THE CITY OF TUSCALOOSA, ALABAMA

CONTRACT BETWEEN THE CITY OF TUSCALOOSA AND TIM A. LEWIS & ASSOCIATES, INC. D/B/A TALA PROFESSIONAL SERVICES REGARDING THE OPERATION OF THE GATEWAY ALBERTA'S INNOVATION + DISCOVERY CENTER
(A16-0532)

AN AGREEMENT BETWEEN THE

CITY OF TUSCALOOSA, ALABAMA

And

TIM A. LEWIS & ASSOCIATES, INC. D/B/A TALA PROFESSIONAL SERVICES

CONTRACT BETWEEN THE CITY OF TUSCALOOSA AND TIM A. LEWIS & ASSOCIATES, INC. D/B/A TALA PROFESSIONAL SERVICES REGARDING THE OPERATION OF THE GATEWAY ALBERTA'S INNOVATION + DISCOVERY CENTER
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THIS CONTRACT is made and entered into by and between the City of Tuscaloosa, Alabama, a Municipal Corporation, and Tim A. Lewis & Associates, Inc. d/b/a TALA Professional Services as follows:

W-I-T-N-E-S-S-E-T-H:

WHEREAS, the April 27, 2011 tornado that stuck the City of Tuscaloosa (City) devastated the area Alberta which at the time was home to many low to moderate income residents; and,

WHEREAS, since the tornado the City has rebuilt public safety buildings and the Tuscaloosa City Board of Education (Board) has rebuilt on the site of the former Alberta Elementary School the Alberta School of Performing Arts in an effort to provide the necessary public infrastructure that will promote, assist and facilitate the regrowth of business and residential opportunities in the Alberta area; and,

WHEREAS, the City has also constructed a technology center known as the Gateway Alberta's Innovation + Discovery Center Alberta (Gateway) in Alberta the purpose of which is to provide and facilitate an increased educational level to a low-moderate area and offer computer access and meeting space for the public that can be utilized by low-moderate income individuals in the area as well as students from nearby colleges such as The University of Alabama and in addition to offering technology resources; and,

WHEREAS, Tim A. Lewis & Associates, Inc. d/b/a TALA Professional Services (TALA) were chosen to operate the Gateway by Resolution of the City Council on February 23, 2016; and,

WHEREAS, TALA and the City have agreed to certain terms and conditions regarding the operation of the Gateway and upon the execution of this Agreement by both parties, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW, THEREFORE, upon and in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. RESPONSIBILITIES OF TALA

1.1 Generally: TALA will provide, perform, and support full programming, event and activity development, community engagement, coordination of technology support and maintenance, and marketing of the Gateway. The primary goal is to develop, produce, maintain, and enhance the interactive experience every visitor and users of the center.

2.1 Services to be Provided:

1. The day to day operations of the Gateway.

The TALA team will consist of two (2) full time employees, three (3) part time employees – 30 hours per week, and support resources onsite and remotely to lead the utilization management, marketing, and technology support of the overall interactive experience at the Gateway. TALA team will include an experienced and successful team of local and national content producers, technologists, managers and marketing professionals.

2. The development, creation, and execution of content. The Gateway consists of a number of emerging technologies which will demonstrate a vast amount of content. TALA will be responsible for keeping the content well developed and fresh so that the experience is meaningful and up to date at all times.

3. The Gateway is an opportunity to introduce and build upon a technology experience. TALA will provide the Gateway with critical marketing services and will do so in such a way to keep the community informed of its programs and events and will encourage use by schools, non-profits, and the general public.

4. The Gateway has a unique opportunity to encourage sponsorship opportunities related to its operations. TALA will seek sponsorships that will benefit the Gateway and specifically the low to moderate income community of Tuscaloosa. TALA will develop a sponsorship plan and will ensure that all sponsorship activity is carried out in a manner that is reflective of the City of Tuscaloosa and in compliance with all laws governing the City of Tuscaloosa. It would be the goal of sponsorships to reduce the amount of public dollars invested in the Gateway by creating a unique opportunity to leverage private funds with public dollars for a greater community impact.

5. TALA will develop a monthly calendar and provide to the City representative each month.

6. TALA will develop and carry out training and education opportunities for the community.

7. TALA will develop and carry out opportunities to encourage tourism and economic development resources for Tuscaloosa and West Alabama.

8. TALA will develop a cost schedule for use of the Gateway and will provide the same to the City representative for approval.

9. TALA will provide to the City representative quarterly updates of the Gateway including daily usage reports, content use, content updates, training and educational usages, and general operations of the Gateway. Quarterly reports will be reviewed within two weeks by the City and TALA will receive a score of 0-5 from the City representative. 0 (poor), 3 (meets expectations) and 5 (excellent). Any score below 3 will require corrective action on the part of TALA. TALA will have 30 days to provide a plan of corrective action satisfactory to the City representative or this contract will be terminated immediately.

10. TALA will provide the City with a State of the Center presentation which will be provided at the City Council Projects Committee Meeting during the month of June 2017 and each June thereafter.

11. TALA will create and present to the City representative a policy and procedures manual for the Gateway.

12. TALA will coordinate with the City representative or his/her assigned designee in regard to payment of utilities, licensing agreements, device and IT technical support, annual maintenance, AV technologies, internet, wireless, security monitoring, data network services and

consumable items, Such items will be the responsibility of the City Of Tuscaloosa.

13. TALA will make available the Gateway to the City of Tuscaloosa for any function necessary so long as the event is not in conflict with a calendared event.

14. TALA will work closely with the City to coordinate and support the maintenance of all technology components. TALA representatives will utilize the IT Help Desk system and procedures for all IT support requests and will likewise utilize the Facility Dude application and procedures for all Facilities Maintenance support requests.

15. TALA will provide general housekeeping of the facility.

SECTION 2. RESPOSIBILITIES OF THE CITY

2.2 Services to be Provided:

1. The City will pay TALA a monthly operating fee of $22,000. Receipt shall be provided by the 1st day of each month and the City will make payment 15 days after receipt of approved invoice.

2. The City will pay all utilities.

3. The City will provide twice weekly housekeeping services. These services will be in addition to the daily housekeeping services provided by TALA.

4. The City will provide IT support related to the equipment and the facility and shall be responsible for the maintenance, repair, scheduling of repairs and procurement of any vendor certified technicians required for specialized maintenance or repair of systems, components or equipment.

5. TALA will immediately notify Facility Maintenance of all mechanical, electrical and plumbing issues immediately who will address the same.

SECTION 3. INSURANCE REQUIRMENTS

3.1 Insurance shall be primary coverage, and hold harmless the City, its officers, agents, and employees, naming the City as Additional Insured and include a Waiver of Subrogation. In the event that TALA retains outside service providers or vendors to provide services to the Gateway, as per their

requirements in Section 2.1 herein, TALA shall likewise require any such service providers or vendors to provide primary coverage insurance and hold harmless the City, its officers, agents, and employees, naming the City as Additional Insured and include a Waiver of Subrogation. The insurance shall be written in comprehensive form by insurance companies rated A- or better by A.M. Best and shall protect the Lessee and the City against claims for Injuries to members of the public (including City employees) or damages to property of others (including City property) arising out of any act of the Lessee or any of its agents, employees or designees and said insurance shall extend to any motor vehicles or other related equipment, irrespective of whether the same is owned, non-owned or hired. Said insurance shall give all parties 30 day written notice of cancellation or intent not to renew the insurance.

3.2 Insurance Limits. TALA shall provide the following coverages:

(b) Insurance Limits. TALA shall provide the following coverages:

(i)General Liability not less than $1,000,000 per occurrence with $2,000,000 General aggregate, including $1,000,000 property damage to premise occupied

(ii) Workers Compensation – Statutory, with Employers Liability Limits not less than $1,000,000 for Each Accident, Disease for Each Employee, Disease for Policy limit

(iii) Sexual Abuse/Misconduct Liability with minimum coverage not less than $1,000,000.

(iv) Automobile Liability (hired & non-owned) with minimum coverage not less than $1,000,000

(v) Professional Liability with minimum coverage not less than $1,000,000 per occurrence/$2,000,000 general aggregate

(vi) Cyber Liability with coverage not less than $1,000,000 per occurrence

(vii) Umbrella Policy with a minimum coverage limit of $1,000,000.

(c) TALA shall provide to the Director, Resilience and Innovation a Certificate of Insurance acceptable to the Director as evidence of insurance coverage for the use and lease of the Facility. This Certificate of Insurance must be delivered to the Director prior to TALA's providing the services as set forth in this agreement.

3.3 TALA shall provide to the Director, Resilience and Innovation a Certificate of Insurance acceptable to the Director as evidence of insurance coverage for the use and lease of the Facility. This Certificate of Insurance must be delivered to the Director prior to TALA's providing the services as set forth in this agreement.

SECTION 4. HOLD HARMLESS/INDEMNITY

4.1 Each party shall generally be responsible for its own acts and will be responsible for all damages, costs, fees, and expenses, including attorney's fees and costs, which arise out of the performance of this agreement and which are due to that party's own negligence, carelessness, unskillfulness and other unlawful conduct and/or the negligence, carelessness or unskillfulness or other unlawful conduct of its respective officers, agents and/or employees acting in their official capacities. Provided; however, TALA shall defend, indemnify and hold the City, its officers, agents and employees free and harmless from and against any claims, demands, actions, damages, expenses, fees, liabilities and/or attorney's fees arising out of, by virtue of or associated with, any claims, demands or actions brought by third parties which are related in any way or are associated with the negligence, tortious acts or other unlawful conduct of TALA or its respective agents, officers and employees in the performance of this agreement. In addition, the City shall release and remise TALA, its officers, agents and employees from and against any claims, demands, actions, damages, expenses, fees, liabilities and/or attorney's fees arising out of, by virtue of or associated with, any claims, demands or actions brought by third parties which are related in any way or are associated with the negligence, tortious acts or

other unlawful conduct of the City or its respective agents, officers and employees in the performance of this agreement.

SECTION 5. SMOKING PROHIBITED ON PREMISES

5.1 TALA shall comply with and enforce all Tuscaloosa City Code Ordinances which restrict or prohibit smoking in public places and in municipal facilities as more specifically set forth in Sec. 13-92 et seq. of the Tuscaloosa City Code.

SECTION 6. DEFAULT/TERMINATION DECLARED BY THE CITY

6.1 The City shall have the right to terminate this agreement forthwith, by giving written notice to TALA of such termination, upon or after the happening of one or more of the following events:

a. TALA undertakes, engages or conducts operations of its business which interferes, compromises or adversely affects the operations of the Gateway; or

b. TALA abandons its obligations prior to the expiration of this agreement; or

c. TALA shall default in fulfilling any other term, covenant or condition to be fulfilled by it hereunder and shall fail to remedy said default within thirty (30) days following receipt by TALA of written demand from City to do so, or if by reason of the nature of such default the same cannot be remedied within such thirty (30) day period, TALA shall have failed to commence the remedying of such default within said thirty (30) day period, or having so commenced, shall have failed there-after to continue with diligence the remedying thereof; or

d. Seizure or need by the Federal Government or State of Alabama due to a natural disaster or emergency; or

e. Any such need by the City to insure the effective and efficient operation of government or any matter which may adversely affect the health, safety and welfare of the public; or

e. Filing a petition in bankruptcy for reorganization or for an arrangement pursuant to the U.S. Bankruptcy Code or any similar federal or state law now or hereafter in effect; or

f. Filing an answer admitting the material allegations of or consenting to or defaulting in answering a petition filed against it in any bankruptcy, reorganization, or similar insolvency proceeding, or if any action shall be taken against it for the purpose of effecting any of the foregoing, or

g. All rights and remedies of the City under this Agreement shall be cumulative and none shall exclude any other right or remedy at law. Such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefor arises, in the absolute discretion of the City.

SECTION 7. DEFAULT/TERMINATION DECLARED BY TALA.

7.1 TALA shall have the right to terminate this Lease in its entirety by giving thirty (30) day's written notice to the City of such termination upon or after the happening of one or more of the following events:

a. The inability of TALA to continue to provide the services as set forth in Section 2.1 herein.

b. A court of competent jurisdiction shall issue an injunction, order or decree preventing or restraining the use by TALA of all or any substantial part of the Leased Premises which remains in force and is not vacated or stayed for a period of ninety (90) days; or

c. Seizure or need by the Federal Government or State of Alabama due to a natural disaster or emergency.

d. Destruction, Fire or Casualty of the Gateway as set forth in Section 9 herein.

SECTION 8. DISCRIMINATION

8.1 TALA, for itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

(1) no person on the grounds of race, color, national origin, sex or religion shall be excluded from participation in, denied the benefits of, or be otherwise

subject to discrimination in the use of the Gateway under the provisions of this Agreement;

(2) that TALA shall operate the Gateway in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-effectuation Title of the Civil Rights Act of 1964, Americans with Disabilities Act, Rehabilitation Act of 1973 and as said Regulations may be amended. Likewise, TALA shall comply with laws of the State of Alabama prohibiting discrimination because of sex, religion, age or physical handicap.

SECTION 9. CASUALTY OR DESTRUCTION OF THE PREMISIES

9.1 In the event that the Gateway is destroyed or damaged by fire or casualty to the extent that the services to be performed by TALA are impossible or may be impeded for a prolonged period of time, TALA may provide the City with written notice and terminate its obligations under this agreement as set forth in Section 7.1 herein. Upon the City's receipt of the termination notice from TALA, the obligations of both parties as set forth in this agreement are discharged and rendered void.

SECTION 10. NOTICES

10.1 All notices or other communications provided for herein to be given or sent to a party by another party shall be deemed validly given or if sent in writing and mailed, postage prepaid, by registered or certified United States mail, addressed to the party at its address set forth above. Any party hereto may give notice to another party at any time, by the method specified above, of a change in the address at which, or the person to whom, notice is to be addressed. The names and addresses of the representatives for the Parties are as follows:

For the City:

Director, Resilience and Innovation
City of Tuscaloosa
Post Office Box 2089
Tuscaloosa, Alabama 35403

For TALA:
~~3625 8th Ave. South~~ 800 22nd Ave
~~Birmingham, Alabama 35222~~ Tuscaloosa, AL 35401
(205) ~~323-1993~~ 369-3406

SECTION 11. BUSINESS LICENSE

11.1 TALA shall obtain a business license from the City of Tuscaloosa and shall renew said license annually while doing business in the City.

SECTION 12. EMERGENCY SITUATIONS

12.1 TALA shall have its employees cooperate and coordinate with the City and or emergency officials in the event of a disaster or inclement weather which may necessitate the public use of the Gateway as a storm or disaster shelter. TALA employees shall become familiar with the emergency procedures as they pertain to the Gateway concerning its use as storm shelter to inform and assist the public in the event of an emergency. The City reserves the right to use any portion of the Gateway in the event of a Federal, State or local emergency or event which may necessitate the need for storage of supplies and equipment as may be needed or required.

SECTION 13. MISCELLANEOUS:

13.1 **Capacity:** Each party to this Memorandum represents and warrants to the other as follows:

A. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.

B. That each has full power and capacity to enter into this Memorandum, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.

C. That to the extent required, each party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this Memorandum and said approval has been reduced to writing and certified or attested by the appropriate official of the party.

D. That each party has duly authorized and empowered a representative to execute this Memorandum on their respective behalf and the execution of this Memorandum by such representative fully and completely binds the party to the terms and conditions hereof.

E. That absent fraud, the execution of this Memorandum by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other party shall be entitled to rely upon the same.

F. That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon the terms and conditions of this Memorandum or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this Memorandum.

G. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this Memorandum.

13.2 Third party Beneficiaries: It is the intent of the parties hereto that there shall be no third party beneficiaries to this Memorandum.

13.3 Final Integration: This Memorandum, together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Memorandum, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not

contained in this Memorandum or expressly referred to herein has been relied on by any party in entering into this Memorandum.

13.4 Force Majeure: Neither party to this Memorandum shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

13.5 Amendment in Writing: This Memorandum may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

13.6 Binding Effect: This Memorandum shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns. If any provision in this Memorandum shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

13.7 Captions: The captions of this Memorandum are for convenience and reference only, are not a part of this Memorandum, and in no way define, describe, extend, or limit the scope or intent of this Memorandum.

13.8 Construction: This Memorandum shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

13.9 Mandatory and Permissive: "Shall", "will", and "agrees" are mandatory; "may" is permissive.

13.10 Governing Laws: The laws of the State of Alabama shall govern the validity of this Memorandum, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Memorandum.

13.11 Prohibition on Assignment and Delegation: No party to this Memorandum may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. Unless the other party consents in writing, no such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

13.12 Waiver: Non enforcement of any provision of this Memorandum by either party shall not constitute a waiver of that provision, nor shall it affect the

enforceability of that provision or of the remaining terms and conditions of the Memorandum.

13.13 Memorandum Date/Counterparts: The date of this Memorandum is intended as and for a date for the convenient identification of this Memorandum and is not intended to indicate that this Memorandum was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

13.14 Use of Words and Phrases: The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

13.15 Liability of the City or City Officials. Notwithstanding any provision hereof to the contrary, the parties agree and acknowledge that the liability and obligations of the City, City officials or City employees as set forth herein are subject to the limitations imposed on municipalities by the Constitution and laws of the State of Alabama. No present or future official, officer or employee of the City shall ever be personally liable for the performance of any obligations hereunder.

The definitions set forth in any portion of this Memorandum, unless the text or context indicates differently, shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

IN WITNESS WHEREOF the parties hereto have set their hands this the 2nd day of July, 2016.

CITY OF TUSCALOOSA

Walter Maddox, Mayor

TIM A. LEWIS & ASSOCIATES, INC.
D/B/A TALA PROFESSIONAL SERVICES

By: _____
Tim A. Lewis

As Its: President

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Walter Maddox, whose name as Mayor of the City of Tuscaloosa, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal that the 2nd day of June, 2016.

My Commission Expires:
2/3/19

Vickie Tilliland
Notary Public

STATE OF ALABAMA)
Tuscaloosa COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Tim A. Lewis, whose name as President of Tim A. Lewis & Associates Inc. d/b/a TALA Professional Services, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal that the 7th day of July, 2016.

Notary Public

My Commission Expires:

12-10-17