

CITY OF ANNISTON
December 5, 2023
5:30 P.M.

- **INVOCATION**
- **PLEDGE OF ALLEGIANCE**
- **CALL TO ORDER**
- **ROLL CALL**
- **READING/APPROVAL OF MINUTES OF PREVIOUS MEETING**
 - November 21, 2023
- **ADDITIONS/DELETIONS TO THE AGENDA**
- **ADOPTION OF AGENDA**

I. BOARD CONFIRMATION

- (a)** Shea Miller – Anniston Museum & Gardens

II. 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.

III. UNFINISHED BUSINESS

IV. MOTIONS

- (a) Resolution adopting Calendar Year 2024 Administrative Fee Schedule
- (b) Resolution authorizing 1st Amendment to the City of Anniston Agreement with BFI Waste Services, LLC d/b/a Republic Services of Anniston
- (c) Resolution authorizing the Mayor to execute an Agreement with the State of Alabama Department of Transportation and the City of Anniston for a Transportation Alternatives Program (TAP) Project No. TAPAA-TA24(918)
- (d) Resolution of the Mayor and Council of the City of Anniston, Alabama, authorizing an amendment of the Fiscal Year 2022 Annual Action Plan Under the Community Development Block Grant (CDBG) Program
- (e) Resolution authorizing a Professional Services Agreement with Tucson Atlantic Consulting
- (f) Motion to approve Shea Miller to Position 9 in the unexpired term ending 10/31/2025 to the Anniston Museums and Garden Board

V. ADDITIONAL OR OTHER MATTERS THAT MAY COME BEFORE COUNCIL

VI. 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) Glen Ray – 3514 Dale Hollow Road, Anniston, AL
- (b) Richard Jackson – 2317 Noble Street, Anniston, AL

COUNCIL COMMENTS

ADJOURNMENT

MINUTES

Anniston, Alabama

November 21, 2023

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, November 21, 2023, at approximately 5:30 o'clock p.m.

Ciara Smith, Council Member, prayed the Invocation.

Ciara Smith, 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.

David Arnett, Public Works Director, was present.

Bruce Downey, City Attorney, was present.

Council Member Smith made a motion to waive the reading of and approve the minutes of the November 7, 2023 regular meeting. 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 November 7, 2023 regular meeting minutes were approved.

Mayor Draper made a motion to adopt the agenda. The motion was seconded by Council Member Roberts 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 Jenkins made a motion to approve a Retail Beer (Off Premises Only) and Retail Table Wine (Office Premises Only) for Circle K Stores Inc., d/b/a Circle K Store 2709324 located at 1443 Lenlock Lane within the police jurisdiction. 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 to reject the bid opened on Monday, November 13, 2023 seeking competitive bids for Unit Price Concrete Supplier. 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 Jenkins made a motion to reject the bid for Anniston Fire Station #4 reroofing to seek alternate funding sources and address any guidelines required for those sources. 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 to approve the bid for the remodel of the Anniston Historic Courthouse (new City Hall) to Bradshaw and Pitts in the amount of \$6,131,000.00. 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.

Mayor Draper introduced the Ordinance declaring surplus real property and authorizing conveyance of the same. (1st Reading)

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

Mayor Draper opened a public hearing to receive public comments on reading the ordinance by title only. No One Spoke. Mayor Draper closed the public hearing on receiving public comments on reading the ordinance by title only.

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 Jenkins made a motion for unanimous consent for immediate consideration of the ordinance declaring surplus real property and authorizing conveyance of the same. 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.

Mayor Draper made a motion for passage and adoption of the ordinance declaring surplus real property and authorizing conveyance of the same. 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 the ordinance was passed and adopted. (23-0-9)

Bryan Newell, 4104 Melanie Drive Moody AL, addressed the city council on his campaign for Congress, Alabama 3rd District.

Council Member Jenkins congratulated Bradshaw & Pitts on the award of the new city hall remodel bid. He stated that it is important to point out a good amount of their subcontractors are all from Anniston. He stated that this facility will serve the City of Anniston for the next 100 years.

Linda Peters with the Calhoun County Veteran's Organization stated that they have put on the Veteran's Day Parade for a long time. She thanked the city for all their assistance. She stated that there were 3 WW2 veterans at this event.

Council Smith wished everyone a Happy Thanksgiving.

Council Member Harris wished everyone a Happy Thanksgiving.

Mayor Draper stated that he is excited the motion that was approved the new City Hall remodel to Bradshaw & Pitts. He stated that everyone is looking forward to moving back downtown. He wished everyone a Happy Thanksgiving and Holiday Season.

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 Harris; 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 5:44 o'clock p.m.

CONSENT AGENDA

RESOLUTION NUMBER 23-R-___

**A RESOLUTION ADOPTING CALENDAR YEAR 2024 ADMINISTRATIVE FEE
SCHEDULE**

WHEREAS, Chapter 2, Section 2.3.2 of “The Code of the City of Anniston, 1981” authorized the Council to adopt by Resolution an annual fee schedule setting forth the administrative fees to be charged by the City for the services and permits identified therein;

WHEREAS, in consideration of the needs and best interests of the City and its citizens, the Council has duly considered, stated and adopted the appropriate administrative fees to be charged by the City, which are set forth in the Calendar Year 2024 Administrative Fee Schedule;

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

Section 1. The Council does hereby adopt the Calendar Year 2024 Administrative Fee Schedule, which shall set and govern the administrative fees to be charged by the City for the services and permits identified therein.

Section 2. The Calendar Year 2024 Administrative Fee Schedule shall take effect on the 1st day of January, 2024 and shall continue in force and application until amended by resolution of the Council.

PASSED AND ADOPTED this the 5th day of **December, 2023**.

CITY COUNCIL OF THE CITY OF
ANNISTON, ALABAMA

BY: _____
Jack Draper, Mayor

BY: _____
Jay Jenkins, Council Member

BY: _____
Demetric Roberts, Council Member

BY: _____
Ciara Smith, Council Member

BY: _____
Millie Harris, Council Member

ATTEST:

Skyler Bass, City Clerk

RESOLUTION NO. 23-R-__

**RESOLUTION AUTHORIZING 1ST AMENDMENT TO THE CITY OF ANNISTON AGREEMENT
WITH BFI WASTE SERVICES, LLC D/B/A REPUBLIC SERVICES OF ANNISTON**

WHEREAS, on 13th day of December, 2022, the City of Anniston entered into that certain contract with BFI Waste Services, LLC, D/B/A Republic Services of Anniston to provide solid waste collection services to the City; and

WHEREAS, according to the terms of that contract the City is updating Section B. City Facility Collection and Disposal: Attachment A, City Collection Location to include two (2) new facilities; The Dr. Satcher Health Clinic & Community Learning Center and the City Market; and

WHEREAS, according the terms of Section IV. Payment for Services (A) Garbage Collection and Disposal all second carts will be billed by Republic Services directly to the residents; Anniston will not invoice for second carts or keep record/count of second carts;

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

Section 1. That the City Manager of the City of Anniston, be and he is hereby authorized, directed and empowered for and in the name of the City of Anniston to execute the 1st Amendment to the solid waste collection services agreement with BFI Waste Services, LLC, D/B/A Republic Services of Anniston dated December 13, 2022 to include amendments as stated therein.

Section 2. That the City Clerk of the City of Anniston, be and she is hereby directed to attest to the City Manager's execution of said Amendment Agreement and affix the seal of the City thereto.

PASSED AND ADOPTED this 5th day of **December, 2023**.

CITY COUNCIL OF THE CITY OF
ANNISTON, ALABAMA

BY: _____
Jack Draper, Mayor

BY: _____
Jay Jenkins, Council Member

BY: _____
Demetric Roberts, Council Member

BY: _____
Ciara Smith, Council Member

BY: _____
Millie Harris, Council Member

ATTEST:

Skyler Bass, City Clerk

FIRST AMENDMENT TO

AGREEMENT FOR SOLID WASTE COLLECTION SERVICES

This First Amendment (the "First Amendment") executed this ____ day of _____, 2023 (the "Effective Date"), by and between the CITY OF ANNISTON, ALABAMA (the "City") and BFI WASTE SERVICES, LLC, D/B/A REPUBLIC SERVICES OF ANNISTON (the "Contractor")

RECITALS

1. Contractor and City entered into an Agreement for solid waste collection services dated December 13, 2022 (the "Agreement").
2. Contractor and City desire to amend the Agreement as set forth in this First Amendment.

AGREEMENT

NOW, THEREFORE, City and Contractor, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, hereby agree as follows:

1. Section B. City Facility Collection and Disposal. See attached amended Attachment A two new city-owned buildings are being added. The Dr. Satcher Health Clinic & Community Learning Center and the City Market.
2. Section IV. PAYMENT FOR SERVICES. A. Garbage Collection and Disposal. For the purposes of clarification, All second carts will be billed by Republic Services directly to the residents; Anniston will not invoice for second carts or keep a record/count of second carts.
3. Continuing Effect. Except as expressly modified or amended by this First Amendment, all terms and conditions of the Agreement shall remain in full force and effect. In the case of a conflict between the Agreement and this First Amendment, this First Amendment shall prevail.
4. Execution in Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have entered into this First Amendment as of the Effective Date set forth above.

THE CITY OF ANNISTON, ALABAMA

BFI WASTE SERVICES, LLC
d/b/a Republic Services of Anniston

By: _____

Steven D. Folks, Sr.

Its: City Manager

By: _____

Pat George

Its: General Manager

ATTESTED:

ATTESTED:

Skyler Bass, City Clerk

ATTACHMENT A**City Collection Locations**

The following is a list of City and public facilities to which the Contractor shall provide the necessary dumpsters or containers, collection, and disposal services for these facilities at no cost to the City. The City will coordinate the scheduling of these pickups with the successful bidder prior to award.

Facility	Address	Type of Container	Number	Frequency
Airport (Fire Station)	2500 Talladega Hwy	dumpster	1	1x weekly
Anniston City Garage	1215 West 10th Street	roll-off	1	Per City Request
Anniston Museum of Natural History	800 Museum Dr	dumpster	2	Mondays & Thursdays
Anniston Police Department	174 West 13th	dumpster	2	Everyday
Aquatic Center	130 Summerall Gate Rd	dumpster	2	1x weekly
Armory (Street Department)	2501 McClellan Blvd	roll-off	1	Per City Request
Berman Musuem	840 Museum Dr	dumpster	2	Mondays & Thursdays
Cane Creek Golf Course	66 Galloway Rd	dumpster	2	1x weekly
Carver Community Center	720 West 14th Street	dumpster	1	1x weekly
City Dump Site (new)	2421 West 21st Street	roll-off	1	Per City Request
City Hall	4309 McClellan Blvd	dumpster	1	1x weekly
City Market	114 W 11 th St	dumpster/carts	1 dumpster, 5 carts	1x weekly
City Meeting Center	1615 Noble St	dumpster	2	1x weekly
Dr. Satcher Health Clinic & Community Learning Center	426 Mulberry Ave	dumpster	1	1x weekly
Duck Pond Park	91 Summerall Gate Rd	roll-off	1	Per City Request

Edgemont Cemetery	3555 Noble St	dumpster	1	1x weekly
Fire Station #1	225 East 17th St	dumpster	1	1x weekly
Fire Station #2	103 F St	carts	2	1x weekly
Fire Station #3	5304 McClellan Blvd	dumpster	1	1x weekly
Fire Station #4	1923 Cooper Ave	carts	2	1x weekly
Fire Station #5	2500 Henry Road	carts	2	1x weekly
Hill Golf	1341 Johnston Dr	dumpster	1	1x weekly
Incinerator	Charles Daughtery Dr	roll-off	2 (1 for ash, one for trash)	Per City Request
Longleaf Botanical Garden	920 Museum Dr	dumpster	1	Mondays & Thursdays
Micheal Tucker Park	6514 Weaver Rd	roll-off/dumpster	1 roll off, 1 dumpster	dumpster weekly/roll-off per city request
Norwood Hodges Community Center	3125 Spring Valley Rd	dumpster	1	1x weekly
Senior Center	980 Littlebrandt	dumpster	1	1x weekly
South Highland Community Center	229 South Allen Ave	dumpster	1	1x weekly
Train Station	126 West 4th St	dumpster	1	1x weekly
Youth Soccer	745 Summerall Gate Rd	dumpster	2	1x weekly

RESOLUTION NO. 23-R-__

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE
STATE OF ALABAMA DEPARTMENT OF TRANSPORTATION AND THE CITY OF
ANNISTON FOR A TRANSPORTATION ALTERNATIVES PROGRAM PROJECT NO.
TAPAA-TA24(918)**

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

- Section 1. That Jack Draper as Mayor of the City of Anniston, Alabama, is hereby authorized, directed and empowered for and in the name of the City of Anniston, to execute an Agreement with the State of Alabama acting by and through the Alabama Department of Transportation (ALDOT) for Preliminary Engineering and Construction of Michael Tucker Trailhead improvements at the Chief Ladiga Trail; Project No. TAPAA-TA24(918); CPMS Ref #100077841 and #100077845 in Anniston, Alabama being more fully described in the Agreement;
- Section 2. That the Agreement be executed in the name of the City, by its Mayor, for and on its behalf.
- Section 3. That the agreement be attested by the City Clerk and the seal of the City affixed thereto.

PASSED and ADOPTED this 5th day of **December, 2023.**

CITY COUNCIL OF THE CITY OF
ANNISTON, ALABAMA

By: _____
Jack Draper, Mayor

By: _____
Jay Jenkins, Council Member

By: _____
Demetric Roberts, Council Member

By: _____
Ciara Smith, Council Member

By: _____
Millie Harris, Council Member

ATTEST:

Skyler Bass, City Clerk

**PRELIMINARY ENGINEERING
AND
CONSTRUCTION
AGREEMENT
FOR A
TRANSPORTATION ALTERNATIVES PROGRAM
PROJECT**

**BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF ANNISTON
Calhoun County**

**Project No. TAPAA-TA24(918)
CPMS Ref# 100077841 & 100077842**

PART ONE (1): INTRODUCTION

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Anniston, Alabama, hereinafter referred to as the CITY.

WHEREAS, the STATE and the CITY desire to cooperate in the Mike Tucker Trailhead improvements at the Chief Ladiga Trail in the City of Anniston; Project# TAPAA-TA24(918); CPMS Ref# 100077841 and 100077842.

NOW, THEREFORE, it is mutually agreed between the STATE and the CITY as follows:

PART TWO (2): FUNDING PROVISIONS

- A. **Project Funding:** Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization. It is expressly understood that federal funds for this project will be provided from Transportation Alternatives Program (TAP) funds as authorized by the U.S. Congress and the STATE will not be liable for any funding. Cost for the project will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds, based on the contract as let price plus CE&I or the estimated costs below, whichever is lower. Any deficiency in Federal Aid or overrun in costs will be borne by the CITY from CITY funds unless approved in writing by the STATE. In the event of an underrun in project costs, the amount of Federal Aid funds will be the amount stated below, or 80% of eligible costs, whichever is less.

- B. The estimated cost and participation by the various parties is as follows:

PRELIMINARY ENGINEERING

FUNDING SOURCE	ESTIMATED COSTS
Federal TAP Funds	\$ 59,752.00
City Funds	\$ 14,938.00

TOTAL	\$ 74,690.00

CONSTRUCTION

FUNDING SOURCE	ESTIMATED COSTS
Federal TAP Funds	\$ 537,768.00
City Funds	\$ 134,442.00

TOTAL (Incl CE&I)	\$ 672,210.00

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the CITY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the CITY relating to this project which is determined to be ineligible for reimbursement by the FHWA or in excess of the limiting amounts previously stated will not be an eligible cost to the project and will be borne and paid by the CITY.

- C. **Time Limit:** This project will commence upon written authorization to proceed from the STATE directed to the CITY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Board and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

- A. The CITY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost to the Project. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the CITY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which

reimbursement is requested by the CITY. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the CITY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property acquired shall be in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.

The CITY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the CITY from the sale or lease of property.

- B. The CITY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will be an eligible cost to the project, as approved by the application.
- C. The CITY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with CITY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will be an eligible cost to the Project.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the CITY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All cost for which the CITY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the CITY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The CITY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the CITY and approved by the STATE. The plans, including the documents relating thereto, is of record in the Alabama Department of Transportation and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the CITY that failure of the CITY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal funding and the refund of any federal funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for *Procedures for Processing State and Industrial Access Funded County and City Projects*, and attached hereto as a part of this Agreement prior to the CITY letting the contract.

- D. The CITY will furnish all construction engineering for the project with CITY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost to the Project.
- E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The CITY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

- A. The CITY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the CITY to proceed.
- B. Associated Construction costs will be an eligible cost to the Project.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids, and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the CITY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The CITY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the CITY, the CITY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The CITY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this agreement. The CITY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the CITY will provide all bids to the STATE with a recommendation for award. The CITY shall not award the contract until it has received written approval from the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

- C. If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The CITY will be the permittee of record with ADEM for the permit. The CITY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The CITY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

The CITY will secure all permits and licenses of every nature and description applicable to the project in any manner and will conform to and comply with the requirements of any such permit or license, and with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

- D. The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation and the project will be built in accordance with the approved plans.
- E. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITY shall indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents,

servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the negligent, careless or unskillful acts of the CITY its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITY, its agents, servants, representatives or employees, or anyone for whose acts the CITY may be liable.

- F. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the CITY, its agents, servants, employees or facilities.
- G. Upon completion and acceptance of this project by the State, the CITY will assume full ownership and responsibility for the project work and maintain the project in accordance with applicable State law.

PART FIVE (5): ACCOUNTING PROVISIONS

- A. The CITY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The CITY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.
- B. The CITY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.
- C. The CITY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.

All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges, in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.

The CITY will report to the STATE the progress of the project in such manner as the STATE may require. The CITY will also provide the STATE any information requested by the STATE regarding the project. The CITY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.

The CITY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project; any and all data and records which in any way relate to the project or to the

accomplishment of the project. The CITY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the CITY will give its full cooperation to those persons or their authorized representatives, as applicable.

The CITY will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.

- D. The CITY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.
- E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.
- F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the CITY, for any audit performed on this project in accordance with Act No. 94-414.

PART SIX (6): MISCELLANEOUS PROVISIONS

- A. By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- B. It is agreed that the terms and commitments contained in this agreement shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in this agreement shall be deemed null and void.
- C. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- D. No member, officer, or employee of the CITY during their tenure of employment, and for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.
- E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.
- F. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.
- G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.
- H. **Exhibits A, E, H, M, and N** are hereby attached to and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

City of Anniston, Alabama

By: _____
City Clerk (Signature)

By: _____
As Mayor (Signature)

Type Name of Clerk
(AFFIX SEAL)

Type Name of Mayor

This agreement has been legally reviewed and approved as to form and content.

By: _____
William F. Patty,
Chief Counsel

RECOMMENDED FOR APPROVAL:

DeJarvis Leonard, P.E.
East Central Region Engineer

Bradley B. Lindsey, P.E.
State Local Transportation Engineer

Edward N. Austin, P. E.
Chief Engineer

STATE OF ALABAMA, ACTING BY AND THROUGH
THE ALABAMA DEPARTMENT OF TRANSPORTATION

John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND
SIGNED BY THE GOVERNOR ON THIS _____ DAY OF _____, 20_____.

KAY IVEY
GOVERNOR, STATE OF ALABAMA

EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

EXHIBIT E

TERMINATION OR ABANDONMENT

- a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.
- b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the CITY upon an equitable basis. The value of the work performed by the CITY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:
 1. The ratio of the amount of work performed by the CITY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.
 2. The amount of the expense to which the CITY is put in performing the work to be terminated in proportion to the amount of expense to which the CITY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the CITY prior to the termination, no consideration will be given to profit, which the CITY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the CITY, the value of the work performed by the CITY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

- a. This contract shall be binding upon the successors and assigns of the respective parties hereto.
- b. Should the AGREEMENT be terminated due to default by CITY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

EXHIBIT H

Page 1

EQUAL RIGHTS PROVISIONS

During the performance of this contract, the CITY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The CITY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

EXHIBIT H**Page 2**

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CITY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The CITY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. Solicitations

In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the CITY of the CITY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. Information and Reports

The CITY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

EXHIBIT H**Page 3**

records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance**

In the event of the CITY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the CITY under contract until the CITY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions**

The CITY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The CITY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a CITY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the CITY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

1. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the CITY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

EXHIBIT H**Page 4**

The CITY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CITY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.
3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CITY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The CITY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The CITY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

- a. The CITY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

EXHIBIT H**Page 5**

- b. The CITY, in accordance with the status of CITY as an independent contractor, covenants and agrees that the conduct of CITY will be consistent with such status, that CITY will neither hold CITY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that CITY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of CITY.

CITYS' CERTIFICATIONS

The CITY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the CITY. The CITY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the CITY at the time of execution of the AGREEMENT. The CITY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The CITY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The CITY agrees that a meal allowance shall be limited to CITY employees while in travel status only and only when used in lieu of a per diem rate.

The CITY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The CITY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CITY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CITY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CITY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR OPERATION**

**SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL
ACCESS FUNDED COUNTY AND CITY PROJECTS**

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Region and notification from the Region that advertisement for bids can be made, or, in the case of force account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Region will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Region to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an inplace annual bid, the County/City will furnish the Region a copy of their bid and this bid price will be used for reimbursement.

Where the County/City is letting a contract locally, the County/City will furnish to the Region the three lowest bids with their recommendation for award. The Region will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Region when the project is complete and the Region will perform a final ride-through to determine whether the project was completed in substantial compliance with original final plans. Final acceptance will be made by the Region with a copy of the letter furnished to the Bureau of Local Transportation.

All required test reports, weight tickets, material receipts and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL:


BUREAU CHIEF/REGION ENGINEER

APPROVAL:


CHIEF ENGINEER

APPROVAL:


TRANSPORTATION DIRECTOR

NOVEMBER 1, 2017

DATE

RESOLUTION NUMBER 23-R-__

PROPOSED AMENDED 2022 ANNUAL ACTION PLAN REALLOCATION OF CDBG FUNDING

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF ANNISTON, ALABAMA,
AUTHORIZING AN AMENDMENT OF THE FISCAL YEAR 2022 ANNUAL ACTION PLAN UNDER
THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

WHEREAS, the City of Anniston has been designated as “Entitlement Community” and therefore receives direct annual funding from the U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant Program; and a “Participating Jurisdiction” under the Home Investment Partnerships Act Program;

WHEREAS, the City is hereby amending 2022 Annual Action Plan to reallocate a total of **\$143,500.00** in unexpended CDBG funds to the City of Anniston’s Public Facility Renovation Project at the Fire Station located at 1923 Cooper Ave in Anniston, AL, as noted in the table below; and

Grant	Year	Approved Uses/Proposed Transfers	Proposed Change
CDBG	2022	City of Anniston Public Works - Infrastructure Improvements in LMIs	(\$143,500.00)
Proposed Reallocated Funds			(\$143,500.00)
CDBG	2022	City of Anniston Fire Station Public Facility Renovations	\$143,500.00
		Subtotal Reallocated Funds	\$143,500.00
		TOTAL REALLOCATION	\$143,500.00

WHEREAS, this Substantial Amendment to the 2022 Annual Action Plan has been published for the HUD-required 30-day citizen participation, review and comment period;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Anniston, Alabama, that the City Manager is hereby authorized to sign the agreement and all documentation relating to the amendment

PASSED AND ADOPTED this 5th day of **December, 2023**.

CITY 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

RESOLUTION NO. 23-R-__

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH TUCSON ATLANTIC CONSULTING

WHEREAS, the Council desires to engage Tucson Atlantic Consulting to provide professional services to the City to conduct a with a comprehensive regional economic development analysis and assessment of existing resources and identification of potential business, industries, and other opportunities;

WHEREAS, Tucson Atlantic Consulting has submitted a proposal to provide these professional services, as specified in the attached Letter of Agreement;

WHEREAS, the Council finds that Tucson Atlantic Consulting is uniquely capable of meeting the professional services needs of the City with respect to the scope of work identified in the proposal, and Tucson Atlantic Consulting 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 Tucson Atlantic Consulting on the terms set forth in the Letter of 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 Tucson Atlantic Consulting at the rates and amounts specified in the attached proposal.

PASSED AND ADOPTED on this the **5th** day of **December, 2023**.

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

LETTER OF AGREEMENT

Services to be Completed

Tucson Atlantic Consulting (the Consultants) will conduct a comprehensive regional economic development analysis and assessment of existing resources and identification of potential business, industries, and other opportunities.

- 1. SWOT and Competitive Matrix:** This includes identification of regional resources and assets available to grow manufacturing, retail, recreation, and tourism. This includes regional workforce and skills, training, including the competitiveness of the regional labor force and any existing skill gaps and emerging gaps that are likely to inhibit future opportunities. Evaluation of regional infrastructure support for existing industry including, education, training organizations, support businesses, transportation resources, infrastructure sites & existing buildings, airport, and quality of life.
- 2. Regional Community Visits:** Conduct on-site interviews with area community elected officials, business executives, education, training, workforce, and associated community leadership to identify current positives, negatives, and expansion opportunities. We will also identify business related trends, future possibilities for new or existing companies, and assess existing infrastructure support.
- 3. Examine:** Existing retail gaps and opportunities for growth.
- 4. Assess:** New opportunities for recreation and tourism growth.
- 5. Recommended Actions:** Based on our experience collaborating with communities across the country in both the site selection capacity and the business consulting capacity, the project team will carefully formulate recommendations on the best ways to capitalize on the region's strengths and how to address the related weaknesses and gaps. This will provide insight for community leadership to move forward to determine Anniston's economic future.
- 6. Marketing Recommendations:** Our assessment will reveal industry sectors that represent a high probability of matching the community resources present in Anniston and the surrounding region.
- 7. Delivery of Findings:** All research and findings related to this study will be presented in digital format in addition to a formal presentation to community leadership.
- 8. Additional Findings:** Although the primary purpose is economic development related, we will seek to uncover hidden and unrealized assets or potential targets,

which will be of value to the community and its region. Community interviews and data together often reveal new unanticipated opportunities.

- 9. Time and Cost:** It is anticipated that the Assessment will take approximately three months to complete and will begin within two weeks from the date this letter is signed.

Total cost of \$43,000.00 includes all expenses. One-half shall be due upon signing this Letter of Agreement and one-half shall be due after final presentation or delivery of the final document.

We will need the City of Anniston to assist with scheduling community interviews and will provide a list of those 12-15 individuals that need to be interviewed.

Agreed this _____ day of _____, 2023.

By: Tucson Roberts
Tucson Atlantic Consulting
Tucson Roberts, President

City of Anniston
Steven D. Folks, Sr., City Manager

City of Anniston Economic Development Assessment Outline

Introduction & Scope of Work

Executive Summary

Demographic review (Anniston, Trade & Labor Shed Area)

Strengths, Weaknesses, Opportunities, Threats

(Competitive Assessment Matrix)

1. Available Land & Buildings
2. Quality of Life
3. Transportation & Economic Geography
4. Business, Political & Economic Climate
5. Utilities
6. Economic Development
7. Land
8. Retail
9. Education
10. Infrastructure

Workforce Skills (50-Miles)

1. Dominant skill sectors
2. By employment
3. Future needs

Industry Analysis and Recruiting Targets

1. Existing land & sites
2. Primary industries & Industry sectors
3. Fastest growing
4. Marketing/Recruitment Targets

Retail Opportunities

1. Traffic counts
2. Retail Gaps
3. Likely Prospects

Recreation and Tourism

1. Existing
2. Additional Resource Based Opportunities.

Recommended Actions

Approximate Schedule of Events*

Week 1 & 2 Community interviews

Week 3 Data identification & purchase

Weeks 4 & 5 SWOT & Competitive matrix

Weeks 5 & 6 Workforce analysis

Weeks 6 & 7 Industry analysis & recruiting targets

Weeks 8 & 9 Retail & Tourism opportunities

Weeks 10-11 Recommended actions

Weeks 12, Draft Document assembly

Week 13 Document review by City of Anniston

Week 14 Final document delivery

Week 15 Oral community presentation

*Note: the above schedule is an estimate precise times may be affected by weather, personal circumstances, or other non-predictable events