

**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of April 21 2009 ("Effective Date") between  
City of Jonesboro ("Owner")  
and W. William Graham, Jr., Inc. ("Engineer")  
Engineer agrees to provide the services described below to Owner for Industrial Rail Spur Maintenance ("Project").

Description of Engineer's Services: \_\_\_\_\_

- I. **Field Survey** – Engineer will deploy a survey crew to the site and perform an as-constructed survey of the facility, locate as many right-of-way monuments as possible, and re-monument as necessary to establish right-of-way. The existing rail spur and related items will be identified to show the information on the prints.
- II. **As-Constructed Drawings** – Once the track has been surveyed, Engineer will prepare drawings to be incorporated into the bid package for the project which includes initial maintenance work to bring the rail spur back into specifications and the other monthly, bi-monthly, quarterly, or annual work to assure that the rail spur is inspected and maintained in accordance with applicable regulations.
- III. **On-Site Inspection** – Once the drawings have been completed, Engineer will inspect the rail spur for any items of concern or deficiencies that should be repaired as a part of the initial maintenance work. Engineer shall also review all applicable regulations and prepare an inspection and maintenance schedule for this required work.
- IV. **Meeting With City** – Once the plans have been completed, all needed repairs have been identified, and the required inspection and maintenance schedule has been prepared, Engineer will meet with the Owner to discuss these items and define the final scope and format of the bid package. Owner will provide its standard front-end documents to the Engineer for use on this project.
- V. **Bid Package** – Engineer will prepare the bid package for the Owner. Owner will advertise the project for bid and hold the bid opening in accordance with its normal purchasing standards.
- VI. **Bid Review** – Engineer will assist the Owner in reviewing the bid proposals, selecting a qualified contractor, and answer technical questions during the initial maintenance work period of the contract as needed to assure successful completion of this work. Engineer will not be required to provide a resident inspector on this project. The Owner will provide periodic inspection of the initial maintenance work called for under the contract and administer the contract in accordance with its standard procedures.
- VII. **Project Review** – Engineer shall provided final inspection of the initial maintenance work prior to the issuance of the certificate of substantial completion to the contractor. Engineer will not be required to inspection the regulatory inspection and maintenance work performed under this same contract.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Owner's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices not in dispute are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest

permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

### 3.01 Additional Services

A. If authorized by Owner, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

### 4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

### 5.01 Controlling Law

A. This Agreement is to be governed by Arkansas law.

### 6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

### 7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the City of Jonesboro Standard Contract Documents.

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. Indemnification Engineer shall indemnify, defend and save harmless the Owner, or its representatives from all claims, demands, suits, actions, payments, liability, and judgments, including reasonable attorney's fees arising out of the activities of Engineer or of Engineer's agents, servants, or employees. The Engineer shall not be required to indemnify the Owner for any damage resulting from the negligence of the Owner or an employee of the Owner. In this connection, Engineer shall carry insurance in the following kinds and minimum limits as indicated:

Worker's Compensation Insurance and Employer's Liability Insurance. The Engineer shall take out and maintain during the life of this contract the applicable statutory Worker's Compensation Insurance with an insurance company authorized to write such insurance in this State covering all his employees, and in the case of any work sublet, the Compensation Insurance for the

latter's employees. The Engineer shall take out and maintain during the life of this contract, Employer's Liability Insurance with a limit of \$500,000 in an insurance company authorized to write such insurance in all states where the Engineer will *have* employees located in the performance of this contract, and the Engineer shall require each of his subcontractors similarly to maintain equivalent insurance on his employees.

General Liability Insurance. The Engineer shall maintain during the life of this contract, General Liability Insurance, naming and protecting him and the Owner against claims for damages resulting from (1) bodily injury, including wrongful death, (2) personal injury; liability, and (3) property damage which may arise from operations under this contract whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such insurance shall be a combined single limit of \$500,000 and \$1,000,000 aggregate.

- i. The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto including contractual liability; and
- ii. The property damage coverage shall include a Broad Form Property Damage Endorsement and shall include the following extensions of coverage: Contractual Liability, Products Liability and/or Completed Operations.

Automobile Liability Insurance. The Engineer shall take out and maintain during the life of this contract such Automobile Liability Insurance as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage which may arise from the operations of any owned, hired, or non-owned automobiles used by or for him in any capacity in connection with the carrying out this contract. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury Limits	\$ 500,000 Each Person
	\$1,000,000 Each Occurrence
Property Damage Limit	\$ 500,000 Each Occurrence
Combined Single Limit	\$1,000,000 Each Occurrence

Professional Liability Insurance. The Engineer shall maintain during the life of this contract, Professional Liability Insurance, naming and protecting Engineer against claims for damages resulting from the Contractor's errors, omissions, or negligent acts. Such policy shall contain a limit of liability not less than \$1,000,000 excluding defense costs and claim expenses.

Certificate of Insurance. The insurance specified above shall be written by a company duly authorized and licensed to do business in the State of Arkansas and shall be maintained until Engineer's work has been completed

and accepted by the Owner. A certificate of insurance evidencing policies required shall be furnished to the Owner, such certificate shall specifically indicate that insurance policies shall give the Owner at least thirty (30) days written notice in the event of cancellation of or material change in any of the policies.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby

until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

#### 8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 5 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

9.01 Payment (Hourly Rates Plus Reimbursable Expenses)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times the standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
2. Engineer's Standard Hourly Rates are attached as Appendix 1.
3. The total compensation for services and reimbursable expenses is Not to Exceed \$ \$20,000.00

B. The Engineer's compensation is conditioned on the time to complete construction not exceeding 6 months. Should the time to complete construction be extended beyond this period, total compensation to Engineer may be appropriately adjusted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

W. WILLIAM GRAHAM, JR., INC.

Robert B. Cochran  
Name

President  
Title

Address for giving notices:

100 N. Rodney Perham Rd #2B  
Little Rock, Ar, 72205

Appendix 1

Engineer's Standard Hourly Rates

Principal Engineer	\$125.00/hr.
Design Engineer	\$120.00/hr.
Land Surveyor/Engr. Tech II	\$ 95.00/hr.
CAD Tech	\$ 75.00/hr.
2-Man Survey Crew	\$ 90.00/hr.
Clerical	\$ 35.00/hr.
Mileage	\$ 0.50/mi.