

11/23/2010

Anniston, Alabama
November 23, 2010

The City Council of the City of Anniston, Alabama, met in Regular Session in the Council Chamber in the City Hall of the City of Anniston, Alabama, on Tuesday, November 23, 2010, at approximately 4:15 o'clock p.m.

Mayor Robinson prayed the Invocation.

Mayor Robinson led the Pledge of Allegiance to the Flag.

Mayor Robinson called the meeting to order. On call of the roll the following Council Members were found to be present: Council Members Spain, Palmore, Little, Dawson and Robinson; absent: none. A quorum was present and the meeting opened for the transaction of business.

Don A. Hoyt, City Manager, was present.

Cleo Thomas, City Attorney, was present.

Council Member Dawson made a motion to dispense with the reading of and approve the minutes of November 9, 2010. The motion was seconded by Council Member Spain; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried.

Mayor Robinson made a motion to delete from the agenda a proposed resolution asking the Anniston Civil Service Board to increase the limit on accumulated sick leave from one-hundred fifty (150) days to two hundred and twenty five days (225). The motion was seconded by Council Member Spain; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried.

Council Member Dawson made a motion to adopt the agenda as amended. The motion was seconded by Council Member Palmore; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried.

Council Member Dawson reintroduced and read Ordinance Number 10-O-14 as follows:

ORDINANCE NUMBER 10-O-14

AN ORDINANCE AMENDING ORDINANCE NO. 98-0-11 (AN ORDINANCE GRANTING A FRANCHISE FOR USE OF CITY RIGHT-OF-WAY TO INTERSTATE FIBERNET, INC.)

BE IT ORDAINED by the City Council of the City of Anniston, Alabama, as follows:

11/23/2010

WHEREAS, the City of Anniston, Alabama ("Franchisor" or "City") has granted to Interstate Fibemet, Inc. (hereinafter "IFN"), its successors or permitted assigns, a franchise for the use of City right-of-way via Ordinance 98-0-11, adopted April 28, 1998; and

WHEREAS, the original franchise term was ten years and IFN and the City of Anniston wish to extend the term for a period of twenty years from the time of commencement of the franchise; and

WHEREAS, IFN shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation, or otherwise, the Franchise granted to it by the City or any of the rights or privileges granted by Ordinance 98-0-11, without the prior consent of the City; and

WHEREAS, ITC' DeltaCom, Inc. ("ITCD") is the parent of IFN; and

WHEREAS, EarthLink, Inc. ("EarthLink") and ITCD recently entered into an Agreement and Plan of Merger pursuant to which ITCD and its subsidiaries will become direct, wholly-owned subsidiaries of EarthLink; and

WHEREAS, IFN and ITC\DeltaCom have represented to the City that the proposed transaction in no way increases risk to the public or the public interest or compromises the City's rights under the Franchise. IFN will continue to have all the assets currently held by IFN and to assert its rights and perform its obligations under the Ordinance.

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Anniston, Alabama, as follows:

Section 1. That Section 3 of Ordinance 98-0-11 (being An Ordinance Granting a Franchise for Use of City Right-of-Way to Interstate Fibernet, Inc.) be, and the same is hereby amended to read in its entirety as follows:

The Term of this Agreement shall commence on the date of acceptance of this Agreement by the Provider, as defined in Section 6 of this Agreement, and shall end twenty years thereafter, unless renewed, revoked or terminated sooner as herein provided.

Section 2. That the City confirms that (a) the franchise was properly granted, (b) the franchise is currently in full force and effect.

Section 3. That the City of Anniston authorizes and consents to, in all respects, the plan of merger pursuant to which ITCD and it subsidiaries including IFN will become direct wholly-owned subsidiaries of EarthLink with the stipulation and condition that IFN will continue to have all the assets currently held by IFN and to perform its obligations under the Ordinance.

Section 4. That this Ordinance shall become effective upon its publication, and the City Clerk of the City of Anniston is hereby ordered and directed to cause a copy of

11/23/2010

this ordinance to be published one time in The Anniston Star, a newspaper of general circulation published in the City of Anniston, Alabama.

PASSED AND ADOPTED this the 23rd day of November, 2010.

CITY COUNCIL OF THE CITY OF
ANNISTON, ALABAMA

By: /s/ Gene Robinson, Mayor

By: /s/ John Spain, Council Member

By: /s/ Herbert N. Palmore, Council Member

By: /s/ Benjamin L. Little, Council Member

By: /s/ David Dawson, Council Member

ATTEST:

/s/ Alan B. Atkinson, City Clerk

Council Member Dawson made a motion for the passage and adoption of Ordinance Number 10-O-14 as reintroduced and read. The motion was seconded by Mayor Robinson; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried and Ordinance Number 10-O-14 was passed and adopted.

Mayor Robinson introduced and read Resolution Number 10-R-124 as follows:

(10-R-124, reimbursements to City officials for travel expense)

Mayor Robinson made a motion for the passage and adoption of Resolution Number 10-R-124 as introduced and read. The motion was seconded by Council Member Dawson; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried and Resolution Number 10-R-124 was passed and adopted.

Council Member Spain introduced and read Resolution Number 10-R-125 as follows:

(10-R-125, board appointment, Historic Preservation Commission)

Council Member Spain made a motion for the passage and adoption of Resolution Number 10-R-125 as introduced and read. The motion was seconded by Mayor Robinson; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried and Resolution Number 10-R-125 was passed and adopted.

Mayor Robinson introduced and read Resolution Number 10-R-126 as follows:

(10-R-126, approving bonds pursuant to Section 147(f) of the IRC of 1986 and the enabling Act)

11/23/2010

Mayor Robinson made a motion for the passage and adoption of Resolution Number 10-R-126 as introduced and read. The motion was seconded by Council Member Dawson.

Bradley Cherry, bond counsel representing Nolan Health Care, addressed the Council and stated this was basically a refinance to save on the interest rates. He stated they have a long term lease with Regional Medical Center. He stated they were a long term care facility.

Council Member Little stated that even though Nolan Health Care was separate from Regional Medical Center someone from RMC should have addressed the Council.

On call of the roll on Mayor Robinson's motion for the passage and adoption of Resolution Number 10-R-126 as introduced and read and Council Member Dawson's second to said motion the following vote was recorded: ayes: Council Members Spain, Palmore, Little, and Robinson; nays: none; abstentions: Council Member Dawson. The motion carried and Resolution Number 10-R-126 was passed and adopted.

Council Member Spain introduced and read Resolution Number 10-R-127 as follows:

(10-R-127, recommending that the legislature of the State of Alabama defeat the amendment to Act 1953-404 currently being introduced by Representative Randy Wood)

Council Member Spain made a motion for the passage and adoption of Resolution Number 10-R-127 as introduced and read. The motion was seconded by Council Member Little.

Council Member Dawson stated he was very disappointed the Representative Wood did not discuss this proposed legislation with the Council before this point. He stated he was ready for the inquiry to be over but he took exception to a local piece of legislation being put on the agenda prior to discussing it with the municipality it is going to effect singularly.

Council Member Spain stated that neither Representative Wood or Boyd had been to an inquiry session to form any first hand opinion of what activities have gone on during this inquiry. He stated he thought the legislation was highly inappropriate and that they should have had conversations with the Council before taking this action.

Council Member Little stated that no representative should be allowed to control a city from Montgomery. He stated that Representative Wood did not need to control Anniston. He stated that if people had shown up like they were supposed to then he felt the inquiry would have ended by now. He stated he did not believe Representative Wood had received many calls concerning the inquiry.

Council Member Palmore stated he was very disappointed that neither Representative Wood or Boyd had contacted them about this legislation or the inquiry. He stated that Representative Boyd lived in his Ward and he had not heard from her concerning this

11/23/2010

issue. He stated he was disappointed that they had not researched the law concerning the Council's inquiry process. He stated he was going to call Representative Boyd to find out if she supports this proposed legislation.

Cleo Thomas, City Attorney, stated that he felt the fifth whereas should read as follows "Whereas, the proposed legislative enactment significantly diminishes internal controls including of its tax collections and financial affairs and undermines the City's ability to properly manage itself."

Council Member Spain made a motion to amend Resolution Number 10-R-127 so that the fifth whereas would read as follows "Whereas, the proposed legislative enactment significantly diminishes internal controls including of its tax collections and financial affairs and undermines the City's ability to properly manage itself." The motion was seconded by Council Member Little; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, and Dawson; nays: none; abstentions: Mayor Robinson. The motion carried.

Mayor Robinson stated that the citizens were speaking through Representative Wood that the Council was wrong in holding the inquiry hearings.

On call of the roll on Council Member Spain's motion for the passage and adoption of Resolution Number 10-R-127 as amended and Council Member Little's second to said motion the following vote was recorded: ayes: Council Members Spain, Palmore, Little, and Dawson; nays: Mayor Robinson. The motion carried and Resolution Number 10-R-127 was passed and adopted.

Mayor Robinson made a motion to accept a \$100,000 Special Funds Allocation from the State of Alabama Discretionary Accounts, as facilitated by Senator Del Marsh, for subsequent allocation to the appropriate organizations responsible for positioning the City of Anniston and surrounding communities, to mitigate negative or enhance positive future Base Realignment and Closure Commission recommendations (aka BRAC). The motion was seconded by Council Member Spain; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried.

Council Member Spain made a motion to approve a retail beer (on or off premises) and retail table wine (on and off premises) ABC application for Ono Sushi and Grill Inc. d/b/a Ono Sushi and Grill at 2900 McClellan Boulevard. The motion was seconded by Council Member Dawson; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, and Dawson; nays: none; abstentions: Council Members Little and Robinson. The motion carried.

Mayor Robinson made a motion to support the efforts of Mr. Tony Baxter and his developer to seek funding through the Anniston/Calhoun County HOME Consortium for the construction of a multi-family housing complex, utilizing 2009 – 2010 HOME

11/23/2010

appropriation from the U. S. Department of Housing and Urban Development (HUD). The motion was seconded by Council Member Dawson.

The Council discussed that this motion had not been discussed in an informal session.

Mayor Robinson made a motion to table his motion to support the efforts of Mr. Tony Baxter and his developer to seek funding through the Anniston/Calhoun County HOME Consortium for the construction of a multi-family housing complex, utilizing 2009 – 2010 HOME appropriation from the U. S. Department of Housing and Urban Development (HUD). The motion was seconded by Council Member Spain; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little and Robinson; nays: Council Member Dawson. The motion carried.

Tony Baxter addressed the Council concerning the motion to seek funding through the Anniston/Calhoun County HOME Consortium for the construction of a multi-family housing complex, utilizing 2009 – 2010 HOME appropriation from the U. S. Department of Housing and Urban Development (HUD) and stated he was under a tight time constraint.

Council Member Dawson made a motion to remove from the table Mayor Robinson's motion to support the efforts of Mr. Tony Baxter and his developer to seek funding through the Anniston/Calhoun County HOME Consortium for the construction of a multi-family housing complex, utilizing 2009 – 2010 HOME appropriation from the U. S. Department of Housing and Urban Development (HUD). The motion was seconded by Council Member Spain; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried.

Council Member Dawson made a motion to treat Mayor Robinson's motion to support the efforts of Mr. Tony Baxter and his developer to seek funding through the Anniston/Calhoun County HOME Consortium for the construction of a multi-family housing complex, utilizing 2009 – 2010 HOME appropriation from the U. S. Department of Housing and Urban Development (HUD) of an emergency nature. The motion was seconded by Mayor Robinson; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried.

On call of the roll on Mayor Robinson's motion to support the efforts of Mr. Tony Baxter and his developer to seek funding through the Anniston/Calhoun County HOME Consortium for the construction of a multi-family housing complex, utilizing 2009 – 2010 HOME appropriation from the U. S. Department of Housing and Urban Development (HUD) and Council Member Dawson's second to said motion the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried.

11/23/2010

Council Member Little made a motion to table the proposed motion to approve an invoice from Paulette Miller in the amount of \$2,500.00 for the "Civil Rights Film Documentary". The motion was seconded by Council Member Dawson; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried.

Council Member Little made a motion to use the Project Pay Building for office space for the Civil Rights Museum. The motion was seconded by Council Member Dawson.

Mr. Hoyt stated that they could use the building temporarily for these purposes but it must remain open for other uses, also.

On call of the roll On Council Member Little's motion to use the Project Pay Building for office space for the Civil Rights Museum and Council Member Dawson's second to said motion the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried.

Alan Atkinson, City Clerk, advised that copies of the following Bid Fact Sheets had been given to the Council:

(wheeled excavator for Public Works)

Mayor Robinson made a motion that the bid in the total amount of \$4,012.57 per month for 60 months by Thompson Tractor Company for the lease/purchase of one wheeled excavator for the Public Works Department be accepted. The motion was seconded by Council Member Dawson; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried.

Alan Atkinson, City Clerk, advised that copies of the following Bid Fact Sheets had been given to the Council:

(bucket truck for the Electrical Dept.)

Mayor Robinson made a motion that the bid in the total amount of \$169,588.00 by Altec Industries for one bucket truck for the Electrical Department be accepted. The motion was seconded by Council Member Dawson; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried.

Mayor Robinson asked Robert Dean, Public Works Director, to address the Council concerning garbage exemptions.

Robert Dean, Public Works Director, addressed the Council and stated that the current garbage contract had a monthly cost of \$8.68 per home based on 8,000 homes. He stated that if 10% (800) of those homes were exempt then the cost would be about \$9.65 for the

11/23/2010

remaining 7,200 homes. He stated if they increase the amount of exemptions they will be at that \$10.00 mark.

Council Member Little stated he would like to have an Executive Session at the next Council Meeting to discuss the purchase of the Downtowner Hotel property. He stated he hoped they could get some trophies for the Cowboys youth football team.

Council Member Palmore stated he would like to congratulate the Anniston High School football team and he stated they needed to do something for the team to show their appreciation.

Council Member Dawson stated he would be in favor of doing something for both of these teams. He stated there would be a ward meeting for his ward on December 9.

Council Member Spain wished everyone a happy Thanksgiving.

Mayor Robinson encouraged everyone to shop in Anniston and Calhoun County and wished everyone a happy Thanksgiving.

There being no further business to come before the meeting at that time Council Member Dawson made a motion the meeting be adjourned. The motion was seconded by Council Member Spain; and on call of the roll the following vote was recorded: ayes: Council Members Spain, Palmore, Little, Dawson and Robinson; nays: none. The motion carried and the meeting was adjourned at approximately 5:45 o'clock p.m.