Execution of the agreement by the Engineer and the Owner constitutes the Owner's written authorization to the Engineer to proceed on the date first above written with the services described herein.

**SECTION 1 - EMPLOYMENT OF THE ENGINEER**

The Owner agrees to employ the Engineer, and the Engineer agrees to perform professional engineering services in connection with the proposed improvements as stated in the sections to follow. These services will conform to the requirements and standards of the Owner, and the standards of skill and care ordinarily used by members of the Engineer's profession practicing under similar conditions. For having rendered such services, the Owner agrees to pay the Engineer compensation as stated in the sections to follow. All of the engineering and surveying services included in this agreement will be supplied by the Engineer's personnel.

**SECTION 2 - SCOPE OF SERVICES**

The Engineer's scope of services is described in attached Appendix A.

**SECTION 3 - PAYMENT**

For the work described under SECTION 2 - SCOPE OF SERVICES, the Owner will pay the Engineer on a lump sum basis. The Owner intends to pay the Engineer from its General Fund and represents that funds are available to pay the Engineer from the General Fund, or funds will be borrowed from another source as necessary to pay the Engineer.

If any payment due the Engineer under this agreement is not received within 60 days from date of invoice, the Engineer may elect to suspend services under this agreement without penalty or

liquidated damages assessed from the Owner.

The table below presents a summary of the fee amounts and fee types for this contract.

<b>WORK DESCRIPTION</b>	<b>FEE AMOUNT</b>	<b>FEE TYPE</b>
Construction Plans - Rehabilitation	\$49,500	Lump Sum
<b>TOTAL FEE</b>	<b>\$49,500</b>	<b>Lump Sum</b>

The lump sum amount to be paid under this agreement is \$49,500. For informational purposes, a breakdown of the Engineer's estimated costs is included in Appendix B with approximate current hourly rates for each employee classification.

The Owner will pay the Engineer on a monthly basis, based upon statements submitted by the Engineer to the Owner indicating the estimated proportion of the work accomplished. Payments not received within 60 days of invoice date will be subject to a one percent monthly simple interest charge. Any unused portion of the fee, due to delays beyond the Engineer's control, will be increased 6% annually with the first increase effective on or about June 1, 2012.

Additional Services (Extra Work). For work not described or included in Section 2 – Scope of Services but requested by the Owner in writing, the Owner will pay the Engineer, for time spent on the project, at the rates shown in Appendix B for each classification of the Engineer's personnel plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The rates shown in Appendix B will be increased annually with the first increase effective on or about June 1, 2012.

#### **SECTION 4 - OWNER'S RESPONSIBILITIES**

In connection with the project, the Owner's responsibilities shall include, but not be limited to, the following:

1. Giving thorough consideration to all documents presented by the Engineer and informing the Engineer of all decisions within a reasonable time so as not to delay the work of the Engineer.
2. Making provision for the employees of the Engineer to enter public and private lands as required for the Engineer to perform necessary preliminary surveys and other investigations.
3. Coordination with the BNSF and UP railroads.
4. Removal of a portion of the bridge deck sliding plates at designated locations to explore the existing condition underneath. (4 locations)
5. Removal of a portion of existing asphalt overlay at the top of the approach slab to determine the thickness of the overlay. (2 locations)
6. Obtaining the necessary lands, easements and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition

and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Owner outside of this contract, except as otherwise described in Section 2 – Scope of Services.

7. Furnishing the Engineer such plans and records of construction and operation of existing facilities, available aerial photography, reports, surveys, or copies of the same, related to or bearing on the proposed work as may be in the possession of the Owner. Such documents or data will be returned upon completion of the work or at the request of the Owner.
8. Paying all plan review and advertising costs in connection with the project.
9. Providing legal, accounting, and insurance counseling services necessary for the project and such auditing services as the Owner may require.
10. Furnishing permits, permit fees, and approvals from all governmental authorities having jurisdiction over the project and others as may be necessary for completion of the project.
11. Giving prompt written notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in the project or other events which may substantially alter the Engineer's performance under this Agreement.
12. Owner will not hire any of the Engineer's employees during performance of this contract and for a period of one year beyond completion of this contract.

## **SECTION 5 – MISCELLANEOUS**

### **5.1 Instruments of Service**

The Engineer's instruments of service provided by this agreement consist of the printed hard copy reports, drawings, and specifications issued for the Assignment or Project; whereas electronic media, including CADD files, are tools for their preparation. As a convenience to the Owner, the Engineer will furnish to the Owner both printed hard copies and electronic media. In the event of a conflict in their content, however, the printed hard copies shall take precedence over the electronic media.

The Engineer's electronic media are furnished without guarantee of compatibility with the Owner's software or hardware, and the Engineer's sole responsibility for the electronic media is to furnish a replacement for defective disks within thirty (30) days after delivery to the Owner.

The Engineer retains ownership of the printed hard copy drawings and specifications and the electronic media. The Owner is granted a license for their use, but only in the operation and maintenance of the Project or Assignment for which they were provided. Use of these materials for modification, extension, or expansion of this Project or on any other project, unless under the direction of the Engineer, shall be without liability to the Engineer and the Engineer's consultants. The Owner shall indemnify, defend, save harmless the Engineer, the Engineer's consultants, and the officers and employees of any of them from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense, arising out of the Owner's use of these materials for modification, extension, or expansion of this Project or on any other project not under the direction of the Engineer.

Because data stored in electronic media form can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, it is agreed that the Owner shall indemnify, defend, save harmless the Engineer, the Engineer's consultants, and the officers and employees of any of them from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense, arising out of changes or modifications to the data in electronic media form in the Owner's possession or released to others by the Owner and for any use of the electronic media and printed hard copy drawings and specifications outside the license granted by this provision.

## **5.2 Opinions of Cost**

Since the Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, the Engineer's Estimates of Project Costs and Construction Costs provided for herein are to be made on the basis of the Engineer's experience and qualifications and represent the Engineer's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but the Engineer cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from estimates prepared by the Engineer.

The Owner understands that the construction cost estimates developed by the Engineer do not establish a limit for the construction contract amount. If the actual amount of the low construction bid exceeds the construction budget established by the Owner, the Engineer will not be required to re-design the project without additional compensation.

## **5.3 Utilities**

The Engineer will not research existing utilities. However, we will include any utility information provided by the City.

#### **5.4 Insurance**

The Engineer currently has in force, and agrees to maintain in force for the life of this Contract, the following schedule of insurance:

Worker's Compensation	Statutory Limit
Automobile Liability (Combined Property Damage and Bodily Injury)	\$500,000.00
General Liability (Combined Property Damage and Bodily Injury)	\$1,000,000.00
Professional Liability	\$2,000,000.00

#### **5.5 Records**

The Engineer will retain all pertinent records for a period of two years beyond completion of the project. Owner may have access to such records during normal business hours.

#### **5.6 Indemnity Provision**

Subject to the limitation on liability set forth in Section 5.8, the Engineer agrees to indemnify the Owner for damages, liabilities, or costs (including reasonable attorneys' fees) to the extent the damages and costs are caused by the negligent acts, errors, or omissions of the Engineer, its subconsultants, or any other party for whom the Engineer is legally liable, in the performance of their professional services under this contract.

The Owner agrees to indemnify the Engineer for damages, liabilities, or costs (including reasonable attorneys' fees) to the extent the damages and costs are caused by the negligent acts, errors, or omissions of the Owner, its agents, or any other party for whom the Owner is legally liable, in the performance of their professional services under this contract.

In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of the Engineer and the Owner, they shall be borne by each party in proportion to its own negligence.

#### **5.7 Design without Construction Phase Services**

It is understood and agreed that the Engineer's Scope of Services under this Agreement does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the Owner. The Owner assumes all responsibility for interpretation of the Construction Contract Documents and for construction observation and supervision and waives any claims against the Engineer that may be in any way connected thereto.

In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer harmless from any loss, claim or cost, including reasonable attorneys' fees and costs of

defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Construction Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the Engineer.

If the Owner requests in writing that the Engineer provide any specific construction phase services and if the Engineer agrees in writing to provide such services, then they shall be compensated for the work as Additional Services.

### **5.8 Limitation of Liability**

In recognition of the relative risks and benefits of the project to both the Owner and the Engineer, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Engineer to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims for expenses from any cause or causes, so that the total aggregate liability of the Engineer to all those named shall not exceed \$500,000, or the Engineer's total fee for services rendered on this project, whichever is greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contractor warranty, and indemnity obligations.

Engineer shall not be liable to Owner for any special, indirect, or consequential damages, such as, but not limited to, loss of revenue or loss of anticipated profits.

### **5.9 Mediation**

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Owner and the Engineer agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.

The Owner and the Engineer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

## **SECTION 6 - CONTROL OF SERVICES**

This is an Arkansas Contract and in the event of a dispute concerning a question of fact in connection with the provisions of this contract which cannot be disposed of by mutual agreement between the Owner and Engineer, the matter shall be resolved in accordance with the Laws of the State of Arkansas.

This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one (1) party through no fault to the other party or for the convenience of the Owner upon delivery of written notice to the Engineer. If this Agreement is so terminated, the Engineer shall be paid for the time and materials expended to accomplish the services performed to date, as provided in SECTION 3 - PAYMENT; however, the

Engineer may be required to furnish an accounting of all costs.

**SECTION 7 - SUCCESSORS AND ASSIGNS**

The Owner and the Engineer each bind himself and his successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the Owner nor the Engineer shall assign, sublet, or transfer their interest in this agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**SECTION 8 - APPENDICES AND EXHIBITS**

8.1 The following Appendices and/or Exhibits are attached to and made a part of this Agreement:

8.1.1 Appendix A - Scope of Services

8.1.2 Appendix B - Fee Spreadsheet

This Agreement may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

OWNER

ENGINEER

**GARVER, LLC**

By: *[Signature]*

Title: *Vice President*

ATTEST: *[Signature]*

## APPENDIX A – SCOPE OF SERVICES

### 2.1 General

Generally, the scope of services includes site investigations, structural analysis and design, and preparing detailed contract plans for rehabilitation improvements to the Bridge Street Bridge. Improvements will consist primarily of the following:

- **Determination of Repairs** – The Bridge Street Bridge Rehab Project will involve a site visit to assess the bridge condition and determine the repair needs. In addition, the latest AHTD bridge inspection report, the existing bridge plans, and the repair plans from 1979 will be reviewed.
- **Bridge Deck** – Based on the site visit on April 14, 2011, the bridge deck that was visually inspected appears to be in good shape. The plans will include removal and replacement of the existing asphalt overlay with a new concrete transition at both ends of bridge. The repair may involve approach slab removal and replacement.
- **Bridge Joints** – The plans will include details for joint replacement using X.J.S. Joints. A portion of the existing slider plates will be removed and new nosing material will be added at each joint.
- **Bearing Replacement** – The plans will include details to replace the existing rocker bearings with new elastomeric bearings. New concrete pedestals at piers may be needed for the bearing replacement. For all piers adjacent to the railroad tracks, a structural steel support system will be designed and detailed to facilitate bearing removal and replacement of the bearings with minimum interference with the railroad tracks. For the other piers, the contractor will be required to provide the jacking and bracing using his/her preferred method and utilizing existing equipments and material and thus this will minimize the cost of the operation.
- **Spall Repair** – The plans will provide spall repair details for the beams, piers, and abutments. The plans will identify field designated locations. We also recommend the use of Fiber Reinforcing Wrapping for spalls located at the columns and beam ends to provide additional strength.
- **Maintenance of Traffic** – Bearing replacement, joint replacement, and approach slab repair portion of bridge repair work cannot be performed under traffic; therefore, traffic control plans for a signed detour will be developed to reroute the traffic during these particular repairs. The contractor can perform the other work during this period.
- **Specifications** – Garver will provide specifications and special provisions necessary for the inclusion in the bid documents.



- **Opinion of Probable Cost** – Garver will provide a probable cost based on weighted averages and experience.

## **2.4 Coordination**

The Engineer will attend coordination meetings with the Owner and other agencies/railroad officials as required.

## **2.7 Preliminary Design**

The preliminary design phase submittal will include a site visit, drawings, and an opinion of probable construction cost. The preliminary design phase will represent approximately 60 percent of final construction contract plans. This submittal will not include technical specifications or “front end” contract documents. The Engineer will not begin final design until the preliminary design is approved by the Owner in writing.

## **2.8 Final Design**

During the final design phase of the project, the Engineer will conduct final designs to prepare construction plans and specifications, for one construction contract, including final construction details and quantities, special provisions, and opinion of probable construction cost. The Engineer will also make final field inspection with Owner, make any needed plan changes as a result of the final field inspection.

## **2.14 Project Deliverables**

The following will be submitted to the Owner, or others as indicated, by the Engineer:

1. Three copies of the Preliminary Plans with opinion of probable construction cost.
2. Three copies of the Final Plans and Specifications with opinion of probable construction cost.
3. Electronic files as requested.

## **2.15 Extra Work**

The following items are not included under this agreement but will be considered as extra work:

1. Redesign for the Owner’s convenience or due to changed conditions after previous alternate direction and/or approval.
2. Submittals or deliverables in addition to those listed herein.
3. Coordination or design of any utilities relocation.
4. Preparation of a Storm Water Pollution Prevention Plan (SWPPP).
5. Construction materials testing.
6. Geotechnical testing.
7. Surveying.
8. Advertising and bid services.
9. Title II services.
10. Construction administration and inspection.
11. Front end sections of construction contract documents.
12. Load rate the bridge
13. Plans for temporary construction easement for the contractor’s equipment and storage of

material during construction.

Extra Work will be as directed by the Owner in writing for an additional fee as agreed upon by the Owner and the Engineer.

## 2.16 Schedule

The Engineer shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below:

<u>Phase Description</u>	<u>Calendar Days</u>
Site Visit and Inspection	7 days from start date
Analyze Existing Plans and Reports	14 days from start date
Preliminary Design	77 days from start date
Final Site Visit with City	7 days from receipt of Owner's comments
Final Plans	21 days from receipt of Owner's comments

**APPENDIX B**  
**Project Name/Number**  
**Garver Hourly Rate Schedule**

<b>Classification</b>	<b>Rates</b>
<b>Engineers / Architects</b>	
E-1	\$ 88.00
E-2	\$ 99.00
E-3	\$ 123.00
E-4	\$ 143.00
E-5	\$ 176.00
E-6	\$ 235.00
<b>Planners</b>	
P-1	\$ 103.00
P-2	\$ 124.00
<b>Designers</b>	
D-1	\$ 80.00
D-2	\$ 111.00
<b>Technicians</b>	
T-1	\$ 71.00
T-2	\$ 92.00
<b>Surveyors</b>	
S-1	\$ 38.00
S-2	\$ 51.00
S-3	\$ 67.00
S-4	\$ 99.00
S-5	\$ 127.00
2-Man Crew (Survey)	\$ 160.00
3-Man Crew (Survey)	\$ 200.00
2-Man Crew (GPS Survey)	\$ 180.00
3-Man Crew (GPS Survey)	\$ 220.00
<b>Construction Observation</b>	
C-1	\$ 77.00
C-2	\$ 108.00
C-3	\$ 144.00
<b>Administration</b>	
X-1	\$ 49.00
X-2	\$ 66.00
X-3	\$ 109.00

**APPENDIX B**

**CITY OF JONESBORO  
BRIDGE STREET BRIDGE REHAB PROJECT**

**FEE SUMMARY**

<b>Title I Services</b>	<b>Estimated Fees</b>
Rehab Plans	\$49,500.00
<b>Subtotal for Title I Services</b>	<b>\$49,500.00</b>

