

## CITY OF ANNISTON

October 4, 2022

5:30 P.M.

- INVOCATION
- PLEDGE OF ALLEGIANCE
- CALL TO ORDER
- ROLL CALL
- READING/APPROVAL OF MINUTES OF PREVIOUS MEETING
  - September 20, 2022 Regular meeting
- ADDITIONS/DELETIONS TO THE AGENDA
- ADOPTION OF AGENDA

### I. PUBLIC HEARING

#### **Speaking to a Public Hearing Item**

In the interest of time and to ensure the fairness of all persons who appear before the City Council to speak for or against a public hearing item, speakers will be limited to three (3) minutes each to address City Council except as described herein. One speaker for the Petitioner may address the City Council for no more than 10 minutes, unless extended by the Mayor. In an effort help the City Council and the general public to better understand the issues, the Mayor may request that a City staff member address the City Council from the podium. Speakers from the general public may only speak when recognized by the Mayor during the public hearing. Speakers will be asked to come to the podium to address the City Council for three (3) minutes and they shall state their name and resident address for the record. Speakers addressing City Council on a public hearing item should coordinate comments in order to respect City Council's time constraints. Groups should select a spokesperson to present the major points that summarize their position and opinions. Speakers are urged to be brief and non-repetitive with their comments. Comments shall specifically address the public hearing item before the City Council, and the speaker shall maintain appropriate tone and decorum when addressing the City Council. City Council may ask questions of the applicant, speakers, or staff during these proceedings only for the purpose of clarifying information. The speaker shall not direct derogatory comments to any individual, organization, or business. At the conclusion of the three (3) minute time period, the speaker will be notified that his/her time has elapsed and the next speaker will be recognized to come forward to the podium and address the City Council. Once the public hearing is closed on an item, there will be no further opportunity for formal or informal public input at a City Council meeting.

### II. UNFINISHED BUSINESS

- (a) Motion to approve a Bingo Permit to 7 Springs Ministries located at 33 Old Gadsden Hwy, Anniston, Alabama 36201

### **III. CONSENT AGENDA**

- (a)** Motion to approve the bid for demolition of eight (8) substandard structures using funding from General Fund
- (b)** Motion to approve the bid for demolition of three (3) substandard structures using funding from Community Development Block Grant (CDBG) funds
- (c)** Motion to approve a Special Events Retail Alcohol License application for Northeast Alabama Bicycle Association d/b/a Coldwater Mountain Fat Tire Festival from October 21 – 23, 2022 located at 399 Monsanto Road
- (d)** Motion to approve a Lounge Retail Liquor – Class I application for Grand Central Civic and Event Center LLC d/b/a Grand Central Civic and Event located at 1031 Noble Street within the corporate city limits
- (e)** Motion to approve a Special Retail Liquor – More than 30 Days application for Hotel LLC d/b/a Hotel Finial located at 1600 Quintard Avenue within the corporate city limits
- (f)** Motion to suspend the rule requiring the City Council to meet on the third Tuesday of October 2022

### **IV. RESOLUTIONS**

- (a)** Resolution authorizing Professional Services Agreement with The Retail Coach, LLC
- (b)** Resolution authorizing Professional Services Agreement with Sain Associates

### **V. ORDINANCES**

- (a)** Ordinance to repeal Chapter 13, Article III, Sections 13.5 through 13.9 of the Code of Ordinances governing Rental Housing Health and Safety

### **VI. ADDITIONAL OR OTHER MATTERS THAT MAY COME BEFORE COUNCIL**

## VII. PUBLIC COMMENTS

### Public Comment – Speaker Protocol

The City of Anniston believes that any member of the general public should be afforded the opportunity to address the City Council provided that designated rules are followed by the speaker. Any member of the public, who wishes to address the City Council and offer public comment on items within the City Council's jurisdiction, may do so during the Public Comment period of the meeting. However, no formal action will be taken on matters that are not part of the posted agenda. In order to ensure the opportunity for all those desiring to speak before the Council, there is no yielding of time to another speaker. This opportunity to address City Council may not be used to continue discussion on an agenda item that has already been held as a public hearing. Matters under negotiation, litigation, or related to personnel will not be discussed. Members of the general public who would like to address the City Council during the Public Comment portion of the meeting, may do so in accordance with the rules outlined in Ordinance 21-O-22 adopted by the City Council on November 2, 2020 as stated:

**Section 12.** Members of the public may address the Council or speak on matters of public concern during the period of the meeting agenda reserved for public comments, subject to the following procedures:

(a) No person shall be allowed to speak during public comments unless he or she submits a Request to Speak During Public Comments form to the Office of the City Manager no later than 3:00 P.M. on the Friday before the Council meeting. The request shall identify the speaker by name and residential address and shall specify the date of the meeting in which the speaker desires to offer public comments.

(b) The period for public comments shall be open to the **first ten (10) persons** who submit a timely request to speak during the meeting at hand.

(c) In advance of each meeting, the City Manager shall provide the Council a list of the persons authorized to speak during the period for public comments, not to exceed ten (10) persons, which shall identify the speakers in the order in which their requests were made. The presiding officer shall call on each person from the list. Once recognized, each person shall be provided no more than **three (3) minutes** to complete his or her public comments.

(d) Those persons who make a timely request, after the first ten (10) requests, shall be first on the list of persons authorized to speak during the period for public comments in the next meeting, unless he or she asks to be removed from the list.

**Section 13.** All comments made by members of the Council shall be restricted to the matter under consideration and shall be addressed to the presiding officer, except during the period of the meeting reserved for Council Comments. All comments made by members of the Council shall be restricted to three (3) minutes, unless the presiding officer grants exception for good cause.

**Section 14.** No comments shall be permitted by a member of the Council or by a member of the public that is of a disparaging nature or which would constitute a personal attack on the integrity of any member of the Council or the staff of the City.

Once the speaker has been recognized to speak, he/she should not attempt to engage the City Council and/or Staff in a discussion/dialogue and the speaker should not ask specific questions with the expectation that an immediate answer will be provided as part of the three (3) minute time frame since that is not the intent of the Public Comment period. If the speaker poses a question or makes a request of the City, the Mayor may refer the issue or request to the City Manager for follow up. At the conclusion of the three (3) minute time period, the speaker will be notified that his/her time has elapsed and the next speaker will be recognized to come forward to the podium and address the City Council. The Mayor may rule out of order any Speaker who uses abusive or indecorous language, if the subject matter does not pertain to the City of Anniston, or if the Speaker(s) attempts to engage the City Council Members in a discussion or dialogue on issues. City Council shall not discuss non-agenda matters because it does not give the public adequate notice. Accordingly, City Council shall be limited to asking factual and clarifying questions of staff, and when appropriate, the Council may consider placing a matter on a future agenda. In addition, it is not reasonable to expect staff to respond to any of a variety of issues on which they may or may not be prepared to respond to on a moment's notice, so the City Manager may respond, or direct staff to respond at a later time.

(a) Jim Pritchett – 2609 Old Gadsden Hwy

(b) Shawana Hill – 2630 Wilmer Avenue

(c) Richard Jackson – 2317 Noble Street

(d) Glen Ray – 3514 Dale Hollow Road

## VIII. COUNCIL COMMENTS

### ADJOURNMENT

## MINUTES



Anniston, Alabama

September 20, 2022

The City Council of the City of Anniston, Alabama, met in Regular Session in Room B at the Anniston City Meeting Center in the City of Anniston, Alabama, on Tuesday, September 20, 2022, at approximately 5:30 o'clock p.m.

Jay Jenkins, Council Member, prayed the Invocation.

Jay Jenkins, Council Member, led the Pledge of Allegiance to the Flag.

Mayor Draper called the meeting to order. On call of the roll, the following Council Members were found to be present: Council Members Jenkins, Roberts, Smith, Harris and Draper; absent: none. A quorum was present and the meeting opened for the transaction of business.

Steven Folks, City Manager, was present.

Bruce Downey, City Attorney, was present.

Council Member Harris made a motion to waive the reading of and approve the minutes of the September 6, 2022 regular meeting. The motion was seconded by Council Member Smith and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris and Draper; nays: none. The motion carried and the September 6, 2022 regular meeting minutes were approved.

Council Member Jenkins made a motion to waive the reading of and approve the minutes of the September 14, 2022 called meeting. The motion was seconded by Council Member Roberts and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Harris and Draper; nays: none; abstentions: Council Member Smith. The motion carried and the September 14, 2022 called meeting minutes were approved.

Mayor Draper made a motion to adopt the agenda. The motion was seconded by Council Member Harris and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris and Draper; nays: none. The motion carried and the agenda was adopted.

Council Member Harris made a motion to remove from the table and place on the floor for passage and adoption the motion to approve the request from Anniston City Schools for remaining balance of FY22 appropriated funds of \$45,000.00 to utilized for technology resources and support across District facilities and FY21 appropriated funds of \$200,000.00 to be utilized for Support of Cobb Preparatory Academy, Maintenance. The motion was seconded by Council Member Smith and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris and Draper; nays: none. The motion carried.

Mayor Draper made a motion to adopt the consent agenda:

- (a) Resolution authorizing reimbursements to city officials for expenses incurred while traveling away from the city (22-R-48)

(b) Resolution authorizing the Mayor to execute an agreement with East Alabama Regional Planning and Development Commission for the Anniston Express Fixed Route System and the ADA Para-Transit Services (22-R-49)

(c) Motion to approve a Special Events Retail Alcohol License application for Northeast Alabama Bicycle Association d/b/a Coldwater Mountain Fat Tire Festival from October 21-23, 2022 located at Zinn Park

(d) Motion to approve a Special Events Retail Alcohol License application for the City of Anniston d/b/a Jazz & Art Festival on October 20, 2022 located in City of Anniston Parking lot #3 at 12<sup>th</sup> & Noble Street from 3:00pm-Midnight.

The motion was seconded by Council Member Harris and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris and Draper; nays: none. The motion carried and the consent agenda was approved.

Mayor Draper introduced a Resolution to amend the FY2022 budgets for the General Operating Fund, Museum of Natural History Fund, Fire Training Fund, and the Internal Services Funds, to adjust for the differences between the previously adopted budgets and presently projected revenues and expenditures in the budgets of the various funds.

Council Member Harris made a motion for passage and adoption of a Resolution to amend the FY2022 budgets for the General Operating Fund, Museum of Natural History Fund, Fire Training Fund, and the Internal Services Funds, to adjust for the differences between the previously adopted budgets and presently projected revenues and expenditures in the budgets of the various funds. The motion was seconded by Council Member Smith and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris and Draper; nays: none. The motion carried and the resolution was passed and adopted. (22-R-50)

Mayor Draper introduced an Ordinance amending Section 15.57 of the Code of Ordinances of the City of Anniston, Alabama adding four-way stop intersections (1<sup>st</sup> Reading) (22-O-10)

Council Member Smith made a motion to read the ordinance by title only. The motion was seconded by Council Member Roberts.

Mayor Draper opened a public hearing to receive public comment on reading the ordinance by title only. No one spoke. Mayor Draper closed the public hearing to receive public comment on reading the ordinance by title only.

Mayor Draper read the ordinance amending Section 15.57 of the Code of Ordinances of the City of Anniston, Alabama adding four-way stop intersections by title only.

Council Member Jenkins made a motion of unanimous consent for immediate consideration. The motion was seconded by Council Member Smith and on call of the roll the following vote was recorded: ayes: Council Member Jenkins, Roberts, Smith, Harris and Draper; nays: none. The motion carried.

Council Member Harris made a motion for passage and adoption. The motion was seconded by Council Member Jenkins and on call of the roll the following vote was recorded: ayes: Council Member Jenkins,

Roberts, Smith, Harris and Draper; nays: none. The motion carried and ordinance (22-O-10) was passed and adopted.

Robert Houston, 2 Bristol Place, addressed the city council that when they took office in 2017, they walked into total decay and neglect. He stated that they did not have a school system but a system of schools. He stated that the Anniston school system was \$800,000.00 short this year in their budget. He stated that there will be required meetings to discuss funding and legal matters between the school system and the city council.

Trudy Munford, 2226 McDaniel Ave, addressed the city council that the Anniston City Board of Education, walked into a burning building in 2016. She stated that they did not have their one month reserve, and the IRS and Social Security department were penalizing them on a daily basis. She stated that they were borrowing money from banks to make payroll. She stated that in 2017 and 2018 they did not pass their audit. She stated that the city council made a decision to stop the allocation of the 1% sales tax and she agreed with them. She stated that they passed the audit in 2022.

Shawana Hill, 2630 Wilmer Ave, addressed the city council on issues in her neighborhood and her father's neighborhood. She stated that someone who moved into her neighborhood dumped crates in the yard and on the porch. She stated that near her father's property, 2706 Old Quintard, there is a property on his street, so bad that the grass has grown up on the cars and she has never seen a nuisance notice or anything.

Glen Ray, 3514 Dale Hollow Rd., addressed the city council that the citizens should not be rushed and expected to talk for only 3 minutes. He stated that this should be changed.

Richard Jackson, 2317 Noble Street, addressed the city council that they do what they want, when they want to do it. He stated that he does not appreciate the Mayor cutting the citizens off when their time has elapsed. He stated that the ordinance they created should be erased and citizens should have at least 10 minutes to speak. He stated that this is like voter suppression. He also stated that people are coming around at night dumping things in the alley.

Council Member Jenkins thanked everyone for being there and for their comments. He stated that the council is hearing their concerns and will take them into account.

Council Member Roberts stated this his number is 256-499-4218. He stated that he has always been very open and accessible. He stated that a lot of things were said today and he guarantees if they would sit down and talk with someone, they would see that they are very misconceived. He stated that we have to get out the habit of talking at people. He stated that it is all about delivery. He stated that they should come together and have a conversation, in a peaceful manner.

Council Member Smith stated that they are dancing around the elephant in the room. She stated that while she appreciates the Martin Luther King quotes, she agrees with the sentiments of Munford and Council Member Roberts to continue with their quarterly meetings with the school board. She stated that today, they voted on \$45,000.00 from fiscal year 2022. She stated that \$100,000.00 was allocated for the school system, \$55,000.00 was voted on to pay the salary of a teacher for the Helping Families Initiative, something she brought forth to Dr. Hill. She stated the \$200,000.00 is being allocated to the school system from fiscal year 2021. She stated that the reason why those funds were withheld was because the school system failed to produce an audit. She stated that it is within the council discretion

on how to utilize those funds. She stated that since she has been in office the council has never voted to deny giving the school board funding. She stated that this should be an opportunity for collaboration instead of conflict. She stated that the council discussed suspending the trash ordinance and more information will come.

Council Member Harris stated that she looks forward to working with the school board for better communication. She stated that it is obvious, that there are some real misunderstandings.

Mayor Draper stated that he appreciates all the comments. He stated that open dialogue, like this, is necessary in order to resolve the issues that they face. He stated that it is important for them to continue to partner with other governmental entities such as the Anniston school board. He stated that he agrees that they need to have these quarterly meetings to have an on-going dialogue.

There being no further business to come before the council at that time Mayor Draper made a motion that the meeting be adjourned. The motion was seconded by Council Member Smith; and on call of the roll, the following vote was recorded: ayes: Council Members Jenkins, Roberts, Smith, Harris and Draper; nays: none. The motion carried and the meeting was adjourned at approximately 6:03 o'clock p.m.

# **CONSENT AGENDA**

## FACT SHEET

**SUBJECT:** Evaluation of bids for demolition of 8 substandard structures.

**FACTS:** Funding from General Fund.

### VENDORS SUBMITTING BIDS

	Emtek	T&D	Bell-It-Out
425/426 B Street	\$4,800.00	\$7,500.00	\$4,500.00
1325 W. 15 <sup>th</sup> Street	\$3,800.00	No bid	\$3,500.00
531 S. Christine Ave.	\$8,500.00	No bid	\$4,700.00
1107 Mulberry Ave.	\$4,800.00	No bid	\$3,700.00
600 W. 18 <sup>th</sup> Street	\$5,900.00	No bid	\$4,500.00
413 Chestnut Ave	\$4,400.00	No bid	\$3,950.00
508 Mulberry Ave	\$5,500.00	No bid	\$4,950.00
1515 Walnut Ave	\$5,800.00	No bid	\$7,500.00
<b>Total</b>	\$43,500.00	\$7,500.00	\$37,300.00

**RECOMMENDATION:** Bell-it-Out should be awarded the bid for 7 of the substandard structures in the amount of \$29,800.000. Emtek should be awarded the bid for the property 1515 Walnut Ave for \$5,800.00.

## **FACT SHEET**

**SUBJECT:** Evaluation of bids for demolition of 3 substandard structures.

**FACTS:** Funding from CDBG.

### **VENDORS SUBMITTING BIDS**

	Emtek	Teague
3711 Pelham Road	\$4,200.00	\$4,850.00
325 S Wilmer	\$8,500.00	\$8,700.00
405 S Wilmer	\$3,800.00	\$7,800.00
<b>Total</b>	<b>\$16,500.00</b>	<b>\$21,350.00</b>

**RECOMMENDATION:** Teague should be awarded the bid for the CDBG properties in the amount of \$16,500.00.

## **RESOLUTIONS**



**RESOLUTION NO. 22-R-\_\_**

**AUTHORIZING PROFESSIONAL SERVICES AGREEMENT  
WITH THE RETAIL COACH**

WHEREAS, the Council desires to engage The Retail Coach to provide professional services to aid the City in its retail market research, analysis, strategies, and recruitment;

WHEREAS, The Retail Coach has submitted a proposal to provide these professional services, as specified in Exhibit A to the attached Professional Services Agreement;

WHEREAS, the Council finds that The Retail Coach is uniquely capable of meeting the professional services needs of the City with respect to the scope of work identified in the proposal, and The Retail Coach is highly skilled and equipped to provide these professional services;

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

The City Manager is hereby authorized to engage The Retail Coach on the terms set forth in the Professional Services Agreement, attached hereto, to provide the professional services identified in the scope of work. The City Manager is authorized and directed to take such actions as are necessary and appropriate to obtain and utilize these professional services, including the payment of compensation to The Retail Coach at the rates and amounts specified in the attached proposal.

PASSED AND ADOPTED on this the \_\_\_\_ day of \_\_\_\_\_, 2022.

COUNCIL OF THE CITY OF  
ANNISTON, ALABAMA

\_\_\_\_\_  
Jack Draper, Mayor

\_\_\_\_\_  
Jay Jenkins, Council Member

\_\_\_\_\_  
Demetric Roberts, Council Member

\_\_\_\_\_  
Ciara Smith, Council Member

\_\_\_\_\_  
Millie Harris, Council Member

ATTEST:

\_\_\_\_\_  
Skyler Bass, City Clerk

## PROFESSIONAL SERVICES AGREEMENT

This Agreement for Professional Services (“Agreement”) is made by and between City of Anniston (“Client”) and The Retail Coach, LLC, a limited liability company (“Professional”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

### RECITALS:

**WHEREAS**, Client desires to engage the services of the Professional as an independent contractor, and not as an employee, to provide the services described in Exhibit “A” (the “Scope of Services”) to assist Client in creating a Retail Recruitment and Development Strategy (the “Project”); and

**WHEREAS**, the Professional desires to render professional services for Client on the terms and conditions set forth in this Agreement;

**NOW THEREFORE**, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

### Article I Term

1.1 This Agreement shall commence on October 1, 2022 (“Effective Date”) and continue until completion of the services, unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination the Professional shall deliver to Client all finished and unfinished documents, data, studies, surveys, drawings, maps, reports, photographs or other items prepared by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the Client in accordance with this Agreement prior to such termination.

### Article II Scope of Service

2.1 The Professional shall perform the services in connection with the Project as set forth in the Scope of Services.

2.2 The Parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the professional standard of care applicable by law to the services performed hereunder.

### **Article III Schedule of Work**

The Professional agrees to complete the required services in accordance with the Scope of Services outlined in Exhibit "A".

### **Article IV Compensation and Method of Payment**

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services, not to exceed a total amount of forty two thousand dollars (\$42,000).

### **Article V Devotion of Time; Personnel; and Equipment**

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should Client require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services as agreed between the Parties.

5.2 The Professional shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

### **Article VI Miscellaneous**

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Professional may not assign this Agreement without the prior written consent of Client. In the event of an assignment by the Professional to which the Client has consented, the assignee shall agree in writing with Client to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Alabama shall govern this Agreement.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Professional, in satisfying the conditions of this Agreement, is acting independently, and that Client assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of Client. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for Client:

Attn: Steven D. Folks Jr.  
City Manager  
City of Anniston  
P.O. Box 2186  
Anniston, AL 36202

If intended for Professional:

Attn: Kyle Cofer  
The Retail Coach, LLC  
PO Box 7272  
Tupelo, MS 38802

6.9 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) statutory Worker's Compensation Insurance at the statutory limits and

Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iii) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$1,000,000.00 per claim and \$1,000,000.00 in the aggregate.

- (b) All policies of insurance shall be endorsed and contain the following provisions: (1) name Client, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; and (2) provide for at least thirty (30) days prior written notice to the Client for cancellation of the insurance; (3) provide for a waiver of subrogation against the Client for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. The Professional shall provide written notice to the Client of any material change of or to the insurance required herein.
- (c) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of services and upon request by Client.

6.10 Indemnification. CLIENT SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF THE PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST CLIENT, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CLIENT") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CLIENT OR BREACH OF CLIENT'S OBLIGATIONS HEREUNDER. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS CLIENT FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE PROFESSIONAL'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CLIENT, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY CLIENT ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR

REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT.  
THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.11 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.12 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

*[Signature Page to Follow]*

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

City of Anniston

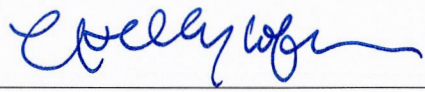
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXECUTED this 1<sup>ST</sup> day of october, 2022.

The Retail Coach, LLC

By:  \_\_\_\_\_

Name: C. Kelly Cofer

Title: Founder/CEO

**EXHIBIT “A”**  
**Scope of Services**





Proposal for: Anniston, Alabama

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# Strategy Outline: **Retail Market Analysis & Recruitment Services**



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## Retail Market Analysis & Recruitment Services

# Executive Summary



The Retail Coach is submitting this proposal for a **Retail Market Analysis & Recruitment Services** to be executed for the City of Anniston, Alabama.

### Objectives:

- Research and analyze the Anniston retail market for growth opportunities
- Determine the unique, viable retail market potential for Anniston
- Identify key retail and restaurant targets that align with the vision of growth for the City
- Recruit target retailers and restaurants through proactive outreach and industry conference representation

### Submitting Firm:

The Retail Coach, LLC

### Mailing Address:

The Retail Coach, LLC  
PO Box 7272  
Tupelo, MS 38802

### Primary Contact:

Kyle Cofer  
Project Director  
kylecofer@theretailcoach.net  
662-319-7144

For more than 20 years, The Retail Coach has been **the premier national retail recruitment partner** for municipalities, economic development organizations, and development firms. Having worked more than 650 assignments in 41 states, our recruitment approach is simple – do what you say you are going to do, do it at the highest level possible and constantly communicate findings and results to our clients. This approach has proven successful, leading to multiple assignments with more than 90% of our clients.

Our goal is to not only aid the City of Anniston in preparing and executing a retail market analysis and recruitment strategy, but to also bring a level of retail expertise to local stakeholders for the City to **ultimately reach its potential for sales tax revenue and quality of life.**

The most important aspect of any Retail Market Analysis is its ultimate application and resulting impacts. Our approach has always been action-oriented to ensure that market reports are not placed on a shelf to collect dust. **Working with all project team members, local stakeholders, and public officials** is a critical component in which The Retail Coach is experienced and well-equipped to execute.

## About The Retail Coach



We are the nation's premier retail recruitment, market analysis, and development firm. Our experience combines strategy, technology, and creative marketing to execute high-impact retail and restaurant recruitment strategies for local governments, chambers of commerce and economic development agencies.

We have served more than 650 communities in 41 states across the country over the last 20+ years.



### PROVEN RESULTS

**5+ Million**

Square feet of new retail space recruited to client communities

**\$600 Million**

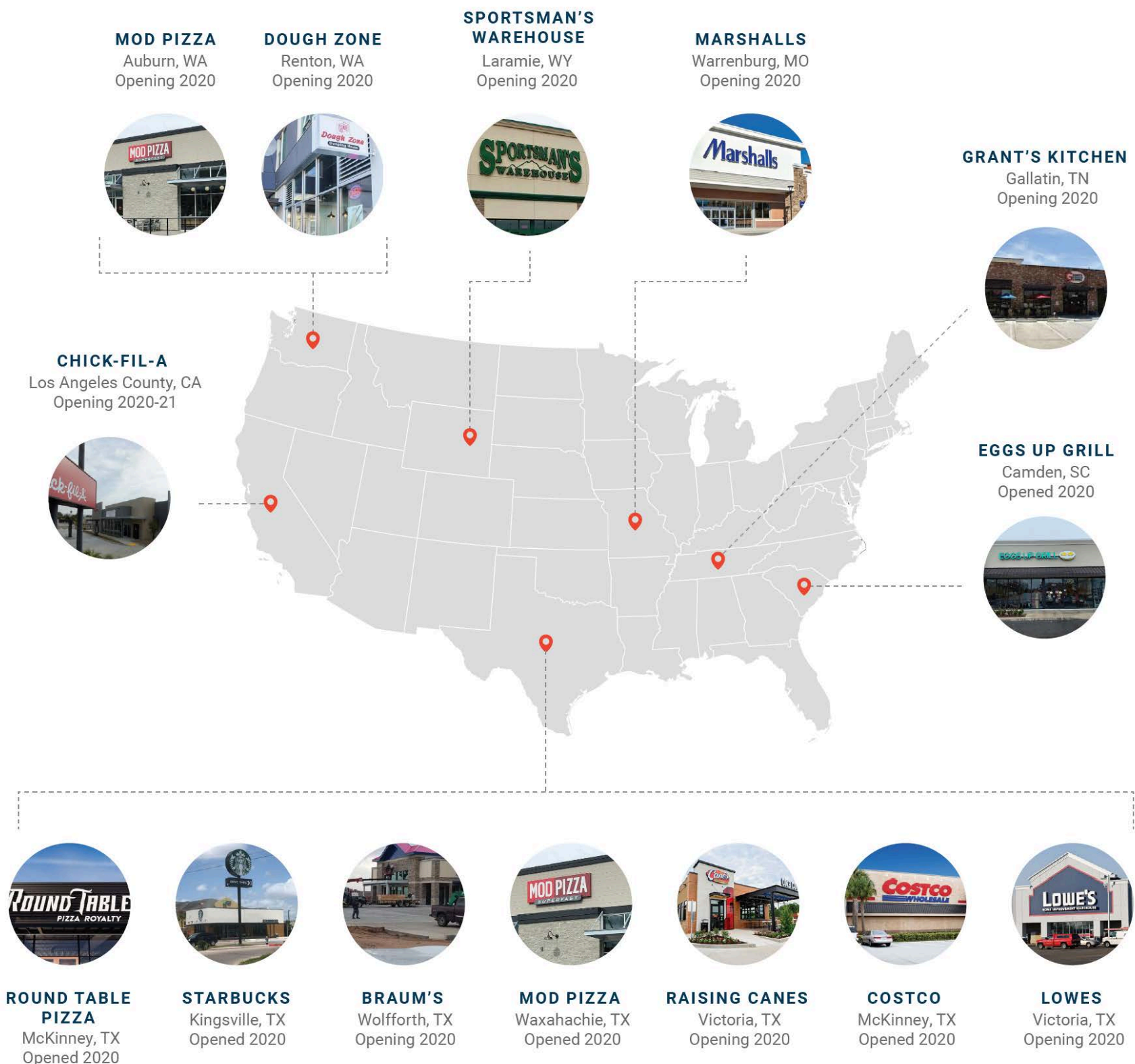
Additional sales tax dollars generated in client communities

**90% Repeat**

Percent of clients that choose us for repeat assignments



## Snapshot of Recent Grand Openings in The Retail Coach Client Communities.



and many more.....



# Company Profile

## Retail Recruitment Success



5+ Million Square Feet of New Retail recruited to client communities in the last 5 years.

The Retail Coach has helped attract these retailers and restaurants - plus hundreds more - to our client communities.



## Office Locations



The Retail Coach has been headquartered in **Tupelo, Mississippi** since being founded in 2000. Our corporate office is located in the Historic Fair Park District in Downtown Tupelo.

To best serve our client communities across the country, we have additional regional offices in **Austin** and **Dallas, Texas**. These strategic locations provide our team with closer proximity to major site selection and brokerage offices, while allowing key access to major transportation hubs.



## Project Approach

# Retail360® Process



Moving beyond data to bring new retailers and restaurants to your community.



Retail recruitment is a process, not an event. Through our proprietary Retail360® Process, we offer a dynamic system of products and services that enable communities to expand their retail base and generate additional sales tax revenue.

The Retail360® Process identifies the strengths and weaknesses of your community to attract retail and highlights your community's advantage over competing cities. Through our multi-phase approach to recruiting new retailers, we're able to help communities build a long-term retail economic development plan.

## Market-Based Solutions

We understand that every community has its own unique set of development needs. Therefore, we work with our clients to determine those needs and to offer custom, tailored solutions. Our strategies are data-driven and verified through our Retail360® Process.

## On-the-Ground Analysis

Just as each client has their own set of needs, we know that each client has a unique position in the marketplace as it competes to recruit new retailers. We spend time in your community with leaders and stakeholders, which enables us to determine your market position and identify retailers that fit your community.

## Action Plan for Retail Growth

We analyze, recommend, and execute aggressive strategies for pursuing the ideal retailers, as well as coaching our clients through the recruitment and development process. This partnership typically produces the best results when, together, we derive short-term and longterm strategies based on market data and opportunities.





# What Makes Us Different

## Our Team is Your Team

We take a partnership approach and become an extension of your team. Our clients are invited to participate in the recruitment process, allowing you to learn and expand your network.

## We are Flexible & Agile

We have intentionally kept our team size optimal in order to keep the ability to adapt and change. This helps us continue to develop new programs and lead through innovation.

## Always Fully Transparent

We track recruitment activity and prospect feedback in your custom retail recruitment dashboard and host monthly calls with your team to keep you updated on progress.

## We Avoid Conflicts of Interest

We are not brokers, and we do not have to answer to in-house agents looking for a commission. Our interests are always in line with your vision and what's best for your community.

## Experienced & Connected

We pioneered the retail recruitment industry more than 20 years ago and leverage more than two decades of experience and relationships to help drive retail growth in your community.

## We use Consistent Project Teams

We do not have a sales team that hands you off to a face once the project begins. You will keep the same point of contact from start to finish to ensure a consistent, open line of communication.





Your  
**Project Team**

## Your Project Team

# Leadership Structure



### Day-to-Day Project Management



**Kyle Cofer**  
Project Director



**Charles Parker**  
Project Director

Kyle and Charles oversee The Retail Coach projects in the Southeast, in addition to the SmallBiz360 and Training Programs. Kyle is located in our Tupelo office and Charles is in our Dallas office. They will both be the contacts for the entirety of your project.

### Leadership & Project Strategy



**Kelly Cofer, CCIM**  
Founder & CEO



**Aaron Farmer**  
President

With more than 50 combined years of retail development experience, Kelly and Aaron play an integral role in every project for The Retail Coach, including in-depth market analyses, recruitment strategies, and development plans for our clients.

### Retailer Recruitment



**Cary Everitt**  
Recruitment Specialist



**Caroline Hearnberger**  
Recruitment Specialist

Cary and Caroline manage our relationships with national and regional retailers, brokers, site selectors, and developers. They execute our recruitment process, including the site submission process and retailer feedback.

### Data & Market Research



**Matthew Lautensack**  
Director of Research

Matthew uses cutting-edge, GPS-based market data to pinpoint true opportunity in retail markets. He provides the latest retail trade area data and prepare our clients' market reports.

### Administrative Support



**Nancy Dees**  
Director of Finance



**Rylee Lefevre**  
Marketing Manager

Nancy and Katie support all projects by managing client invoicing and contract needs, as well as marketing, promotional, and graphic design support.



## Your Project Team

# Instructor & Speaker Experience

As the pioneer of proactive retail recruitment and development services, The Retail Coach team is frequently sought after for speaking engagements and instructor roles for conferences, trainings, basic economic development courses, and other industry events.

Here are a few of the events and courses in which our team has recently presented:

### IEDC: Basic Economic Development Course (TX, AR, CO)

Session Title: "Retail Recruitment in Economic Development"

### National League of Cities: Small Cities Conference

Session Title: "Small Cities, Big Demand"

### Southern Municipal Leagues: Annual Conference

Session Title: "Building the Right Retail Recruitment Strategy"

### EDC of Colorado: Drive I Lead I Succeed Conference

Session Title: "Retail is Changing...Is Your Community Ready?"

### Main Street America: Main Street Now! Conference

Session Title: "Business Attraction & Retention Strategies"

### Stand Up Rural America: Annual Conference

Session Title: "The Reality of Rural Retail Recruitment"

### Illinois Financial Forecast Forum: Annual Conference

Session Title: "Dynamic Trends in the Retail Environment"

### International Council of Shopping Centers: RECON

Session Title: "Developers & Retailers: The New Power Couple"





# The Retail Coach: **Approach**

## Project Outline & Deliverables

# Analyzing the Market



Understanding your true customer base is critical to quantifying the demand for new retail and restaurant development. The Retail Coach uses real data **collected from actual customers** in your community to analyze trade area boundaries, competitive markets, and leakage. This high confidence data allows our team to “tell your story” and show potential investors why they need to be in your market.

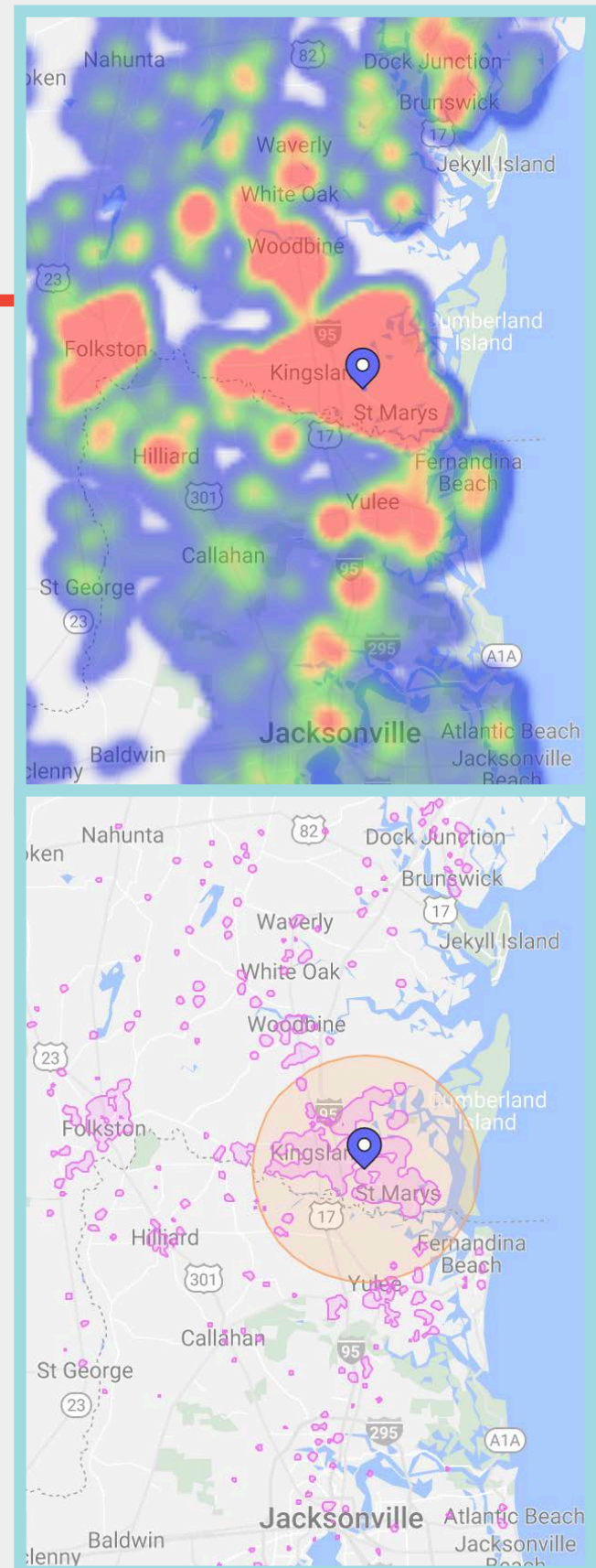
### High Impact Mobile Location Data Analysis

#### Case Study: Mariner's Point Shopping Center

We explore the top 90% of Consumer Foot Traffic (collected via mobile location data) to analyze where consumers are regularly traveling from to shop in the Camden retail market.

These maps depict the home locations of consumers shopping at the Walmart-anchored Mariner's Point Shopping Center over the last 12 months. When overlaid with a 10-mile radius, consumer distribution illustrates the regional draw this shopping node has. Kingsland appears to be a primary shopping destination for many residents of Folkston, but also draws a significant number of customers from Yulee and Woodbine. Using a simple radius demographic analysis would under-represent the market that this Walmart and adjacent retailers are serving.

A strong retail recruitment strategy will illustrate to potential investors how the area serves a much wider customer base than just a radius or a drive time - and mobile location data is a great tool to utilize to help change existing (and likely antiquated) impressions of a retail market.





# Determining Retail Opportunity

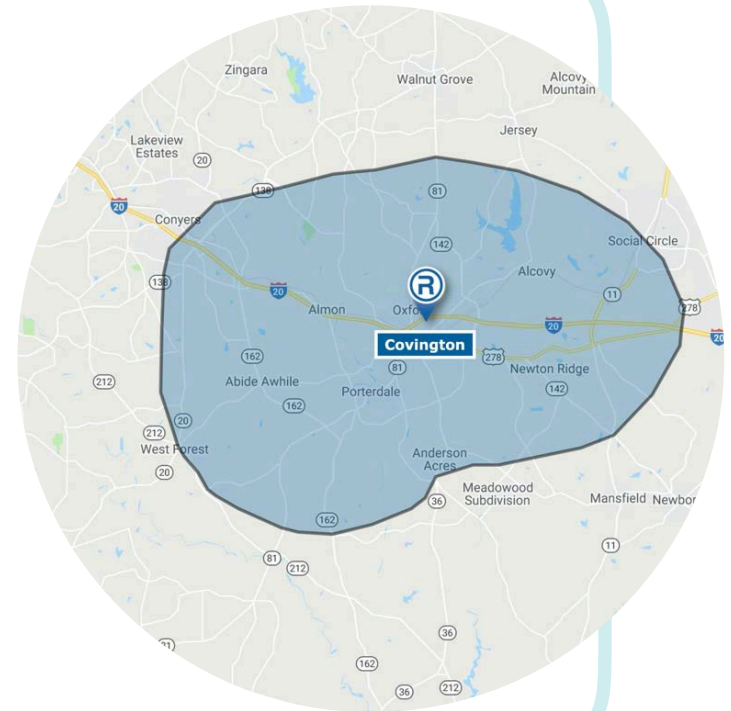


The Retail Coach will perform extensive market research and analysis to evaluate the local retail market. This “macro” to “micro” approach enables The Retail Coach to analyze competitive and economic forces that may impact the community’s retail recruitment and development plan.

## Custom Retail Trade Area Analysis:

The Retail Trade Area is the geographical area from which the community’s retailers derive a majority of their business. It is the foundational piece of the retail plan and its accuracy is critical.

The Retail Coach will create custom-drawn retail trade areas for your community based on cell phone mobile location/GPS data from shoppers as well as on-the-ground analysis from The Retail Coach team.



### Trade Area Determinations

Custom, drive-time, and radial retail trade areas will all be analyzed

### Retail Leakage Analysis

Gap analysis of supply & demand, includes Pull Factor (Leakage Index)

### Demographic Profile Analysis

Full Demographic profiles for all RTAs, County, and your community

### Retail Demand Outlook

Expenditures by sector, with expected growth projections

### Psychographic Profile Analysis

Full Tapestry profiles for all RTAs and your community

### Retail Expenditures Analysis

Breakdown of expenditures and spending potential, by sector

### Competing Community Analysis

Overview of competing markets and competitive advantages

### Consumer Spending Report

Patterns and Marginal Propensity to Spend for Consumers in the market

### Peer Community Analysis

Overview of similar retail markets and potential for growth

### Visitor Analysis

Explores foot traffic and preferences of travelers from other areas

# Identifying Development Opportunity



Retail site selection has evolved from an art to a science - brands are making decisions based on hard data and strict parameters based on past performance of existing locations. Those parameters and site criteria set up expectations for communities looking to recruit them, but can also serve as an indication of where communities need to invest their resources.

## Retail Real Estate Analysis:

The Retail Coach will review the existing real estate market and execute a **Highest & Best Use Analysis** of the key retail corridors in your community. This will identify key sites in the area that are prime for development or redevelopment, and help the County begin to strategize where resources need to be allocated to best position the County for new retail and restaurant recruitment.

Retailers are interested not only in the market data on your community, but also in evaluating all available property vacancies and sites that fit their location preferences. The Retail Coach will identify priority retail vacancies and development/redevelopment sites to market.

The Retail Coach will create a **Retail Site Profile** for each identified vacancy and site with current site-specific information, including:

- Location
- Aerial photographs
- Site plan
- Demographic profile
- Property size and dimensions
- Traffic count
- Appropriate contact information





## Identifying Retailers for Recruitment

The Retail Coach is the first national retail recruitment firm to introduce retailer and developer recruitment specifically for communities. More than 20 years and over 650 projects later, the recruitment of retailers remains our primary focus and the primary metric of success - and starting with a strong prospect list sets a strong foundation for attracting new retail.

### Target Retailer & Restaurant Match List:

The Retail Coach will target national and regional retail brands that are a good “fit” for the community. This means that we take into account several factors....

- What type of consumers are in the market, bases on the Retail Trade Area population, demographics, and psychographics.
- Which sectors are not currently meeting demand and therefore have a high leakage index, or have projected demands that will require new business additions to meet.
- Current and future corporate strategies for brand expansion and new locations in the region, and specific to Alabama.
- Available real estate locations and vacancies that are attractive, and attainable for specific uses/concepts.
- Peer Community Analysis results that indicate the your market would support a specific brand or concept.

**five BELOW**



**Marshalls**



**Publix**



## Project Outline & Deliverables

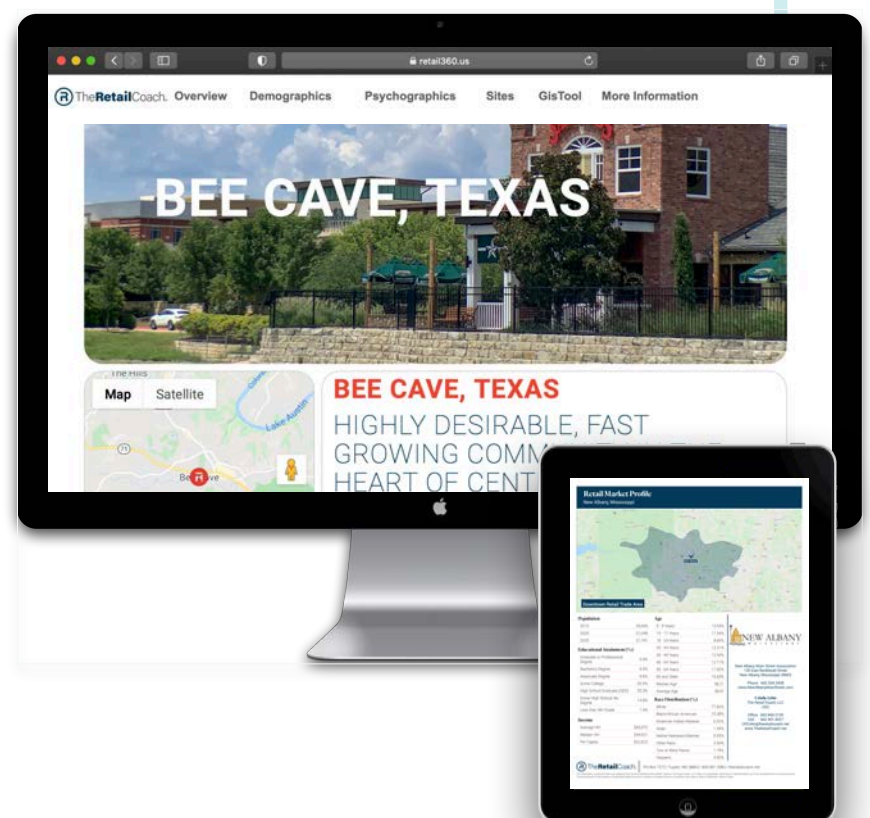
# Marketing & Branding



To attract targeted retailers, the most critical step is to provide accurate and current community data and site-specific information on available opportunities. It is important that this marketing information positively reflects the community's attributes and brand to site selectors, real estate brokers, and developers, because it is essential in making initial decisions about locating in the community.

### Online Retail Dashboard

The Retail Coach will create a Retail360® Retail Dashboard for your community, which will be available for visual presentation and easy downloading of all data sets and marketing information. With a few clicks, retailers, brokers and developers can learn about your community's retail potential like never before.



### Retail Market Profile

The Retail Coach will develop a Retail Market Profile tailored to the specific needs of targeted retailers' essential site selection and location criteria for your community. The profile serves as a community introduction, and includes: Retail Trade Area map, location map, traffic count, demographic profile summary, appropriate logo and contact information.

### Developer & Retailer-Specific Opportunity Packages

In addition to the more general Retail Market Profile, an Opportunity Package is developed to send specifically to developers, real estate departments, or brokers for individual retailers, and highlights the market characteristics and site availabilities that align with their retail site needs.



## Recruitment of Retailers & Developers

The Retail Coach was the first national retail recruitment firm to introduce direct retailer and developer recruitment services specifically for municipal clients. **Twenty years and 650+ projects later, the recruitment of retailers remains one of the primary metrics of success.** Today, our experience has proven that a community must move beyond just gathering data sets, and proactively recruit retail to achieve their development goals.

### Retailer & Developer Recruitment

The Retail Coach will actively recruit retailers on your behalf. Our retailer recruitment process includes:

- Introductory emails and retail market profile are sent to each targeted retailer.
- Personal phone calls are placed to measure interest level.
- Personal emails and retailer feasibility packages are sent to each targeted retailer.
- Personal emails and retail site profiles for prime vacancies are sent to the appropriate targeted retailers.
- Personal emails are sent to inform targeted retailers of significant market changes.
- Personal emails are sent to decision makers once per quarter to continue seeking responses regarding their interest level in the community.
- A retailer status report is provided with each retailer's complete contact information and comments resulting from recruitment activities.

### Retail Industry Conference Representation

We help communities connect with retailers and developers at retail conferences such as the annual ICSC Recon Conference and other regional events.

More than just, “having conversations on your behalf”, we will help your team prepare for the event, attend the event with your team, and even work to set up meetings with key contacts for your team. We want all of our clients to be as **involved in the process** as they like to be, and growing your network at these events can be beneficial to ultimate, long-term success.





# The Retail Coach: **Experience**

## The Retail Coach: Experience

# Project References



Contact:

**Kristy Crisp**  
*Director of Economic Development*  
City of Gastonia, North Carolina  
kristyc@cityofgastonia.com  
704-842-5105



Contact:

**Suzi Sale**  
*Economic Development Director*  
City of Camden, South Carolina  
ssale@camdensc.org  
803-420-7882



Contact:

**Serra P. Hall**  
*Director of Commercial Development*  
Newton County IDA, Georgia  
skphillips@selectnewton.com  
770.786.7510



Contact:

**Rosemary Bates**  
*Special Projects Director*  
Gallatin EDA, Tennessee  
rosemary.bates@gallatintn.gov  
615.230.7953



“The Retail Coach is hands-down one of the best consultant teams of any kind that our team has had the pleasure of working with. Their extensive expertise and nationwide connections with site selectors, developers, and major chains have opened up new doors for the City, allowing us to take our recruitment efforts to the next level and collaborate with brands that hadn’t previously considered our market.

They work as an extension of our staff, anticipating needs and freeing up in-house staff time. I can’t recommend the Retail Coach highly enough.”

Chenin Dow: Economic Development Manager (Lancaster, California)

“Thank you for Gallatin's partnership with The Retail Coach. Charles Parker and his team have been very beneficial in helping my development find retail tenants. We have currently signed [multiple tenants] with their help and guidance.”

Brad Jolly: Developer (Gallatin, Tennessee)

“The Retail Coach has truly been the teammate I needed to achieve our goals in the retail and commercial sector. Their always-prompt response and ability to use data to support quality development and foster long lasting relationships have made a difference in our connections and community. The Retail Coach staff has been an outstanding extension of our office and our community.”

Serra Hall: VP, Project Development (Newton County, Georgia)



“As a customer of The Retail Coach I have witnessed first-hand success with Aaron Farmer and his skilled team. The staff at The Retail Coach delivers the knowledge, skill, and rapport necessary to recruit retail into regions seeking progression, all while taking the difficulty away from the municipalities. They are a strong catalyst in retail expansion for any community that is looking for increased economic growth.”

Sean Overeynder: City Manager (Lamesa, Texas)

“After visiting our city, The Retail Coach staff were able to quickly recognize the challenges of our rapidly growing community and identify submarkets for retail attraction. The time they spent in the community and surrounding areas, meeting with community representatives and really working to understand our retail challenges, made the difference.”

Michelle Hill: Economic Development Director (Firestone, Colorado)

“For years I researched firms to help me with retail development and The Retail Coach continued to surface as the best choice provider. Over and over again I heard about their ‘service after the sale.’ This was important. You see a lot of firms can run data and put together fancy reports. What allows The Retail Coach to stand out is their coaching. A tool is useless unless someone ‘coaches’ you on the best way to utilize it. When you hire The Retail Coach you are not just buying data, you are hiring a coach to help you with your retail development needs. I highly recommend them to any community seeking to effectively recruit retail development.”

Dave Quinn: Economic Development Manager (Fairview, Texas)





“The Retail Coach organization has a proven track record of accurately portraying a community, providing the information needed to help prospective retailers see the community. They are well respected among retail chains and retail site locators. They take the time to visit the community- boots on the ground if you will and they will visit with retailers and learn all they can about the community before publishing their work. Another factor in this is the company is constantly seeking out new technology to improve their results- they have the tools and the talent.”

Charlie Smith: Former Executive Director (Mount Pleasant, Texas)

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“We chose to work with The Retail Coach because the City wanted to help direct the type of retail coming to the City, helping to ensure it meets demands and fills a need. The Retail Coach also provides a strong local component, assisting our existing, local retail establishments to respond to today’s competitive environment so they too can thrive.”

Steve Brodsky: City Manager (Xenia, Ohio)

“We were pleased that The Retail Coach does not apply a ‘one size fits all’ approach to retail growth. Their team has a national reputation for adapting tried and true strategies to suit the individuals needs and unique characteristics and in the communities in which they work. Beyond that, The Retail Coach’s team develops long term relationships with their clients which extends well past the performance period of their professional services contracts. We expect that when The Retail Coach’s work in Laramie is complete, we and our partners will be emboldened to take on complex retail issues, but if we hit a snag along the way, The Retail Coach’s team will be just a call or text away.

Sarah Reese: City Manager (Laramie, Wyoming)



Cost Proposal:  
**Retail Market Analysis &  
Recruitment Services**



# Retail Market Analysis & Recruitment Services

## **Deliverables & Responsibilities**



### **Analyzing the Market**

Retail Trade Area (RTA) Determination based on Mobile Location Technology

### **Determining Retail Opportunities**

Retail Trade Area & Community Demographic Profiles (Historical, Current, and Projected)

Retail Trade Area Psychographic Profiles

Retail Gap Analysis & Demand Outlook

Retail Expenditures & Consumer Spending Reports

Competing & Peer Community Analysis

Visitor Analysis

### **Identifying Development Opportunities**

Community-wide sites inventory

Highest & Best Use Analysis of priority sites/vacancies

5 Retail Site Profiles

### **Identifying Retailers & Developers for Recruitment**

Target list of priority retail/restaurant prospects

### **Marketing & Branding**

Retail Market Flyer (RMF)

Retailer Feasibility Packages

Developer Opportunity Package

Online Retail360 Dashboard

### **Recruiting Retailers & Developers**

Proactive Retail Recruitment & Recruitment Updates

Retail Industry Conference Representation

Live Retail Recruitment Tracking Platform

### **Retail Coaching**

Leadership Strategy Sessions

Ongoing Coaching & Project Management with Monthly Update Calls

## Retail Market Analysis & Recruitment Services

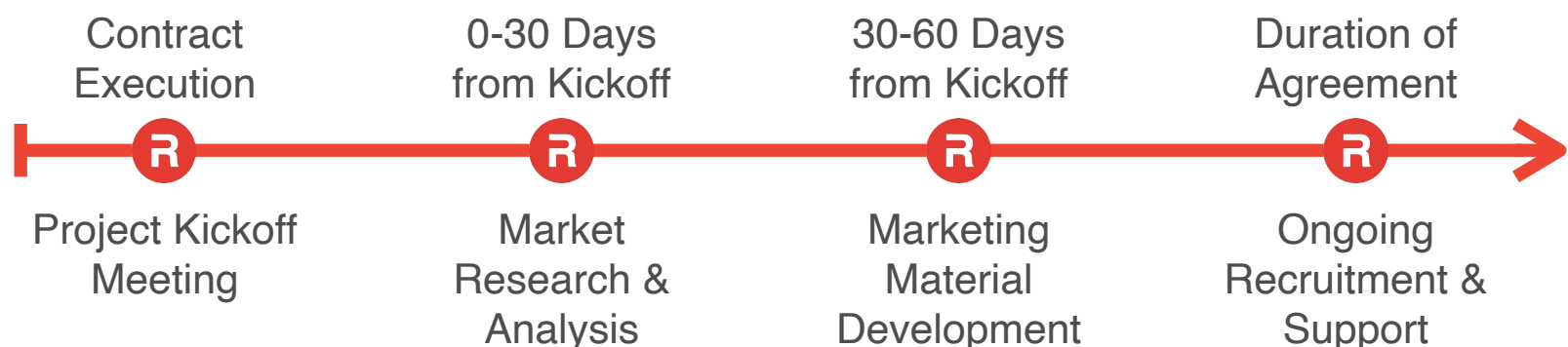
# Project Costs & Timeline



### Retail Market Analysis & Recruitment Services

**\$42,000**  
(Not to Exceed Amount)

#### 12 Month Project Timeline



### Work Fees

The duration of this agreement is twelve (12) months, with a fee for completion of outlined work of **\$40,000**, payable in two installments:

- a) \$20,000 upon execution of the agreement;
- b) \$20,000 at 180 days after execution of agreement.

The City of Anniston may elect to extend the agreement for a total fee of \$30,000 per 12 month extension period.

### Reimbursable Project Expenses

It is estimated that reimbursable expenses will be no more than \$2,000 (not to exceed amount). Reimbursable expenses include:

- a) All travel costs;
- b) Cost of special renderings and maps, if any;
- c) Cost of copies for reports and maps/drawings; and
- d) Cost of shipping expenses, if any.

\*All Work Fees and Project expenses are payable within 30 days after receipt of the expense invoice. The Retail Coach will provide a digital copy of the deliverables.





## Contact Information:

Kyle Cofer

Project Director

kylecofer@theretailcoach.net

662.319.7144

Charles Parker

Project Director

cparker@theretailcoach.net

662.231.9078



**RESOLUTION NO. 22-R-\_\_**

**AUTHORIZING PROFESSIONAL SERVICES AGREEMENT  
WITH SAIN ASSOCIATES**

WHEREAS, the City requires civil engineering and construction inspection services for the public works project for the repaving of Leighton Avenue from the northern end of East 22<sup>nd</sup> Street to the southern end of O Street;

WHEREAS, Sain Associates has submitted the attached proposal, dated September 20, 2022, to provide the professional services required for this project;

WHEREAS, the Council finds that Sain Associates is uniquely capable of meeting the professional services needs of the City with respect to the scope of work identified in the proposal, and Sain Associates is highly skilled and equipped to provide these professional services;

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

The City Manager is hereby authorized to engage Sain Associates on the terms set forth in the proposal, attached hereto, to provide the professional services identified in the scope of work. The City Manager is authorized and directed to take such actions as are necessary and appropriate to obtain and utilize these professional services, including the payment of compensation to Sain Associates at the rates and amounts specified in the attached proposal.

PASSED AND ADOPTED on this the \_\_\_\_ day of \_\_\_\_\_, 2022.

COUNCIL OF THE CITY OF  
ANNISTON, ALABAMA

\_\_\_\_\_  
Jack Draper, Mayor

\_\_\_\_\_  
Jay Jenkins, Council Member

\_\_\_\_\_  
Demetric Roberts, Council Member

\_\_\_\_\_  
Ciara Smith, Council Member

\_\_\_\_\_  
Millie Harris, Council Member

ATTEST:

\_\_\_\_\_  
Skyler Bass, City Clerk



**SAIN**  
ASSOCIATES

September 20, 2022

Mark Wilson  
Public Works Engineer  
P.O. Box 2168  
Anniston, AL 36202

Two Perimeter Park South  
Suite 500 East  
Birmingham, Alabama 35243  
Telephone: (205) 940-6420  
[www.sain.com](http://www.sain.com)

SUBJECT: City of Anniston – Leighton Ave Re-Paving (2.94 miles)  
SA Project #220257

Dear Mark:

We appreciate the opportunity to submit this proposal for Civil Engineering design and Construction Inspection Services to repave approximately 2.94 miles of Leighton Avenue in Anniston, AL. Following is a description of our understanding of your project and the scope of services that we propose to undertake.

#### General Project Understanding

Based on our meeting earlier this month, we understand that the City of Anniston plans to mill & overlay approximately 2.94 miles of Leighton Avenue from East 22<sup>nd</sup> Street at the northern end to O Street at the southern end. Asphalt patching, striping, minor curb repair and traffic control are anticipated to be a part of this project. Please note that we are excluding and drainage or utility infrastructure modifications from this scope. We understand that this project is funded with local money and federal and state guidelines do not apply to the project other than using the ALDOT standard specifications for using construction pay items.

#### Scope of Services

Sain will develop a bid package for re-paving Leighton Ave based on ALDOT standard pay items. Please note that we will use County GIS data to estimate bid quantities and no ground run survey will be performed. Once the City approves advertising of the project, Sain will handle the advertising and bid opening. We will review all submitted bids and make a recommendation to the City on awarding the contract.

During the construction phase, Sain would provide 1 full time inspector to inspect the project. He would mark locations for patching prior to paving, track application rates, and calculate quantities for payment to the contractor. He would also perform visual inspections of workmanship and materials. A project manager would also be utilized on a part time basis as needed.

#### Exclusions

The following services are excluded from this proposal but can be provided if deemed necessary and requested by you:

- Materials Testing
- Survey



Re-paving of Leighton Ave  
Mark Wilson-Public Works/Engineering  
September 20, 2022



- Pavement Rehab Design
- Modifications to drainage or utility infrastructure

#### Fees

We propose to provide the above described services based on the following fee schedule:

Bid Package & Contracting.....	Lump Sum Fee of \$29,500
Construction Inspections .....	Hourly with estimated budget of \$45,000
Total Estimated Budget.....	\$74,500

Reimbursable expenses such as printing, shipping, plan/permit application fees, mileage, etc. are included in the above estimate. The Construction Inspections budget is based on an average of \$7500 per week for an estimated 6 weeks of construction.

#### Procedures for Changes in Scope of Work

The scope of work documented herein is based upon information known as of the date of this proposal. Should future changes (e.g. site plan, regulatory, project phasing, additional meetings, etc.) necessitate changes in the scope of work, we will contact you to discuss the scope of the additional work and its impact to our contracted fees and project schedule. No additional work will be undertaken by Sain or our subconsultants without your authorization.

#### Terms and Conditions

This contract is subject to the enclosed Terms and Conditions. All subsequent services required by you outside the scope of service specified will be performed on a time and materials basis according to the schedule of rates enclosed. Any modification to this contract document must be approved in writing by both parties with approval indicated by each signatory's initials and the date of approval.

#### Proposal Limitations

We reserve the right to withdraw or modify this proposal if not contracted within 60 days.

#### Schedule

Upon approval of this proposal, Sain will work with you to establish a schedule.

Thank you for the opportunity to provide this proposal. If you have any questions or need clarification on any item, please call me. We look forward to working with you.

Re-paving of Leighton Ave  
Mark Wilson-Public Works/Engineering  
September 20, 2022



Sincerely,

SAIN ASSOCIATES, INC.

Stefan Graeber, PE  
Team Leader  
Alabama PE 26311

Enclosures:  
Sain Terms & Conditions (sch. 2022)

OFFERED:  
SAIN ASSOCIATES, INC.  
BY: Joe Meads, PE #17103  
Principal / Owner

\_\_\_\_\_  
Signature of Authorized Representative

Date: \_\_\_\_\_

ACCEPTED:  
CITY OF ANNISTON

BY: \_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Print Name & Title

Date: \_\_\_\_\_



## SAIN ASSOCIATES, INC. TERMS AND CONDITIONS

### Rates:

Principal .....	\$190.00 - \$275.00 per Hour
Engineer/Planner .....	\$98.00 - \$148.00 per Hour
Senior Engineer .....	\$150.00 - \$210.00 per Hour
GIS Professional .....	\$125.00 - \$135.00 per Hour
Designer .....	\$87.00 - \$125.00 per Hour
Surveyor .....	\$100.00 - \$140.00 per Hour
Survey Crew (1-Person) .....	\$100.00 per Hour
Survey Crew (1-Person + Robot) .....	\$150.00 per Hour
Survey Crew (2-Person) .....	\$175.00 per Hour
Survey Crew (3-Person) .....	\$215.00 per Hour
Survey Per Diem .....	\$150.00 per person per Night
Administrative Support .....	\$60.00 - \$75.00 per Hour

### Reimbursable Expenses

Printing, contract carrier service, and travel expenses are not included within Consultant's basic fee and will be passed along to Client at cost plus 10%.

### Payment

Payment for services by Consultant is to be made monthly based upon the percentage of work completed and invoiced to Client. Client's obligation to pay for services rendered hereunder is in no way dependent upon its ability to obtain financing, to obtain payment from a third party, or to obtain approval of any governmental or regulatory agencies, or upon Client's successful completion of the project. Payment for services and expenses hereunder is due in full within thirty (30) days after receipt of invoice. For past due accounts in excess of 120 days Consultant will issue a past due statement with interest of 1½% per month from said thirtieth (30th) day. Consultant may elect to seek assistance in collection of accounts in excess of 120 days in which case Client will be billed for attorney's fees for collection in the amount of 1/3 of the outstanding balance or such greater amount as the court finds reasonable. Consultant reserves the right to suspend services under this agreement until receipt of payment in full for all amounts due for services rendered and expenses incurred.

### Standard of Care

The standard of care for all professional services performed or furnished by Consultant under this Agreement will be the skill and care ordinarily provided by members of Consultant's profession practicing under the same or similar circumstances and professional licenses at the same time and in the same locality, as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of Consultant's profession. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

### Responsibility of the Client

Client shall provide all criteria and full information as to Client's requirements for the Project, including budgetary limitations.

### Reliance on Information Provided by Others

Consultant shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's Consultants and Contractors, and information from public records, without the need for independent verification.

### Schedules, Budgets and Estimates or Opinions of Cost

Any schedules or completion dates, budgets, or estimates of cost prepared by Consultant represent Consultant's professional judgment based on its experience and available information. Since neither Consultant nor Client has control over: the cost of labor, materials, or equipment, or contractor's methods of determining prices; competitive bidding or market conditions; utility conflicts or right-of-way acquisition; agency approval times or actions of a Consultant Program Manager not employed by Sain, the Consultant cannot and does not warrant or represent that actual schedules, budgets or completion dates or actual costs will not vary from schedules or completion dates, budgets or estimates of cost prepared by Consultant or proposed, established, or approved by Client.

### Approvals

Client agrees and acknowledges that the approval process necessary to maintain a project timeline is both unpredictable and outside of the Consultant's control. Consequently, the Consultant makes no representations as to its ability to timely achieve or to obtain said permits or approvals from any governing authority or outside agency.

### Site Visits/Job Site Safety/Construction Phase Services

Consultant and Client acknowledge and agree that the Consultant shall not have responsibility and will not be liable for job site safety or construction means and methods, regardless of whether Consultant's scope of services documented herein include site visits during the construction phase. The Consultant is not responsible for, and shall by no means be liable for, the acts or omissions of any owner, contractor, subcontractor or material supplier.

### Right of Entry

Client, at its sole cost and expense, shall furnish the Consultant, its agents, employees, and subcontractors a right-of-entry and any other authorizations or licenses needed for Consultant to enter the Project location to perform the services contemplated by this Agreement. Client agrees and acknowledges that



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the services provided by the Consultant may require certain activities that may disrupt the use of the Project's property location and may disturb, alter, or damage the terrain and vegetation thereabout and that Consultant will not restore the property to its original state.

#### **Certifications**

Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant's having to certify, guaranty, or warrant the existence of conditions that Consultant cannot ascertain or verify. Further, Consultant and Client acknowledge and agree that Consultant shall not be expected to provide any certifications unless expressly agreed upon by Consultant, as evidenced in writing within the scope of Consultant's work invoiced to Client.

#### **Unforeseen Conditions and Occurrences**

If, during the course of performance of services pursuant to this Agreement, any unforeseen hazardous substance, material, object, element, or other unforeseen conditions or occurrences are encountered which, in the Consultant's judgment, materially affects or may affect the services to be provided hereunder, the risk involved in providing the services, or the scope of the services, Consultant will notify Client. Subsequent to that notification, Consultant may: (a) if practicable, in Consultant's judgment and with Client's approval, complete the original scope of services in accordance with this Agreement; (b) agree with Client to modify the scope of services and the estimate of costs to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the Parties and incorporated herein; or (c) terminate the services effective on the date of notification for convenience.

#### **Use of Electronic Media**

Copies of documents that may be relied upon by the Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format or text, data, graphic or other types that are furnished by Consultant to Client are only for convenience of the Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application, operating systems or computer hardware differing from those in use by Consultant at the beginning of this assignment.

#### **Limitation of Remedies**

Liability of remedies of Sain Associates, Inc. resulting from errors, omissions, or the negligence of Sain Associates, Inc., its agents or employees, pursuant to work under this agreement shall not exceed the lesser of the value of engineering or surveying services required to correct the deficiency or the basic consulting fee for work covered hereunder or the actual cost of the remedies. This provision is being agreed to as a result of the fees being charged.

#### **Consultant's Choice of Arbitration or Court**

Client and Consultant agree that if a dispute arises out of or relates to this Agreement, the parties will attempt to settle the dispute through good faith negotiations. If direct negotiations do not resolve the dispute, the parties agree to endeavor to settle the dispute by mediation prior to the initiation of any legal action unless delay in initiating legal action would irrevocably prejudice one of the parties. Mediation shall take place in Jefferson County, Alabama, and if a mediator cannot be agreed upon by parties, then it is agreed that AAA (American Arbitration Association) will appoint a mediator. If mediation is unsuccessful, any such dispute shall be subject to and resolved at the election of Consultant, by either arbitration in accordance with the Rules of the AAA or by a trial by judge in either the Circuit Court for Jefferson County, Alabama, or the United States District Court for the Northern District of Alabama.

#### **Indemnification**

Client and Consultant each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence.

#### **Force Majeure**

Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.

#### **Termination of Contract**

Client may terminate this Agreement with seven days prior written notice to Consultant for convenience or cause. Consultant may terminate this Agreement for cause with seven days prior written notice to Client. Failure of Client to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Consultant has been paid in full all amounts due for services, expenses and other related charges.

#### **Ownership of Documents**

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein. Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of constructing, occupying and maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or Client's disclosure of any such documents to any third party.

#### **Third Parties**

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Consultant. Consultant's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against Consultant because of this Agreement or Consultant's performance of services hereunder.

#### **Consequential Damages Waiver**

Neither the Client nor the Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

#### **Conflicting or Inconsistent Terms/Severability**

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In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any provision of this Agreement which is held to be void or unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions.

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## **ORDINANCES**