

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 4/11/2013

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Appraisal Services for Church Street Improvements, Phase I

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement with Johnson & Associates Consulting Engineers, L.L.C., for Utility Easement Acquisition for Church Street & Pratt Avenue Widening & Realignment, Phase I, State Project No. STHV-4500(200) & COH Project No. 65-01-RD05

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.

This contract between the City of Huntsville and Johnson and Associates provides for acquisition and related services to obtain the utility easements for Church Street, Phase I, for a total contract amount of \$35,433.00. Account No. 02-6500-0813-8178

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Kath y Mark

Date:

revised 3/12/2012

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **4/11/2013**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Easement Acquisition Services**

Document Name: **J&A-Church St PH I Project No. STPHV-4500(200) & 65-01-RD05**

City Obligation Amount: **\$35,433.00**

Total Project Budget: **\$35,433.00**

Uncommitted Account Balance: **0**

Account Number: ²³
~~02~~-6500-0813-8178

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating	<i>Kathy Martin</i>	<i>4/10/13</i>
2) Legal	<i>Mary C. Cates</i>	<i>4/3/13</i>
3) Finance	<i>[Signature]</i>	<i>4/3/13</i>
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 13-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into an agreement with Johnson & Associates Consulting Engineers, L.L.C., in the amount of THIRTY-FIVE THOUSAND FOUR HUNDRED THIRTY-THREE AND NO/100 DOLLARS (\$35,433.00) for Utility Easement Acquisition for the Church Street & Pratt Avenue Widening & Realignment, Phase I, State Project No. STPHV-4500(200) & City Project No. 65-01-RD05 in 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 that document attached hereto and identified as "Agreement between City of Huntsville and Johnson & Associates Consulting Engineers, L.L.C. for Utility Easement Acquisition for Church Street & Pratt Avenue Widening & Realignment, Phase I, State Project No. STPHV-4500(200) & City Project No. 65-01-RD05 consisting of a total of eighteen (18) pages plus thirty (30) additional pages consisting of Attachments 1-6, and the date of April 11, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 11th day of April, 2013.

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

APPROVED this the 11th day of April, 2013.

Mayor of the City of Huntsville,
Alabama

AGREEMENT BETWEEN
CITY OF HUNTSVILLE, ALABAMA
AND
JOHNSON & ASSOCIATES CONSULTING ENGINEERS, L.L.C.
FOR
UTILITY EASEMENT ACQUISITION
FOR
CHURCH STREET AND PRATT AVENUE WIDENING & REALIGNMENT,
PHASE I

STATE PROJECT NO. STPHV-4500(200) &
COH PROJECT NO. 65-01-RD05

April 11, 2013

President of the City Council of the City
of Huntsville, AL
Date: April 11, 2013

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**AGREEMENT BETWEEN
CITY OF HUNTSVILLE, ALABAMA
AND
JOHNSON & ASSOCIATES CONSULTING ENGINEERS, L.L.C.
FOR
UTILITY EASEMENT ACQUISITION
FOR
CHURCH STREET & PRATT AVENUE WIDENING & REALIGNMENT,
PHASE I
STATE PROJECT NO. STPHV-4500(200) &
CITY PROJECT NO. 65-01-RD05**

THIS AGREEMENT made as of the 11th day of April in the year 2013, by and between the CITY OF HUNTSVILLE, ALABAMA (hereinafter called OWNER), and JOHNSON & ASSOCIATES CONSULTING ENGINEERS, L.L.C., (hereinafter called ENGINEER).

WITNESSETH, for the considerations hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1 - ENGAGEMENT OF THE ENGINEER

The OWNER hereby engages the ENGINEER, and the ENGINEER hereby accepts the engagement to provide general UTILITY EASEMENT ACQUISITION as a representative of the OWNER to include the following:

- 1.1** Professional Utility Easement Acquisition for Church Street & Pratt Avenue Widening & Realignment, Phase I, as further described in ARTICLE 2, and hereinafter called PROJECT.
- 1.2** By executing this Agreement, the ENGINEER represents to the OWNER that the ENGINEER is a professional qualified to act as the ENGINEER for the PROJECT and is licensed and certified to practice 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, certifications, permits or other authorizations necessary to act as the ENGINEER for the PROJECT until the ENGINEER's remaining duties hereunder have been satisfied. The ENGINEER shall assign only qualified personnel to perform any service concerning the PROJECT. All services rendered by the ENGINEER for the PROJECT shall be performed by or under the immediate supervision of experienced and qualified professionals licensed, certified, and registered as appropriate in the State of Alabama possessing the expertise in the discipline of the service being rendered. The ENGINEER assumes full responsibility to the OWNER for the negligent acts, errors and omissions of its ENGINEERS or others employed or retained by the ENGINEER in connection with the PROJECT.
- 1.3** 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. The ENGINEER agrees to provide all necessary ENGINEER services

required to professionally accomplish the ENGINEER's defined scope of services.

ARTICLE 2 –SERVICES OF THE ENGINEER

- 2.1** ENGINEER shall provide for OWNER professional services for appraisals, surveying, appraisal review, and negotiations required by this project. These services shall include consultation and advice, as outlined herein and further described in the SCOPE OF SERVICES, ATTACHMENT 1.
- 2.2** The ENGINEER shall serve as the OWNER's professional representative in those portions of the PROJECT to which this Agreement applies and shall consult with and advise the OWNER during the performance of these services.
- 2.3** The ENGINEER shall promptly correct, or have corrected, any errors, omissions, deficiencies or conflicts in the ENGINEER's work product or that of his sub-contractors/sub-consultants, without additional compensation for time, reproduction or distribution.
- 2.4** All work provided under this contract shall be conducted in accordance with the Alabama Department of Transportation (ALDOT) Right of Way Bureau Procedural Manuals and on the appropriate ALDOT forms.

ARTICLE 3 – CONSTRUCTION ADMINISTRATION SERVICES

OMITTED

ARTICLE 4 - ADDITIONAL SERVICES

The following services of the ENGINEER are not included in Articles 2. 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 in Article 7, unless otherwise noted.

- 4.1** Making revision in 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.
- 4.2** Preparing 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.
- 4.3** Providing expert witness services and other services arising out of claims. Providing second appraisals and updating appraisals for court or for time delays unless delays are for causes in the control of the consultant.

ARTICLE 5 - RESPONSIBILITIES OF OWNER

The OWNER, without cost to the ENGINEER, will perform the following in a timely manner so as not to delay the services of the ENGINEER:

- 5.1** Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the PROJECT including previous reports and any other data relative to the PROJECT.
- 5.2** Assist the ENGINEER as necessary in acquiring access to and making all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform the work under this agreement.
- 5.3** Designate in writing a person to act as the OWNER's representative with respect to the work to be performed under this Agreement, such person to have complete authority to transmit instructions, receive information, interpret and define the OWNER's policies and decision with respect to materials, equipment elements and systems pertinent to the work covered by this Agreement. Examine all reports presented by ENGINEER, obtain advice of an attorney, insurance counselor and other ENGINEERS as OWNER determines appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 5.4** The OWNER shall intercede on the ENGINEER'S behalf when data from, or review by third parties is not on schedule through no fault of the ENGINEER.
- 5.5** The OWNER's review of any documents prepared by the ENGINEER or its subconsultants shall be solely for the purpose of determining whether such documents are generally consistent with the OWNER's 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 6 - PERIOD OF SERVICES

- 6.1** The ENGINEER shall begin work upon receipt of a written Notice of Assignment in substantially similar form to that marked as "Attachment 6" and attached hereto. All work will be done in a timely fashion and the parties hereto acknowledge that time is of the essence in the performance of services pursuant to this contract. Earliest commencement date of services to this agreement is date of approval by City Council. The final completion date for the completion of services outlined in Article 2 shall be January 12, 2014.

The ENGINEER shall perform these services with reasonable diligence and expediency consistent with sound professional practices. The ENGINEER shall include in his schedule an allowance for time required for OWNER's review of submissions and for approvals of authorities having jurisdiction over the PROJECT. When approved by the OWNER, the schedule shall not be exceeded by the ENGINEER, except for cause.

If the ENGINEER becomes aware of delays due to time allowances for review and approval being exceeded, delay by the OWNER, the OWNER's ENGINEERS, or any other reason beyond the ENGINEER's control, which may result in the schedule of performance of the ENGINEER's services not being met, the ENGINEER shall promptly notify the OWNER. If the OWNER becomes aware of any delays or other causes that will affect the ENGINEER's schedule, the OWNER shall promptly notify the ENGINEER. In either event, the ENGINEER's schedule for performance of its services shall be equitably adjusted.

ARTICLE 7 - PAYMENT TO THE ENGINEER

7.1 BASIC SERVICES

The OWNER shall compensate the ENGINEER for services rendered pursuant to this Agreement per schedule shown on Attachment 1 for services described in Article 2.

PAYMENT SUMMARY

Utility Easement Acquisition – Lump Sum Amount of - **\$35,433.00**

ARTICLE 8 - GENERAL PAYMENT PROCEDURE

8.1 INVOICES

Payment will be made upon delivery of services included in Attachment 1 and receipt of invoices totaling no more than the amount stated in Article 7.1.

8.2 TIME FOR PAYMENT

The OWNER shall make payment for service in Articles 2 within 60 days of receipt of valid invoice.

8.3 OWNER'S RIGHT TO WITHHOLD PAYMENT

In the event the OWNER becomes credibly informed that any representations of the ENGINEER 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. Additionally, failure by the ENGINEER to supply substantiating records shall be reason to exclude related costs from the amounts which might otherwise be payable by the OWNER to the ENGINEER.

ARTICLE 9 - GENERAL CONSIDERATIONS

9.1 OWNER and ENGINEER agree that the following sections and provisions shall apply to the work to be performed under this Agreement and that such provisions shall supersede any conflicting provisions of this Agreement.

9.2 If reviewing agencies raise questions regarding the work of the ENGINEER, OWNER will participate in such meetings as deemed necessary to explain and clarify this work.

9.3 This Agreement may be canceled by either party in the event of default or violation of any of the provisions of this Agreement by the other party, by written notice delivered to the address of record by registered mail giving ten (10) days advance notice of the intention to cancel. In the event of cancellation of this Agreement, ENGINEER shall be paid for all work performed to date of cancellation, less any loss, damage, or liability incurred by reason of default of the ENGINEER and all records, data, parameters, design calculations

and other information collected or obtained in the performance of this Agreement shall be delivered to OWNER.

9.4 SUCCESSORS AND ASSIGNS

OWNER and ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, with respect of all covenants of this Agreement; except as above, neither OWNER nor ENGINEER shall assign, sublet or transfer his interest in this Agreement without 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 that may be party hereof, nor shall it be construed as giving any rights or benefits hereunder to anyone other than OWNER and ENGINEER.

9.5 CHANGES

9.5.1 The OWNER may, at any time by written order, make changes within the general scope of the Agreement in the services to be provided. If such changes cause an increase or decrease in ENGINEER's cost of, or time required for performance of any services, whether or not changed by any order, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Upon notification of change, ENGINEER must assert any claim of ENGINEER for adjustment in writing within 30 days from the date of receipt unless OWNER grants a further period of time.

9.5.2 If findings in any phase of this PROJECT significantly alter the scope of work for subsequent phases, or if regulations are changed resulting in a scope of work change for any phase, ENGINEER fees set forth in Article 7 may be renegotiated by the OWNER and ENGINEER.

9.6 ENGINEER'S RECORDS

Documentation accurately reflecting services performed and the time expended by the ENGINEER and his personnel and records of reimbursable expenses shall be prepared concurrently with the performance of the services and shall be maintained by the ENGINEER. The ENGINEER shall maintain record copies of all written communications, and any memoranda of verbal communications related to the PROJECT. All such records and documentation shall be maintained for a minimum of five (5) years after the PROJECT date of final completion or for any longer period of time as may be required by law or good practice. If the ENGINEER receives notification of a dispute or of pending or commencement of litigation during this five-year period, the ENGINEER shall continue to maintain all PROJECT records until final resolution of the dispute or litigation. The ENGINEER shall make such records and documentation available to the OWNER upon notice and shall allow the authorized representative(s) of the OWNER to inspect, examine, review and copy the ENGINEER's records at the OWNER's reasonable expense.

9.7 USE AND OWNERSHIP OF DOCUMENTS

All rights of ownership, copyrights, construction documents, including all drawings, specifications and other documents, electronic media, or things prepared by or on behalf of the ENGINEER for the PROJECT are hereby transferred to the OWNER and shall be the sole property of the OWNER and are free of any retention rights of the ENGINEER. The ENGINEER hereby grants to the OWNER an unconditional right to use or to refer to, for any purpose whatsoever, the construction documents and any other documents or electronic media prepared by or on behalf of the ENGINEER for the PROJECT, free of any copyright claims, trade secrets or other proprietary rights with respect to such

documents. The ENGINEER shall be permitted to retain copies thereof for its records. The ENGINEER's documents and other work products are not intended or represented to be suitable for re-use by OWNER or others on extensions of the PROJECT or on any other PROJECT. Any re-use without specific written verification or adaptation by ENGINEER will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including attorneys' 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.

9.8 TERMINATION FOR CAUSE

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.

9.9 TERMINATION BY THE OWNER WITHOUT CAUSE

The OWNER may terminate this Agreement 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 8.1.

ARTICLE 10 - INDEMNITY AND INSURANCE

10.1 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 subcontractor.

10.2 MINIMUM SCOPE OF INSURANCE:

A. General Liability:

Insurance shall be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the OWNER's approval. The same insurance

company should write General Liability Coverage and OWNERS ENGINEERS Protective Insurance.

B. Commercial General Liability

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

C. 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 shall be maintained for a discovery and reporting period of no less than five (5) years after completion of the professional services and Certificates of Insurance shall be submitted to the OWNER on a yearly basis during this time frame. 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 State of Alabama. 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.

D. 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.

E. 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. "Waivers of Subrogation" in favor of the OWNER shall be endorsed to Workers' Compensation Insurance.

F. Employers Liability Insurance:

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

10.3 MINIMUM LIMITS OF INSURANCE:

A. General Liability:

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

\$ 2,000,000 General Aggregate Limit
\$ 2,000,000 Products - Completed Operations Aggregate
\$ 1,000,000 Personal & Advertising Injury
\$ 1,000,000 Each Occurrence

B. Professional Liability:

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

\$ 500,000 Per Claim - Land Surveyors

\$ 1,000,000 Per Claim - Other Professionals

C. Automobile Liability:

\$ 1,000,000 Combined Single Limit per accident for bodily injury and property damage.

D. Workers' Compensation:

As required by the State of Alabama Statute

E. Employers Liability:

\$ 1,000,000 Bodily Injury by Accident or Disease

\$ 1,000,000 Policy Limit by Disease

10.4 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 City of Huntsville/OWNER shall be named on the policies of general liability and automobile insurance and on the certificate of insurance as an Additional Insured. Additional Insured status on the Commercial General Liability policy shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent and coverage shall be afforded on a primary basis.

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

A. All Coverage:

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, non-renewal or materially changed 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.

10.5 ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers authorized by the State of Alabama with an A. M. Best rating of A-V or better.

10.6 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 and must be an original signature. Certificates signed using digital signatures will

not be accepted. 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.

10.7 ENGINEERS AND/OR SUBCONTRACTORS WORKING FOR THE ENGINEER:

The ENGINEER shall furnish separate certificates and/or endorsements for each subcontractor and/or ENGINEER showing insurance of the same type or types and to the extent of the coverage set forth in this Article 10.

10.8 HOLD HARMLESS AGREEMENT:

A. 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 representatives 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 there from, and (2) is caused by any negligent act or omission of the ENGINEER or any of their ENGINEERs, 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.

B. Professional Liability:

The ENGINEER agrees, to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless the OWNER, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, costs, fees, and expenses (including actual fees and expenses of attorneys, expert witnesses, and other ENGINEERs) actually or allegedly arising out of, or resulting from, the professional services of the ENGINEER or the ENGINEER's ENGINEERs, subcontractors, or suppliers, including, without limitation, any breach of contract or any negligent acts, errors, or omissions in the performance of the professional services provided pursuant to or as a result of this Agreement. Neither, the OWNER nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other parties own negligence.

To the fullest extent permitted by law, the ENGINEER shall defend, protect, indemnify, and hold harmless the OWNER, its elected and appointed officials, officers, directors, employees, agents, and representatives from and against any and all liability, claims, demands, damages, loss, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other ENGINEERs) for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the OWNER in writing. If the ENGINEER has reason to believe the use of a required design, process or product is an infringement of a patent, the ENGINEER shall be responsible for such loss unless such information is promptly given to the OWNER.

ARTICLE 11- MISCELLANEOUS PROVISIONS

11.1 GOVERNING LAW

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

11.2 INTENT AND INTERPRETATION

11.2.1 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 produce the intended result shall be provided by the ENGINEER.

11.2.2 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.

11.2.3 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 APPRAISER AND CONTRACT MANAGEMENT industry; and third, if there is no generally accepted meaning in the APPRAISER AND CONTRACT MANAGEMENT industry, according to its common and customary usage.

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

11.2.5 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.

11.2.6 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.

11.3 TIME IS OF THE ESSENCE

Time limitations contained herein, or provided for hereby, are of the essence of this Agreement. The ENGINEER understands and acknowledges that time is of the essence in completion of the PROJECT and that the OWNER will incur damages if the PROJECT is not completed on time.

11.4 SUCCESSORS AND ASSIGNS

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.

11.5 NO THIRD-PARTY BENEFICIARIES

This Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns. Nothing contained herein is intended to or shall create a contractual relationship with, or any rights in favor of, or any cause of action in favor of, any third party, against the OWNER or the ENGINEER.

11.6 INTELLECTUAL PROPERTY/ CONFIDENTIALITY

All information, documents, and electronic media furnished by the OWNER to the ENGINEER belong to the OWNER, are considered proprietary and confidential, unless otherwise indicated by the OWNER, and are furnished solely for use on the OWNER's PROJECT. Such information, documents, and electronic media shall be kept confidential by the ENGINEER, shall only be released as necessary to meet official regulatory requirements in connection with the PROJECT, and shall not be used by the ENGINEER on any other PROJECT or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the OWNER hereunder is specifically authorized in writing by the OWNER in advance. This Section 11.6 shall survive the expiration of this Agreement.

11.7 SUBCONTRACT REQUIREMENTS

The ENGINEER shall include the terms and conditions of Articles 10 and 11 of this Agreement in every subcontract or agreement with a ENGINEER for this PROJECT so that these terms and conditions shall be binding upon each subcontractor or ENGINEER.

11.8 NOTICES

Unless otherwise provided, all notices shall be in writing and considered duly given if the original is hand delivered; if delivered by telex, facsimile, or tele-copy; or is sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices, hand delivered or delivered by telex, facsimile, or tele-copy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

11.9 STRICT COMPLIANCE

No failure of the OWNER to insist upon strict compliance by the ENGINEER with any provision of this Contract for Professional Services shall operate to release, waive, discharge, modify, change or affect any of the ENGINEER's obligations.

11.10 WAIVER

No provision of this Agreement may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.

11.11 SEVERABILITY

If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions of this Agreement shall remain valid and enforceable.

11.12 ETHICS

The ENGINEER shall not offer or accept any bribes or kickbacks from or to any manufacturer, ENGINEER, trade contractor, subcontractor, supplier or any other individual or entity in connection with the PROJECT. The ENGINEER shall not confer on any governmental, public or quasi-public official having any authority or influence over the PROJECT any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised. The ENGINEER shall not, without the express written permission of the OWNER, engage or recommend to the OWNER engagement of any ENGINEER, trade contractor, subcontractor, or supplier to provide services on behalf of the ENGINEER, OWNER or PROJECT in which the ENGINEER has a direct or indirect proprietary or other pecuniary interest; or call for the use of or by exclusion require or recommend the use of products, materials, equipment, systems, processes or procedures in which the ENGINEER or in which any ENGINEER, trade contractor, subcontractor, or supplier of the ENGINEER has a direct or indirect proprietary or other pecuniary interest. Without prior notification and written approval of the OWNER, the ENGINEER and the ENGINEER'S subconsultants shall not offer services to the OWNER'S contractor.

The OWNER anticipates there will be a need for the ENGINEER to provide services such as appraisals, appraisal review, negotiations, relocation assistance, and any other necessary efforts to acquire rights-of-way and/or easements for various projects for the OWNER.

11.13 E-VERIFY – NOTICE

The ENGINEER shall enroll, and shall remain enrolled for the duration of this contract, in a designated employment eligibility verification system (E-Verify) in accordance with the City of Huntsville Ordinance 09-735. If the ENGINEER uses subcontractors in connection with the performance of work herein and the value of the subcontract exceeds \$3,000, the subcontractor shall also comply with this ordinance. The ENGINEER shall include specific written notice in all requests for bids or proposals prepared by the ENGINEER that contractors and any subcontractors are required to enroll in the E-verify program as required by the ordinance. Failure to comply with the requirements of the ordinance shall be a material breach of the contract.

As a condition of this agreement, pursuant to 8 U.S.C. §1324a, Johnson & Associates Consulting Engineers, L.L.C., hereby certifies that it has not knowingly employed, recruited, referred for a fee, or contracted with an unauthorized alien, with respect to employment in the United States. Further, Johnson & Associates Consulting Engineers, L.L.C., hereby certifies that it has enrolled in the City of Huntsville designated employment eligibility verification system in accordance with Ordinance 09-735 and will maintain enrollment throughout the term of this contract.

Johnson & Associates Consulting Engineers, L.L.C.
(Company)

BY: 
(Authorized Representative)

11.14 ENTIRE AGREEMENT

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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**OWNER:
CITY OF HUNTSVILLE**

BY: _____
Tommy Battle

TITLE: _____
Mayor

ATTEST: _____

Given under my hand this _____ day

Of _____, 2013.

Notary Public

My commission expires _____

**ENGINEER:
JOHNSON & ASSOCIATES CONSULTING
ENGINEERS, L.L.C.**

BY: _____
Nathan Johnson

TITLE: _____
President

ATTEST: _____

Given under my hand this 3rd day

Of April, 2013.

Notary Public

My commission expires 3/28/15

ATTACHMENT 1
SCOPE OF SERVICES

(Refer to letter dated March 22, 2013, from Wade Shadden to Kathy Martin and attachments).



March 22, 2013

Handwritten: HWA RWA

Ms. Kathy Martin, P.E.
City Engineer
City of Huntsville
P. O. Box 308
Huntsville, AL 35801

ATTN: Ms. Kelly Davis

**RE: Project No. STPHV-4500(200)
Church Street Improvements Phase 1
City of Huntsville, AL
Madison County
Utility Easement Acquisition Services**

Ms. Davis:

We are pleased to submit a proposal for Utility Easement Acquisition services on the above referenced project. The following services are required to complete the scope of work in a timely manner and in accordance with federal and state guidelines. After reviewing the project, the following services will be needed:

- Field Staking of Easement Limits
- Appraisals of each affected property
- Appraisal Reviews for each affected property
- Negotiations (acquisition of property)
- Assisting the City's attorney appointed to the project
- Coordination with the City and ALDOT

The man-day and fee proposal to provide the above services is a lump sum fee of \$35,433 to provide the above services. The man-day and fee proposal is based on the ALDOT approved Right-of-Way map dated 10/23/12. Attached you will find a "Breakdown of Services" and corresponding lump sum fee for each required task associated with the acquisition process.

Wisener, LLC plans to enlist the services of Tom Armstrong and Mike Pyron to perform the appraisals for all affected tracts for the project. Both gentlemen are approved by ALDOT. Appraisal reviews will be accomplished by Jerry Cordell. Mr. Cordell is also approved by ALDOT. Mr. Wisener will manage and coordinate the work executed for appraisals and appraisal reviews. Compensation for these individuals will be the sole responsibility of Wisener, LLC. The approved fees do not include a markup from Wisener, LLC to utilize subconsultants.



We plan to start work immediately following approval of a contract. Appraisals will be performed first and submitted to the reviewer as they are received. The reviewer will go through his review with the appraiser and once completed the appraisal and review will be submitted to the City. Wisener, LLC will prepare the appropriate documents from the City to submit to ALDOT for review and approval. Upon receipt of the approved offers from ALDOT, Wisener, LLC will begin negotiations and relocations.

The fee does not include updating appraisals (for court or for time), second appraisals, or fees for expert testimony. Likewise, attorney fees are not included since the City will be utilizing the City's own attorney to handle all closings and title work. Fees to prepare a Right-of-Way map showing acquired deeds are excluded from the proposal. If it is determined that a second appraisal is needed on any tract or updated appraisals due to time decided by the City or ALDOT, we will submit a supplemental proposal for those fees. A supplemental agreement will also be required should any of our staff be needed for court work or appraisals for court. Fees for any appraisal updates cannot be anticipated however fees for expert witnesses will be \$100/hr for appraisers and \$65/hr for all others on Wisener, LLC staff.

Once again, we thank you for considering our services, and we look forward to working with yourself and the City to complete this project in an expeditious manner. Please let me know if you have any questions.

Sincerely,
Johnson & Associates, LLC
Consulting Engineers

A handwritten signature in black ink, which appears to read 'Wade Shadden', is placed below the printed name.

Wade Shadden, P.E.
Project Manager



**Breakdown of Services
Project No. STPHV-4500(200)
Church Street Improvements
City of Huntsville, AL
Madison County**

The breakdown below is based on the above referenced project which has 7 Tracts.

• Appraisals	
7 affected Tracts with Utility Easement	
Tracts 3A, 6A, 25A, 27A, 43A & 44 (\$2,500 each) =	\$15,000
Tract 7A (\$1,500 each) =	\$1,500
Subtotal =	<u>\$16,500</u>
• Appraisal Reviews	
7 Tracts @ \$700 each =	<u>\$4,900</u>
• Negotiations	
\$500 per Tract (7 tracts) =	<u>\$3,500</u>
• Project Management, Meetings, and Coordination	
50 Hours at \$65 per hour =	<u>\$3,250</u>
Sub-Consultant Total Services Estimate =	\$28,150
• Field Staking of Easement Limits	\$5,875
Subconsultant Administration =	\$1,408
Grand Total Services Estimate =	\$35,433

ATTACHMENT 2 - ALABAMA IMMIGRATION ACT - REPORT OF OWNERSHIP FORM**CITY OF HUNTSVILLE, ALABAMA REPORT OF OWNERSHIP FORM****A. General information.** Please provide the following information:

- Legal name(s): Jackson & Associates Consulting Engineers, LLC
- Doing business as (if applicable): _____
- City of Huntsville current taxpayer identification number (if available): 155775
(Please note that if this number has been assigned by the City and if you are renewing your business license, the number should be listed on the renewal form.)

B. Type of Ownership. Please complete the un-shaded portions of the following chart by checking the appropriate box below and entering the appropriate Entity I.D. Number, if applicable:

Type of Ownership (check appropriate box)	Entity I. D. Number ¹	Formation Documents (if required see footnote 2 below) ²	Immigration Law Applies	Individuals Who Must Be Verified Under Immigration Law
<input type="checkbox"/> Individual or Sole Proprietorship	Not Applicable	Not Applicable	Yes	Each individual or sole proprietor
<input type="checkbox"/> Partnership	Not Applicable	See Paragraph C	Yes	Each partner if an individual
<input type="checkbox"/> Limited Partnership	Number: _____	Formation Documents (See Paragraph C)	Yes	Each general partner if an individual
<input type="checkbox"/> Limited Liability Partnership (LLP)	Number: _____	Formation Documents (See Paragraph C)	No, <u>unless not a Registered LLP</u>	Each partner of a Non-Registered LLP if an individual
<input type="checkbox"/> Limited Liability Company (LLC) (Single Member)	Number: _____	Formation Documents	Yes	Sole member if an individual
<input checked="" type="checkbox"/> LLC (Multi-Member)	Number: <u>27-1867033</u>	Formation Documents	No	Not Applicable
<input type="checkbox"/> Corporation	Number: _____	Formation Documents	No	Not Applicable
<input type="checkbox"/> Other, please explain:	Number: _____ (if a filing entity under state law)	To be determined	To be determined	To be determined

- C. Immigration Law.** Please note that each owner who is an individual, as identified in the last column of the chart above, must provide proof of U.S. Citizenship or lawful alien presence in accordance with Ala. Act 2011-535 by completing the applicable forms, as provided by the City. In the case of a partnership whose partners must be verified, you are requested to please provide a copy of the Partnership Agreement or other appropriate documentation evidencing the names of each individual who is a partner in the partnership, unless such information is available by searching the Alabama Secretary of State's website and an Entity I.D. Number has been provided.

¹ **Entity I.D. Numbers.** If an Entity I.D. Number is required and if the business entity is registered in this state, the number is available through the website of Alabama's Secretary of State at: www.sos.state.al.us/, under "Government Records". If a foreign entity is not registered in this state please provide the Entity I.D. number (or other similar number by whatever named called) assigned by the state of formation along with the name of the state.

² **Formation Documents.** Formation documents, including articles or certificates of incorporation, organization, or other applicable formation documents of the entity, as recorded in the probate records of the applicable county and state of formation, are not required unless: (1) specifically requested by the City, or (2) an Entity I.D. Number is required and one has not been assigned or provided.

ATTACHMENT 3 – ENGINEERS PERSONNEL FEE SCHEDULE
(Article 7.1)

OMITTED

ATTACHMENT 4 - CONTRACT DOCUMENT REQUIREMENTS LIST

REQUIREMENT	SUBMIT TO	SUBMITTAL REQUIREMENT DATE	NUMBER OF COPIES	REFERENCE SECTION OF CONTRACT AND COMMENTS
Deviations from OWNER's standards.	OWNER	Prior to incorporating deviations.	N/A	
Approval of ENGINEER's Request for Payment.	OWNER	Within ten (10) days of receipt of the request from the contractor.	4	Article 8.1
Approval of ENGINEER submittals	OWNER	So as to cause no delay to the contractor or the PROJECT.	1	Article 8.1
Any information pertaining to any claim.	OWNER	Immediately	4	Article 10.2
Information pertinent to the PROJECT, all criteria and full information as to OWNER's requirements, copies of all design and construction standards.	ENGINEER	So as to not delay the services of the ENGINEER	N/A	
Notification of delays.	ENGINEER; OWNER	Promptly	4	Article 6.1
ENGINEER's monthly invoices.	OWNER	Monthly	N/A	
ENGINEER progress report.	OWNER	Monthly	N/A	
Records, data, parameters, design calculations and other information.	OWNER	Cancellation of contract.	2	Article 9.6
Any claim of ENGINEER for adjustment as a result of a contract change.	OWNER	Within 30 days from notification of change.	4	Article 9.5.1 & 9.5.2
Documentation, records of reimbursable expenses, record copies of all written communications, and any memoranda of verbal communications related to the PROJECT.	OWNER	Upon notice from the OWNER.	2	Article 9.6
Termination notification.	OWNER or ENGINEER	7 days prior to termination.	4	Article 9.9 & 9.10
Certificate of Insurance for	OWNER	At 0% design	N/A	

ENGINEER.		conference		
Insurance cancellation, suspension, or reduction in coverage or limits.	OWNER	30 days prior to effective date except for cancellation which is 10 days notification.	N/A	

ATTACHMENT 5 - REQUIREMENTS FOR DOCUMENT SUBMITTALS

All drawings shall be sized 24" x 36", unless otherwise approved by the OWNERS Project Engineer.

Title blocks shall as a minimum, contain the name of the project, date, city project number, and ENGINEER's name. The title block of drawings shall contain a space for the names of the preparer and the reviewer and/or checker. These blocks shall be signed on each submittal (See Attachment "11" for sample standard drawing format). Drawings shall contain alphanumeric revision designations. Drawings issued for review shall be issued with alpha revision designation and the revision letter shall be changed for each submittal containing drawing changes. Drawings issued for construction shall be issued with numeric designation at revision level "0" and described as "Issued for Construction" in the revision description block. Subsequent drawing changes require the revision level to be raised using successively higher numbers and the changes to be marked by circling and briefly described in a revision block.

Unless otherwise specified by the Owners Project Engineer, all drawings for review submittals shall be full or half-size copies. All documents shall be clearly marked in a revision block indicating the applicable submittal milestone, i.e. 30%, 60%, 90%, etc.

Submittals required by the State of Alabama for their review, bidding, etc., shall be of the size, form and numbers of copies as the state may require even though such submittals may differ from the submittals set forth as being required elsewhere in this Agreement.

All drawings shall be prepared in Micro station .DGN format, unless otherwise approved by the OWNERS Project Engineer. Transmittal letters shall consist of a list of files being submitted, a description of the data in each file, and a level/layer schematic of each design file. DGN design files shall have working units as follows: master units in feet, no sub-units, and 1,000 positional units. All data submitted shall use NAD 1983 Alabama East Zone horizontal datum and NAVD 88 vertical datum coordinates.

Digital files shall be submitted by 4-3/4" CD ROM, DVD, 3 and 1/2 inch floppy disk, or to the City of Huntsville F.T.P. site.

All print copies shall be first generation copies.

All text documents shall be prepared in Microsoft Word 2010 format.

All spreadsheets shall be in Microsoft Excel 2010 format.

A schedule showing the critical paths shall be in Microsoft Projects format, unless otherwise approved by the OWNERS Project Engineer.

Aerial photography files shall be in Intergraph (.COT) or (.tiff) format.

All mapping shall meet National Map Accuracy Standards unless otherwise noted. If National Map Accuracy Standards are not met, the accuracy of the map shall be identified to the Owners Project Engineer and on the maps derived from the aerial survey. National Map Accuracy Standards are shown below. This and other map standards are shown in Department of the Army, US Army Corps of Engineers standard, "EM 1110-1-1000, Engineering and Design - Photogrammetric Mapping".

<http://140.194.76.129/publications/eng-manuals/em1110-1-1000/toc.htm>

All services performed by the **ENGINEER** on projects with Federal Funds involved will be performed in accordance with the current amendments of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*.

The **ENGINEER** and its employees, agents and sub-contractors shall refrain from soliciting business from landowners contacted as a result of **ENGINEER'S** negotiating on behalf of the **OWNER** and the **ENGINEER**, its employees, agents and sub-contractors will be prohibited from engaging in business related to any parcels or tracts of land negotiated for the course of this contract for a period of 90 days following the finalization of the acquisition of the right-of-way for a particular parcel of land.

ATTACHMENT 6

NOTICE OF ASSIGNMENT

DATE: _____ 2013

TO: _____

FROM: _____

RE: EASEMENT CONTRACT

Pursuant to the contract, you are hereby assigned to perform the easement acquisition services described in the above referenced contract for the following project.

Project No.: _____

Project Name: _____

No. of Parcels: _____

Federal Funds: Yes _____ No _____