

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT for professional services is made by and between the City of Madison, Alabama, a municipal corporation, located at 100 Hughes Road, Madison, Alabama 35758, hereinafter referred to as "City," and **Barge Design Solutions, Inc.**, located at **200 Clinton Avenue West, Suite 800, Huntsville, Alabama 35801**, hereinafter referred to as "Consultant."

WITNESS TO:

WHEREAS, the City of Madison has sought professional services for lighting photometrics of a roundabout at the intersection of Balch Road and Browns Ferry Road; and

WHEREAS, the best interests of the City and its residents will be served by retaining an experienced provider of such services; and

WHEREAS, Consultant is an experienced and unique provider of the services required and is capable of providing the same in a professional, timely manner; and

WHEREAS, the City desires to avail itself of Consultant's unique abilities and services and Consultant desires to provide same to City;

NOW, THEREFORE, in consideration of mutual covenants and agreements herein set forth, the parties, intending to be legally bound, hereby agree as follows:

SECTION 1: SCOPE OF WORK

- A. Pursuant to the provisions of this Agreement, Consultant will provide the following services to City: Lighting Photometrics for a roundabout at the intersection of Balch Road and Browns Ferry Road, said services to be administered according to Consultant's proposal dated August 12, 2024 ("Attachment A"), which is attached hereto and wholly incorporated herein by this reference.
- B. Consultant shall thoroughly and proficiently perform all services using reasonable diligence and exercising judgment, care, and skill ordinarily used by similar persons providing the same or similar services under the same or similar circumstances.
- C. Consultant shall furnish all supplies, materials, machinery, equipment, and means, except as otherwise expressly specified herein, necessary or proper to carry out the services required by this Agreement.
- D. Consultant shall perform all services in accordance with the provisions of this Agreement and shall be solely responsible for the legality, safety, efficiency, and

adequacy of the services performed hereunder.

- E. Throughout the term of this Agreement, Consultant shall provide City reasonable and meaningful access via telephone and e-mail to Consultant's principals for the purpose of fulfilling the contracted-for deliverables.
- F. Any and all information provided to Consultant by City, of the type normally available for the proposed services, which has been prepared by or for others (including, but not limited to, the City, the State of Alabama, and various federal agencies) will be considered "best available information" and thus appropriate and sufficient for the services proposed herein. Consultant will not develop such original information unless specifically included in the attachments incorporated in Section 1.A.

SECTION 2: EXPENSE STRUCTURE; OPTIONAL SERVICES & FEES

- A. The total compensation for services rendered by Consultant pursuant to Section 1.A. shall be an amount not to exceed **Eleven Thousand Two Hundred Dollars (\$11,200.00)**, payable on a monthly basis as services are rendered and invoiced to City. Consultant is solely responsible for submission of monthly detailed invoices outlining the work performed and the payment due from City, terms net thirty (30) days.
- B. All fees and expenses related to Consultant's performance are included in the total compensation set forth in Section 2.A., and Consultant shall not be compensated for any other expenses.
- C. All taxes applicable to the payments made to Consultant hereunder shall be the sole responsibility, obligation, and liability of Consultant.
- D. Payment of compensation as set forth in Section 2.A. vests complete and irrevocable ownership in the City of all paid-for deliverables created by Consultant and City shall be perpetually vested with full usage rights of the same.
- E. In the event that Consultant determines that additional services are necessary, Consultant shall notify the City with reasonable promptness and explain the facts and circumstances giving rise to the need. Consultant shall not proceed to provide any additional services until Consultant receives written authorization of City. Any additional services will be performed according to the Consultant's fee schedule, set forth in Attachment A, and shall be subject to the budgetary restrictions of the City's duly-adopted budget for the then-current fiscal year.

SECTION 3: INDEMNIFICATION & INSURANCE

A. Indemnification: Consultant agrees to hold harmless and indemnify City from and against all injuries, deaths, claims, suits, damages, losses, liabilities, judgments, costs, and expenses to the extent caused by negligent performance of professional services on the part of Consultant or its individual employees, officials, agents and representatives in the course of Consultant providing services pursuant to the instant Agreement.

To the extent allowed by law, City agrees to hold harmless and indemnify Consultant from and against all injuries, deaths, claims, suits, damages, losses, liabilities, judgments, costs, and expenses resulting from willful malfeasance, bad faith or gross negligence on the part of City or its individual employees, officials, agents and representatives in the course of receiving services from Consultant pursuant to the instant Agreement.

B. Insurance: Consultant further agrees to maintain and keep in full force and effect at all times during the term of this Agreement and any extensions thereof the following insurance policies for the duration of this agreement: Commercial General Liability Insurance, including officers, agents, and employees with per-project policy limits of not less than two million dollars (\$2,000,000.00) for each occurrence and in the aggregate for bodily injury and property damage; automobile liability covering owned and rented vehicles operated by Consultant with policy limits of not less than one million dollars (\$1,000,000.00) combined single limit and aggregate for bodily injury and property damage; two million dollars (\$2,000,000.00) Products/Completed Operations Aggregate; one million dollars (\$1,000,000.00) Personal and Advertising Injury limits combined single limit or equivalent; one million dollars (\$1,000,000.00) workers' compensation; and one million dollars (\$1,000,000.00) Umbrella/Excess Liability Insurance. The Contractor shall name the City and its employees, agents, and servants as additional insureds in said policies and shall provide endorsements evidencing such coverage upon City's request. In addition, Consultant shall carry professional liability insurance covering Consultants negligent acts, errors, and omissions in its performance of professional services with policy limits of not less than one million dollars (\$1,000,000.00) per claim and two million dollars (\$2,000,000.00) in the aggregate.

All insurance policies as required of the Consultant in this Agreement shall be written by a company or companies authorized and qualified to do business in the State of Alabama. Contractor shall promptly file the certificates of all coverage required hereunder with City within ten (10) days of the effective date of this Agreement. Each insurance policy and certificate shall provide, in effect, that the policy may not be cancelled or non-renewed by the insurer until at least thirty (30) days after the insurer shall have notified the City of such action in writing by sending the same to the point of contact identified in Section 10. Consultant's insurance shall provide primary coverage as relates to other insurance carried by the City.

SECTION 4: COMMENCEMENT; TERM

This Agreement shall come into effect when the authorized representatives of each party finally execute and affix their respective signatures hereto in their duly authorized capacities. In the event the signatures are affixed on different dates, the date of the latter signature shall be the date the Agreement comes into effect. This Agreement shall expire upon the City's

acknowledgement of Consultant's fulfillment of the terms of the Scope of Work contained herein.

SECTION 5: TERMINATION

This Agreement may be terminated by either party, with or without cause, upon the provision of thirty (30) days' notice to the other party. In the event of termination, Consultant shall be entitled to payment only for services rendered as of the date of termination, and City shall be entitled to receive only that work product created by Consultant as of the date of termination.

SECTION 6: INDEPENDENT CONTRACTOR RELATIONSHIP

It is mutually understood and agreed, and it is the intent of the parties, that an independent contractor relationship be and is hereby established under the terms and conditions of this Agreement. It is further mutually understood and agreed that employees of Consultant are not nor shall be deemed to be employees of City and that employees of City are not nor shall they be deemed to be employees of Consultant.

SECTION 7: EXCUSED PERFORMANCE

In case performance of any terms or provisions hereof shall be delayed or prevented because of compliance with any law, decree or order of any governmental agency or authority, whether the same shall be of Local, State or Federal origin, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, acts of God, pandemics or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence, said party is unable to prevent, the party so suffering may, at its option, suspend, without liability, the performance of its obligations hereunder during the period of such suspension of performance of duties hereunder.

SECTION 8: ASSIGNMENT

Neither Consultant nor City may assign or transfer this Agreement or any part thereof without the express, written consent of the other party.

SECTION 9: ENTIRE AGREEMENT: WAIVER

This Agreement constitutes the entire Agreement between the parties with respect to the provision of the services outlined herein and there are no other or further written or oral understandings or agreements with respect thereto. No variation or modification of this Agreement and no waiver of its provisions shall be valid unless in writing and signed by duly authorized representatives of Consultant and City. This Agreement supersedes all other agreements between the parties.

SECTION 10: NOTICES

All notices to City shall be addressed to:

*Director
City Department
100 Hughes Road
Madison, Alabama 35758*

*With a copy to:
City Attorney
City of Madison Legal Department
100 Hughes Road
Madison, AL 35758*

All notices to Consultant shall be addressed to:

*Barge Design Solutions, Inc.
200 Clinton Avenue West, Suite 800
Huntsville, Alabama 35801*

SECTION 11: GOVERNING LAW

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

SECTION 12: MISCELLANEOUS PROVISIONS

- A. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.
- B. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- C. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.
- D. In the event the terms set forth in the body of this Agreement conflict with the terms set forth in any attachment hereto, the terms set forth in the body of this

Agreement shall prevail.

- E. The headings of each section are inserted for reference purposes only. Any conflict between a descriptive heading and the content of the section shall be resolved in favor of the language contained in the section.
- F. Consultant agrees to comply with all applicable Federal, State, and Local laws and regulations, including, but not limited to, those pertaining to wages and hours of employment. By signing this Agreement, the parties affirm, for the duration hereof, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

IN WITNESS WHEREOF, the parties hereto affirm that they have the authority to execute this Agreement on behalf of their respective entities for the entire term and have hereunto set their hands and seals on the day and year respectively noted.

**City of Madison, Alabama,
a municipal corporation**

Attest:

By: _____
Paul Finley, Mayor

Lisa D. Thomas, City Clerk-Treasurer

Date: _____

STATE OF ALABAMA §
§
COUNTY OF MADISON §

I, the undersigned Notary Public, in and for said County, in said State, hereby certify that Paul Finley and Lisa D. Thomas, whose names as Mayor and the City Clerk-Treasurer, respectively, of the City of Madison, Alabama, 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, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Madison, Alabama, a municipal corporation.

Given under my hand and official seal this ____ day of _____, 20__.

Notary Public

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

Lighting Photometrics for Balch Road at Browns Ferry Road Roundabout

The City of Madison (Client) requested Lighting Photometrics be added to the Balch Road at Browns Ferry Road Roundabout design project (Project). Barge is currently designing and developing plans for the roundabout under the original agreement dated March 14, 2023. The original agreement will be supplemented to include Lighting Photometrics. Huntsville Utilities will complete the Lighting Design. Huntsville Utilities will provide to Barge the conduit and pull box design for inclusion in the City's roundabout plans. Barge will add the conduit and pull box design, provided by Huntsville Utilities, into the City's roundabout plans and quantities. The contractor awarded the City's roundabout project will install the conduit, pull boxes, as well as the pedestals, which will be provided by Huntsville Utilities. Huntsville Utilities will complete the Lighting installation after the City's contractor has completed the roundabout construction.

II. Scope of Services

Barge proposes the following Scope of Services:

Lighting Photometrics

Barge will prepare lighting photometrics calculations. Lighting will be designed to IESNA standards for roundabouts. The light fixture to be used will be specified by the City or Huntsville Utilities. Barge will coordinate with the City and/or Huntsville Utilities to determine the light fixture to be used for photometric analysis.

Barge will provide a layout plan showing required locations of light poles based on the lighting photometrics. Barge will include the conduit and pull box locations in this layout plan based on the Lighting Design provided by Huntsville Utilities. Barge will include quantities in the City's roundabout plans and estimated costs in the opinion of probable construction cost (OPCC) for the conduit, pull boxes and pedestals.

Huntsville Utilities will design the conduit, pull boxes, electrical wiring plan, embedded light poles and fixtures, and lighting control center. The contractor awarded the City's roundabout contract will install and construct the conduit, pull boxes, and pedestals. Huntsville Utilities will install and construct the electrical wiring plan, light poles and fixtures, and lighting control center.

Barge will submit one (1) lighting photometrics plan and one (1) light pole layout plan including conduit and pull box locations to be included with the final roundabout construction plans, for review by the City.

III. Project Understandings, Assumptions, and Exclusions

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

1. Huntsville Utilities will design the conduit, pull boxes, electrical wiring plan, embedded light poles and fixtures, and lighting control center.
2. Huntsville Utilities will provide the required conduit, pull boxes and pedestals to the City's contractor.
3. The City's contractor will be responsible for picking up the conduit, pull boxes and pedestals from Huntsville Utilities facility and transporting these items to the project site.
4. The contractor awarded the City's roundabout contract will install and construct the conduit and pull boxes and pedestals.
5. Light poles will be embedded poles rather than anchor-based poles.
6. Huntsville Utilities will install and construct the electrical wiring plan, light poles and fixtures, and lighting control center.
7. Utility Coordination is excluded from this contract except as noted above.
8. Bidding and Construction Phase services are excluded from this contract.
9. Construction budget for items listed in our scope of services is unknown at this time; Barge will strive to work with the City in the establishment of this budget but cannot be held responsible as to whether or not the yet-undefined budget is achieved.
10. Project will be City-funded. No state or federal monies are anticipated to be used for this project
11. Schedule is dependent upon the timely receipt of critical information. Information to be provided by others will be received in a timely manner that corresponds to the project schedule. If the information is not received in a timely manner, then additional design fees may be required.
12. Construction plans will utilize the City's standard details and specifications and/or ALDOT's standard details and specifications.
13. Services resulting from significant changes in general scope or character of the project, or its design are excluded.

IV. Time of Performance

Barge is prepared to begin work within one (1) week upon receipt of a signed professional services agreement or written authorization to proceed. Upon receipt of the authorization to proceed, Barge will furnish a schedule to the City.

V. Client's Responsibilities

Barge 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.

1. Provide information as required to support development of Barge's scope, as required in the project agreement for services.
2. Provide review comments in a timely manner.
3. Provide single point of contact for project coordination purposes.

VI. Deliverables

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

1. Lighting Photometrics Plan.
2. Light Pole Layout Plan including light pole, conduit and pull box locations; and conduit, pull box, and pedestal quantities.
3. Design files (PDF and DGN).

VII. Compensation

Fee Summary Table

Items	Fee Type	Fee Amount
Lighting Photometrics	Lump Sum	\$11,200.00
Total	LUMP SUM	\$11,200.00