CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 1/28/2016

Action Requested By:
General Services

Agenda Item Type
Resolution

Subject Matter:

Huntsville Tennis Center Expansion

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter an agreement between the City of Huntsville and Barge, Waggoner, Sumner and Cannon, Inc. for engineering services at the Huntsville Tennis Center.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow
and accomplish and; any other information that might be helpful.

Engineering Services for six clay tennis courts

Associated Cost: $46,950

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: 1/21/16

revised 3/12/2012

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **General Services** Council Meeting Date: **1/28/2016**

Department Contact: **Chris O'Neil** Phone # **256-427-5281**

Contract or Agreement: **Barge, Waggoner, Sumner and Cannon, Inc.**

Document Name: **Huntsville Tennis Center Engineering Design Services**

City Obligation Amount: **$46,950** ✓

Total Project Budget:

Uncommitted Account Balance:

Account Number: **4003-14-00000-52308-00000000** ✓

Procurement Agreements

Select...	Select...

Grant-Funded Agreements

Select...	Grant Name:

Department	Signature	Date
1) Originating	[illegible]	01/20/2016 1/21/16
2) Legal	Mary Cates	1/25/2016
3) Finance CC	M Salge	1-26-16
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011

RESOLUTION NO. 16-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an agreement by and between the City of Huntsville and Barge, Waggoner, Sumner and Cannon, Inc. in the amount of Forty Six Thousand Nine Hundred Fifty Dollars and No/100's($46,950.00) for engineering services for the Huntsville Tennis Center Expansion located at 2305 Airport Road SW, Huntsville, Alabama on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to the certain document attached hereto and identified as "Standard Agreement between the City of Huntsville and Barge, Waggoner, Sumner and Cannon, Inc." consisting of sixteen (16) pages, together with the signature of the City Council President and an executed copy of said document being permanently kept on file in the Office of the City Clerk Treasurer of the City of Huntsville, Alabama

ADOPTED this the _____ day of _____, 2016.

_____
President of the City Council of the City of Huntsville, Alabama

APPROVED this the _____ day of _____, 2016.

_____
Mayor of the City of Huntsville, Alabama

STANDARD AGREEMENT
BETWEEN
CITY OF HUNTSVILLE
AND
BARGE WAGGONER SUMNER & CANNON, INC.

This Agreement is made by and between the City of Huntsville, Alabama, a Municipal Corporation by:

City of Huntsville
308 Fountain Circle
Huntsville, Alabama 35801

(hereinafter referred to as the "Owner") and:

Barge Waggoner Sumner & Cannon, Inc.
200 Clinton Avenue
Suite 800
Huntsville, AL 35801

(hereinafter referred to as the "Engineer") under seal for services described below to be rendered for the following Project:

Project Title: Huntsville Tennis Center Expansion
Address: 2305 Airport Road SW
General Project Description: Engineering Design services for 6 clay tennis courts

This Agreement shall be effective on the date it is executed by the last party to execute it. The Owner and the Engineer hereby agree as follows:

Date: _____

President of the City Council: _____

ARTICLE I
THE ENGINEER'S BASIC DUTIES TO THE OWNER

1.1 By executing this Agreement, the Engineer represents to the Owner that the Engineer is professional qualified to act as the Engineer for the project and is licensed to practice Engineering by all public entities having jurisdiction over the Engineer and the Project. The Engineer further represents to the Owner that the Engineer will maintain all necessary licenses, permits or other authorizations necessary to act as Engineer for the Project until Engineer's remaining duties hereunder have been satisfied. The Engineer assumes full responsibility to the Owner for the negligent acts, errors and omissions of its consultants or others employed or retained by the Engineer in connection with the Project.

1.2 Execution of this Agreement by the Engineer constitutes a representation that the Engineer has become familiar with the Project site and the local conditions under which the Project is to be implemented.

1.3 PERIOD OF PERFORMANCE

1.3.1 The Architect shall commence services pursuant to this agreement as of January 29, 2015. The final completion date for the completion of the Project shall be approximately January 31, 2017.

1.4 SCHEMATIC DESIGN

1.4.1 The Engineer shall review and examine the information, including any desired schedule and budgetary requirements, furnished by the Owner to understand the requirements of the Project and shall review the understanding of such requirement with the Owner.

1.4.2 The Engineer shall furnish to the Owner a preliminary written evaluation of such information in light of any Project budget requirements.

1.4.3 The Engineer shall review and discuss with the Owner any alternative approaches to design and construction of the Project.

1.4.4 The Engineer shall prepare and submit to the Owner for review schematic design documents consisting of drawings and other documents illustrating the scale and relationship of proposed Project components.

1.4.5 The Engineer shall submit to the owner an estimate of probable construction costs based upon current area, volume, other unit costs or other information.

1.4.6 The Engineer shall submit provide services to examine or investigate existing conditions or to make measured drawings, or to verify the accuracy of drawings or other information provided by the Owner for the renovation project.

1.5 DESIGN DEVELOPMENT

1.5.1 Based on the schematic design documents and any adjustments authorized by the Owner in its program, desired schedule or Project budget, the Engineer shall prepare and submit to the Owner for review, design development documents consisting of drawings and other documents to fix and describe the size and character of the project as to Engineering, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.5.2 The Engineer shall review its estimate of probable construction costs, shall make any appropriate revisions thereto and furnish same to the Owner.

1.6 CONSTRUCTION DOCUMENTS, BIDDING & NEGOTIATIONS

1.6.1 Construction Documents

1.6.1.1 Upon the Owner's authorization, the Engineer shall prepare Construction Documents consisting of drawings and specifications setting forth in detail the requirements for construction of the Project. Such Construction Documents shall be reasonably accurate, coordinated and adequate for the construction and shall be in conformity and comply with applicable laws, codes and regulations. Products specified for use shall be readily available unless written authorization to the contrary is given by the Owner.

1.6.1.2 The Engineer shall review its most recent estimate of probable construction costs, shall make any appropriate revisions thereto and furnish same to the Owner.

1.6.2 Bidding & Negotiating

1.6.2.1 The Engineer will work with the construction Projects Management Department to develop and provide the following information for review and approval to the City of Huntsville Procurement Services Division for concurrence. The preparation of the Advertisement for Bids will serve as the official notice to proceed with the bidding process.

A. Name and Address of Project

B. Name of Engineering Firm and Engineer and Construction Manager when applicable.

C. Date Contract Documents and Plans to be released, where to pick them up, cost per set, and if applicable will any sets be refunded partially or in full.

D. Proposed date, time, and location for Pre-bid Conference and Bid Opening.

E. Schedule and placement of advertising.

F. The proposed bidding documents including specifications and a complete set of plans for review for compliance with applicable policies and laws.

1.6.2.2 The Engineer shall provide Construction Projects Management Division two complete sets of specifications and drawings.

1.6.2.3 The Engineer will conduct any required Pre-Bid Conference. The Engineer will be responsible for the preparation and distribution of any required addenda.

1.6.2.4 The Engineer will participate in the public bid opening. Representatives from Construction Projects Management Division and Procurement Services shall be in attendance at the bid opening as well as all negotiations following the bid opening. The results of any such negotiation shall become a part of the contract document.

1.7 ADMINISTRATION OF CONSTRUCTION

1.7.1 The Engineer shall provide administration of the Construction Contract as set forth below and shall perform those duties and discharge those responsibilities set forth herein.

1.7.2 The Engineer shall represent the Owner during construction. Instructions and other appropriate communications from the Owner to the contractor shall be communicated through the Engineer. The Engineer shall act on behalf of the Owner only to the extent provided herein.

1.7.3 Upon receipt, the Engineer shall carefully review and examine the Contractor's Schedule of Values, together with any supporting documentation or data which the Owner or the Engineer may require from the Contractor. The

purpose of such review and examination will be to protect the Owner from an unbalanced Schedule of Values which allocates greater value to certain elements of the Work than is indicated by such supporting documentation or data or, than is reasonable under the circumstances. If the Schedule of Values is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless the Owner directs the Engineer to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as submitted, or if necessary, as revised, the Engineer shall sign the Schedule of Values thereby indicating the Engineer's informed belief that the schedule of Values constitutes a reasonable, balanced basis for payment of the Contract Price to the Contractor. The Engineer shall not sign such Schedule of Values in the absence of such belief unless directed to do so, in writing, by the Owner.

1.7.4 The Engineer shall carefully examine the Work of the Contractor whenever and wherever appropriate. The purpose of such examinations will be to determine the quality, quantity and progress of the Work in comparison with the requirements of the Construction Contract. In making such examinations, the Engineer shall exercise care to protect the Owner from defects or deficiencies in the Work, from unexcused delays in the schedule and from overpayment to the Construction Contract. Following each such examination the Engineer shall submit a written field observation report of such examination, together with any appropriate comments or recommendations, to the Owner.

1.7.5 The Engineer shall at all times have access to the Work wherever it is located. The Engineer shall not have control or charge of construction means, methods, techniques, sequences or procedures, or safety precautions or programs in connection with the Work.

1.7.6 The Engineer shall determine amounts owed to the Contractor based upon examinations of the Work as required in Subparagraph 1.7.4, evaluations of the Contractor's rate of progress in light of the remaining Contract Time and upon evaluations of the Contractor's Request for Payment, and shall approve, modify or deny the request for payment and report to the Owner within ten (10) days of receipt of the request from the contractor.

1.7.7 The approval of a Request for Payment shall constitute a representation by the Engineer to the Owner that the Engineer has made an examination of the Work as provided in Subparagraph 1.7.4 and, that the Work has progressed to the level indicated, that the quality of the Work meets or exceeds the requirements of the Construction Contract, and that, the Contractor is entitled to payment of the amount certified.

1.7.8 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

1.7.9 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of the Construction Contract.

1.7.10 The Engineer shall reject Work which does not conform to the Contract Documents unless directed by the Owner, in writing, not to do so. Whenever, in the Engineer's opinion, it is necessary or advisable, the Engineer shall require special examination or testing of the Work in accordance with the provisions of the Construction Contract whether or not such Work is fabricated, installed or completed.

1.7.11 The Engineer shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples. Approval by the Engineer of the Contractor's submittal shall constitute the Engineer's representation to the Owner that such submittal is generally in conformance with the design concept and information given through the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay to the Contractor or the Project. Owner should receive a copy of all approved shop drawings, product data, samples, etc.

1.7.12 The Engineer shall review, and advise the Owner concerning, proposals and requests for Change Orders from the Contractor. The Engineer shall prepare Change Orders for the Owner's approval and execution in accordance with the Construction Contract, and shall have authority to order, by Field Order, minor changes in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time.

1.7.13 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Engineer a list of items to be completed or corrected. When the Engineer, on the basis of an inspection, determines that

the Work is in fact substantially complete, it will prepare a Certificate of substantial Completion which shall establish the date of substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate. Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable costs as determined by the Owner and the Engineer for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

1.7.14 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in full accordance with the Construction Contract and the Construction Contract has been fully performed, the Engineer will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to the Construction Contract. If the Engineer is unable to issue its final Certificate of Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection (s) which cost may be deducted by the Owner from the Contractor's final payment.

1.7.15 The Engineer shall, without additional compensation, promptly correct any errors, omissions, deficiencies or conflicts in the Engineers work product.

1.7.16 The Engineer shall indemnify and hold harmless the Owner, its officers, agents, and employees, from and against all liability, claims, damages, loss, costs and expenses arising out of, or resulting from, Engineer's negligent acts, errors, or omissions in the performance of the Engineer's professional services under this agreement. In the event the Owner is alleged to be liable on account of alleged negligent acts, errors or omissions of the Engineer, the Engineer shall defend such allegations and shall bear all costs, fees and expenses of such defense.

1.8 ADDITIONAL SERVICES

The following services of the Engineer are not included in Paragraphs 1.3 through 1.6. Nevertheless, the Engineer shall provide such services if authorized in writing by the Owner, and they shall be paid for by the Owner as provided hereinafter.

1.8.1 Making revision in drawings, specifications or other documents when such revisions are inconsistent with written direction by the Owner previously given, are required by the enactment of revision of codes, laws or regulations subsequent to the preparation of such documents and not reasonably anticipated, or are due to other causes not within the control or responsibility of the Engineer, either in whole or in part.

1.8.2 Preparing drawings, specifications and supporting data in connection with Change Orders, provided that such Change Orders are issued by the Owner due to causes not within the control or responsibility of the Engineer, either in whole or in part.

1.8.4 Providing additional services for repair or replacement of Work damaged by fire or other cause during construction provided that such services are required by causes not the responsibility of the Engineer, either in whole or in part.

1.8.5 Providing services made necessary solely by the default of the Contractor or major defects or deficiencies in the Work of the Contractor.

1.9 SERVICE SCHEDULE

1.9.1 The Engineer shall perform its services expeditiously. Upon request by the Owner, the Engineer shall submit for the Owner's approval a schedule for the performance for the Engineer's services which shall include allowance for time

required for the Owner's review of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for cause, be exceeded by the Engineer.

1.10 PERSONNEL

1.10.1 The Engineer shall assign only qualified personnel to perform any service concerning the project. At the time of execution of this Agreement, the parties anticipate that the following named individuals will perform those functions indicated:

NAME	FUNCTION
Jason Lowe	Engineer

So long as the individuals named above remain actively employed or retained by the Engineer, they shall perform the functions indicated next to their names. Newly hired employees by the Engineer after the execution of this contract shall be declared to the Owner in writing and classed in a manner similar to existing employees, and subject to all of the terms of this Agreement.

1.10.2 The Owner shall designate representatives who are authorized to make all decisions except for change orders on the Owner's behalf when requested to do so by the Engineer. The following designated Owner representative(s) are authorized to make such decisions and shall be available on any on-call basis and shall be called in the order listed herein:

Name	Work Telephone	Cell Telephone
William C. Bell	256-261-9428	/ 256-427-5281

The Owner shall furnish a revised listing to the Engineer when any changes affecting this list.

ARTICLE II
THE OWNER'S BASIC DUTIES TO THE ENGINEER OTHER THAN COMPENSATION

2.1 The Owner shall provide the Engineer with adequate information regarding the Owner's requirements for the Project including any desired or required design or construction schedule, or both, and any budgetary requirements.

2.2 The Owner shall review any documents submitted by the Engineer requiring the Owner's decision, and shall render any required decision pertaining thereto.

2.3 The Owner shall furnish a legal description and any necessary survey of the site, including as may be reasonably required, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining the existing buildings and other improvements; and information concerning available service utility lines above and below grade, including inverts and depths.

2.4 The Owner shall furnish the services of Geotechnical and other consultants when such services are necessary and are requested by the Engineer.

2.5 The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

2.6 If the Owner becomes aware of any fault or defect in the Project, nonconformance with the Construction Contract, or of any errors, omissions or inconsistencies in the drawings or specifications, prompt notice thereof shall be given by the Owner to the Engineer.

2.7 The Owner shall perform those duties set forth in Paragraphs 2.1 through 2.6 as expeditiously as may reasonably be necessary for the orderly progress of the Engineer's services and of the Work.

2.8 The Owner's review of any documents prepared by the Engineer or its consultants shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's construction program and intent. No review of such documents shall relieve the Engineer of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work product.

ARTICLE III
CONSTRUCTION COSTS

3.1 If a fixed limitation on the cost of Construction is exceeded by the lowest bona fide bid or negotiated proposal, the Owner may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or renegotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4) cooperate in revising the Project scope or quality, or both, as required to reduce the construction costs. In the case of (4) the Engineer, without additional charge to the Owner, shall consult with the Owner and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitations on construction cost. Absent clear and convincing negligence on the part of the Engineer in making its estimates of probable construction cost, providing such modifications and revisions shall be the limit of the Engineer's responsibility arising from the establishment of such fixed limitation of construction costs, and having done so, the Engineer shall be entitled to compensation for all other services performed, in accordance with the Agreement.

ARTICLE IV
BASIS OF COMPENSATION

4.1 The Owner shall compensate the Engineer for services rendered pursuant to Paragraphs 1.3 through 1.6 of this Agreement by payment of the not- to- exceed amount of Forty Six Thousand Nine Hundred Fifty Dollars ($46,950.00) with a reimbursable amount of One Thousand Dollars ($1,000.00). This includes the cost of addenda related to the bidding of this project.

4.2 Payment to the Engineer of the sum set forth in Paragraph 4.1 shall be allocated as follows:

Schematic Design:	10%
Design Development:	10%
Construction Documents:	45%
Bidding:	5%
Construction Administration:	30%

Additional services of the Engineer as described in Paragraph 1.7, if any, shall be compensated as follows: Compensation for such services shall be computed on an hourly basis in accordance with Exhibit "A" attached herewith. Additional Services of consultants, if any, shall be compensated on the basis of multiple of one point two (1.2) times the amounts billed to the Engineer for such service.

4.4 Reimbursable Expenses as defined in Article V, shall be reimbursed to the Engineer by the Owner as provided in Article V.

4.5 If the Engineer's services are changed materially through no fault of the Engineer, compensation due to the Engineer shall be equitably adjusted, either upward or downward.

ARTICLE V
PAYMENT TO THE ENGINEER

5.1 ENGINEER'S INVOICES

5.1.1 Not more frequently than monthly, unless otherwise agreed in writing by the Engineer and the Owner, the Engineer shall submit an invoice to the Owner requesting payment for services properly rendered and reimbursement for Reimbursable Expenses due hereunder. The Engineer's invoice shall describe with reasonable particularity each service rendered, the date thereof, the time expended if services under Paragraphs 1.7 or 4.5 are included in the invoice and the person(s) rendering such service. The Engineer's invoice shall be accompanied by such documentation or data in support of Reimbursable Expenses for which reimbursement is sought as the Owner may require.

5.1.2 If payment is requested for services rendered by the Engineer pursuant to Paragraphs 1.3 through 1.6, the invoice shall additionally reflect the allocations as provided in Paragraph 4.2 and shall state the percentage of completion as to each such allocation. The invoice shall bear the signature of the Engineer, which signature shall constitute the Engineer's representation to the Owner that the services indicated in the invoice have progressed to the level indicated, have been properly and timely performed as required herein that the Reimbursable Expenses included in the invoice have been reasonably incurred, that all obligations of the Engineer covered by prior invoices have been paid in full, and that, to the best of the Engineer's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to the Engineer the payment of any portion thereof should be withheld. Submission of the Engineer's invoice for final payment and reimbursement shall further constitute the Engineer's representation to the Owner that, upon receipt from the Owner of the amount invoiced, all obligations of the Engineer to others, including its consultants, incurred in connection with the Project, will be paid in full.

5.2 TIME FOR PAYMENT

5.2.1 The Owner shall make payment to the Engineer of all sums properly invoiced as provided in Paragraph 5.1, within thirty (30) days of the Owner's receipt thereof.

5.3 OWNER'S RIGHT TO WITHHOLD PAYMENT

5.3.1 In the event the Owner becomes credibly informed that any representations of the Engineer, provided pursuant to Subparagraph 5.1.2, are wholly or partially inaccurate, the Owner may withhold payment of sums then or in the future otherwise due to the Engineer until the inaccuracy, and the cause thereof, is corrected to the Owner's reasonable satisfaction.

5.4 REIMBURSABLE EXPENSES

5.4.1 Reasonable expenses for the project will only include expenses for ADEM Permit and Monitoring for the duration of the project and anything related to the ADEM process.

5.5 ENGINEER'S RECORDS

5.5.1 Documentation accurately reflecting the time expended by the Engineer and his personnel and records of Reimbursable Expenses shall be maintained by the Engineer and shall be available to the Owner for review and copying upon request.

ARTICLE VI
TERMINATION

6.1 TERMINATION FOR CAUSE

6.1.1 This Agreement may be terminated by either party upon seven (7) days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination.

6.2 TERMINATION BY THE OWNER WITHOUT CAUSE

6.2.1 This Agreement may be terminated by the Owner without cause upon seven (7) days' written notice to the Engineer. In the event of such a termination without cause, the Engineer shall be compensated for all services performed prior to termination, together with Reimbursable Expenses incurred. In such event, the Engineer shall promptly submit to the Owner its invoice for final payment and reimbursement which invoice shall comply with the provisions of Paragraph 5.1.

ARTICLE VII
MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 This Agreement shall be governed by the law of the State of Alabama.

7.2 INTENT AND INTERPRETATION

7.2.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to product the intended result shall be provided by the Engineer.

7.2.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

7.2.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the Engineering industry; and third, if there is no generally accepted meaning in the Engineering industry, according to its common and customary usage.

7.2.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

7.2.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

7.2.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

7.3 TIME IS OF THE ESSENCE

7.3.1 Time limitations contained herein, or provided for hereby, are of the essence of this Agreement.

7.4 USE AND OWNERSHIP OF DOCUMENTS

7.4.1 The drawings, specifications and other documents or things prepared by the Engineer for the Project shall become and be the sole property of the Owner. The Engineer shall be permitted to retain copies thereof for its records

and for its future professional endeavors. Such drawings, specifications and other documents or things are not intended by the Engineer for use on other projects by the Owner or others. Any reuse by the Owner without the written approval of the Engineer, shall be at the sole risk of the Owner and the Owner shall indemnify and save harmless the Engineer from any and all liability, costs, claims, damages, losses and expenses including attorney's fees arising out of, or resulting from, such reuse by the Owner; provided however, that this agreement to indemnify and save harmless shall not apply to any reuse of documents retained by, or through, the Contractor.

7.5 SUCCESSORS AND ASSIGNS

7.5.1 The Engineer shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the Owner. Subject to the provisions of the immediately preceding sentence, the Owner and the Engineer, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

7.6 NO THIRD-PARTY BENEFICIARIES

7.6.1 Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

7.7 INSURANCE

The Engineer shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. The Engineer shall procure and maintain for the duration of the job until final acceptance by the Owner, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Engineer, his agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the Owner's approval. General Liability Coverage and Owners Contractors Protective Insurance should be written by the same insurance company.

Commercial General Liability

Products and Completed Operations
Contractual
Personal Injury
Explosion, Collapse and Underground
Broad Form Property Damage

2. Professional Liability:

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage will be maintained for three years after completion of the professional services and Certificates of Insurance will be submitted to the Owner within reasonable economic terms. Coverage shall be no less comprehensive than that which is carried by at least 25% of the registered Engineers or Engineering Firms contracting in the United States. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject project. The professional liability insurance shall contain contractual liability coverage.

3. **Automobile Liability:**

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

4. **Workers' Compensation Insurance:**

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations.

5. **Employers Liability Insurance:**

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

B. **MINIMUM LIMITS OF INSURANCE:**

1. **General Liability:**

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

$ 1,000,000 General Aggregate Limit
$ 1,000,000 Products - Completed Operations Aggregate
$ 1,000,000 Personal & Advertising Injury
$ 1,000,000 Each Occurrence

2. **Professional Liability:**

Insurance may be made on a "claims-made" basis:

$ 100,000 Per Claim - Land Surveyors
$ 250,000 Per Claim - Other Professionals

3. **Automobile Liability:**

$ 500,000 Combined Single Limit per accident for bodily injury and property damage.

4. **Workers' Compensation:**

As Required by the State of Alabama Statute

5. **Employers Liability:**

$ 100,000 Bodily Injury by Accident or Disease
$ 500,000 Policy Limit by Disease

C. **OTHER INSURANCE PROVISIONS:**

The Owner is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the Owner's best interest. If the insurance requirements are not adjusted by the Owner prior to the Owner's release of specifications with regard to the project in question, then the minimum limits shall apply.

The policies are to contain, or be endorsed to contain, the following provisions:

A. All Coverages:

The Engineer is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Owner. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the Owner.

D. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than A-V.

E. VERIFICATION OF COVERAGE:

The Owner shall be indicated as a Certificate Holder and the Engineer shall furnish the Owner with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the Owner before work commences. The Owner reserves the right to require complete, certified copies of all required insurance policies at any time.

F. CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR THE ENGINEER:

The Engineer shall include all subcontractors and/or consultants as insureds under its policies or shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant.

G. HOLD HARMLESS AGREEMENT:

1. Other Than Professional Liability Exposures:

The Engineer, to the fullest extent permitted by law, shall indemnify and hold harmless the Owner, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of the Engineer or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

2. Professional Liability:

The Engineer shall indemnify and hold harmless the Owner, its officers, agents, employees, and specified volunteers from and against any and all claims, demands, losses and expenses including, but not limited to attorney's fees, liability, or consequential damages of any kind or nature resulting from any negligent acts, errors, or omissions of the Engineer or any subconsultants employed by them or anyone employed by them or anyone for whose acts they are legally liable in the performance of the professional services under this agreement.

ARTICLE VIII
OTHER CONDITIONS OR SERVICES

8.1 N/A

8.2 ENTIRE AGREEMENT

8.2.1 This Agreement represents the entire agreement between the Owner and the Engineer and supersedes all prior communications, negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both Owner and Engineer.

ENGINEER

SEAL

JASON LOWE

By: VICE-PRESIDENT

(SIGNATURE)

Barge, Waggoner Sumner & Cannon, Inc.
200 Clinton Avenue, Suite 800
Huntsville, AL 35801

(DATE OF EXECUTION)

OWNER

SEAL

Tommy Battle

By:

(SIGNATURE)

Tommy Battle, Mayor
City of Huntsville
308 Fountain Circle
Huntsville, AL 35801

(DATE OF EXECUTION)

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle, whose name as Mayor of The City of Huntsville, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their official capacity, executed the same with full authority for and as the act of said city on the day the same bears day.

GIVEN under my hand and official seal this the _____ **day of** _____, 2016.

_____
Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that **Jason Lowe** of **Barge, Waggoner, Sumner and Cannon, Inc.**, an Alabama corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same with full authority for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the 22nd day of January, 2016.

_____
Notary Public
My Commission Expires: 4-10-2018

EXHIBIT A

See Attached

Exhibit A

BWSC | Barge Waggoner Sumner & Cannon, Inc.®

January 15, 2016
File No 93000

Mr. Chris O'Neil
Facilities Project Manager
615 Washington St
Huntsville, AL 35801

RE: Huntsville Tennis Center Expansion – Rev1

Dear Mr. O'Neil:

Barge, Waggoner, Sumner, and Cannon, Inc. (BWSC) appreciates this opportunity to provide engineering and architecture services to the City of Huntsville. Enclosed are the revised details of our proposal and proposed scope of work (Attachment A) for the project named above. In addition, we have a sketch of the proposed basis for the area of design (Attachment B) for reference.

This proposal was prepared based on my understanding of the project description. If we have not fully addressed your project requirements, or if you have any other questions regarding the proposal, please advise me immediately by calling 256-203-8952.

Sincerely,

Jason E. Lowe

Jason E. Lowe, PE
Vice President

Copy to:
Jack, Kimbrough, Ken Gipson

The scope of work is presented in the following elements.

I. Project Description
II. Scope of Services
III. Project Understanding, Assumptions, and Exclusions
IV. Time of Performance
V. Client's Responsibilities
VI. Deliverables
VII. Compensation

I. Project Description

Barge Waggoner Sumner & Cannon, Inc. (BWSC) is proposing to provide design services for the design of the Huntsville Tennis Center expansion. This proposal is focused on the construction documents of the next phase of development consisting of 6 new courts. A master plan has been included showing the proposed areas of expansion (Attachment B).

II. Scope of Services

BWSC proposes the following Scope of Services related to the above-noted items.

A. Design Services

Civil Engineering Design

Site and Utility Demolition Design

BWSC proposes to provide site and utility demolition design for the site. This will include details for the demolition of existing driveways, curb and gutter, sidewalks, pavement, and utilities as required. BWSC will provide the appropriate specifications to perform the construction work.

Grading Design

BWSC proposes to provide site, grading, and drainage design for the site. This will include details for the driveways, curb and gutter, sidewalks, pavement, and base, designed to local specifications or geotechnical recommendations. Also included for the site will be inlet and pipe, size and location, drainage swales, and relevant spot elevations to achieve positive drainage. BWSC will provide the appropriate specifications to perform the construction work.

Phased Erosion Control/Stormwater Management System Design

BWSC will provide storm drainage management system design, including surface conveyance system, pipe conveyance system, stormwater detention system, and water quality system per the local requirements. Stormwater calculations will be accomplished using approved methods. The stormwater design will accommodate on-street and off-street drainage. A stormwater pollution prevention plan (SWPPP) will be prepared as required. Plans will also include erosion, sediment, and pollution controls using accepted Best Management Practices (BMP's). BWSC will provide the appropriate specifications to perform the construction work.

Landscape Architectural Design

Planting Design

BWSC will provide professional landscape architectural design services illustrating the proposed planting design for the site and other amenity areas as permitted by the budget. A site landscape plan will be developed. BWSC will provide the appropriate specifications to perform the construction work. Plans will illustrate the following items:

1. Plant location
2. Plant type
3. Plant name (scientific and common)
4. Plant size
5. Notes
6. Details
7. Quantity

Hardscape and Court Design

Provide professional landscape architectural design services illustrating the proposed hardscape features for the project area. Services are to include the following areas:

1. Clay tennis courts
2. Walkways matching existing features and character
3. Lighting associated with new courts

Plans will illustrate the following:

1. Material type and finishes
2. Dimensions and layout
3. Spot elevations and slopes
4. Notes, details, section, etc.

Specifications for noted items will be included.

Irrigation Design

BWSC will provide professional landscape architectural design services illustrating the proposed irrigation design for the facility supporting both planting and new courts. Typical details will be provided as well. BWSC will provide the appropriate specifications to perform the construction work. Plans will be drawn to a known scale

and will illustrate the following:

1. Point of connection to water source
2. Meter size and location
3. Backflow size and location
4. Controller location
5. Main line size and routing
6. Valve size, type, and location
7. Lateral line size and routing
8. Irrigation head, type, and location
9. Quick coupler location
10. Notes and details

B. Permitting Services

BWSC will provide the following permitting services:

1. Planning Commission approval – BWSC will attend a pre-application meeting with the City, if required. Required plans will be submitted to the City Planning Department for review and approval by the Planning Commission. BWSC will attend one Planning Commission Meeting.
2. Grading permit – BWSC will assist Client in obtaining a grading permit.
3. Stormwater approval – BWSC will submit plans to the City Stormwater Department for their review and approval.
4. Engineering Department approval – BWSC will submit plans to the Engineering Department for their review and approval.
5. Alabama Department of Environmental Management (ADEM) SWPPP Coordination – BWSC will prepare the SWPPP and Notice of Intent (NOI) and submit to ADEM.

C. Bid Administration

BWSC will provide professional services related to supporting the Client during bidding and awarding of the construction contract for the work outlined above under Construction Documents. These services will begin upon the successful completion of final construction documents and will include the specific tasks as follows:

1. Coordinate and assist with advertisement and solicitation of bids.
2. Prepare and issue addendums as required during the bid phase.
3. Conduct and attend pre-bid meeting.
4. Prepare and issue meeting minutes of pre-bid meeting.
5. Respond to contractor questions.
6. Prepare certified bid tabulation.
7. Submit recommendation of award.
8. Prepare and issue notice of award.
9. Prepare revisions to plans to incorporate text revisions issued by bid document addendums.
10. Prepare and issue Notice to Proceed.

D. Construction Administration

Provide professional services related to construction administration of the project as

outlined below. These services will begin at the pre-construction meeting. Specific items included are as follows:

1. Assist with the preparation of contract documents.
2. Assist with the preconstruction conference.
3. Assist with the preparation of meeting minutes of preconstruction meeting.
4. Review of up to two (2) reviews of contractor shop drawings, submittals, progress schedule, and schedule of values; monitor for performance during the contract period for items related to our scope of services.
5. Review, approve, and recommend payment of contractor monthly pay requests for items related to our scope of services.
6. Assist with monthly construction progress meeting and issue meeting minutes.
7. Assist with monthly site visits for an assumed 6-month construction period.
8. Provide support for the review change order requests.
9. Provide necessary interpretations and clarifications of the contract documents.
10. Participate in punch list inspection.
11. Issue Certificate of Substantial Completion.
12. Assist with final project closeout.
13. Participate in City-required site visits as required for permit compliance.

III. Project Understandings, Assumptions, and Exclusions

A. BWSC will provide the above-noted services based upon a given set of assumptions. These assumptions are as follows.

1. Existing conditions will be based on existing property surveys provided by the City of Huntsville, .5 ft GIS contours provided by the City of Huntsville, and as built drawings from the initial build out of the tennis center. This information wil be used as the basis of design. No survey work has been included in the scope of the project.
2. Geotechnical information from the initial construction of the Tennis Center will be provided by the City of Huntsville and used as the basis of design.
3. BWSC will have access to the site and adjoining areas, as required.
4. Construction duration is assumed to be 6 months.
5. Permit, recording fees, etc., are to be paid by the Client/Owner.
6. Lighting modifications to existing fixtures.
7. Design fee is based upon the site plan (Attachment B), as provided by the Client. Modification or changing of the site plan may require additional services, depending upon the scope and timing of changes.
8. It is assumed that no modifications are planned for the existing parking area and that the current parking is adequate for this expansion.
9. Irrigation is to be from a domestic water source, and no supplemental pumping systems are required.
10. In providing the OPCC, the Client understands that BWSC has no control over the cost or availability of labor, equipment materials, over-market conditions, or the Contractor's method of pricing, and that BWSC's OPCC are made on the basis of BWSC's professional judgment and experience. BWSC makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from BWSC's OPCC.

IV. Time of Performance

BWSC is prepared to begin work within two (2) weeks upon receipt of a signed professional services agreement or written authorization to proceed. For planning purposes, BWSC has prepared the following milestone schedule.

Tasks	Duration
Design	
1. Construction Documents (90%)	6 weeks
2. Client Review of 90% Construction Documents	2 weeks
3. Revise Permit Plans per Client Comments	1 weeks
4. Permitting Agencies Review of Permit Plans	4 weeks

BWSC and Client are aware that many factors outside BWSC's control may affect BWSC's ability to complete the services to be provided under this Agreement. BWSC will perform these services with reasonable diligence and expediency, consistent with sound professional practices.

V. Client's Responsibilities

BWSC strives to work closely with our clients. In order for the project team to function efficiently, certain information is needed to be provided by the Client and other interested stakeholders in a timely manner. These items and responsibilities are noted below.

A. Provide information as required to support development of BWSC's scope, as required in the project agreement for services.

B. Provide review comments in a timely manner.

C. Provide single point of contact for project coordination purposes.

D. Coordination of public meetings, including public announcements/invitations, providing meeting space, public information, and associated expenses will be provided by Client.

VI. Deliverables

Several deliverables will be produced as part of the basic professional services. The following is a list of bid documents that will be produced as a part of this effort.

A. Construction plans, notes, and details for selected phase of expansion (30/90/100% Submittals)

B. Planning Commission Submittal

C. Project manual

D. Permit documentation

E. Certified bid tab, notice of award, and notice to proceed

F. Final punch list and certificate of substantial completion

VII. Compensation

The compensation to be paid to BWSC for providing requested services is provided in the Fee Summary Table below.

Fee Summary Table

Items	Fee Type	Fee Amount
A. Construction Documents (6 courts)	Lump Sum	$39,905
B. Permitting Services	Lump Sum	$1,175
C. Bid Administration	Lump Sum	$1,175
D. Construction Administration	Lump Sum	$4,695
TOTAL	Lump Sum	$46,950

*Refer to Attachment C for a breakdown of fees tied to state fee curve

The fees provided above are valid up to three (3) months from the date of this proposal.

ALABAMA NATIONAL GUARD
PHASE II
SOUTH RUNWAY RD.
PROPOSED RESTROOMS
PHASE II
PROPOSED RESTROOMS

Attachment C - Huntsville Tennis Center Design Budget

Construction Documents

Item	Cost	Qty	Total
Clay Courts	$60,000	6	$360,000
Sitework	$140,000	1	$140,000
Hardscape/Landscape	$75,000	1	$45,000
Contingency	20%	1	$81,000
			$626,000
Construction Docs	7.50%		$46,950.00

*Percent construction costs taken from Alabama state fee curve group III