

June 6, 2022

STATE OF ALABAMA,  
LIMESTONE COUNTY,  
CITY OF ATHENS.

The City Council of the City of Athens, Alabama met in regular session at the Athens Municipal Building, 200 Hobbs Street West, Athens, Alabama, on June 6, 2022 at 5:30 p.m. The meeting was called to order by Councilman Chris Seibert, President of the City Council. Upon roll call, the following were found to be present: Councilmembers Chris Seibert, Dana Henry, Harold Wales and Wayne Harper. Annette Barnes-Threat, City Clerk, was present and recorded the minutes of the meeting. Wayne Harper offered the invocation. Mayor Marks led the Pledge of Allegiance. The Chairperson stated that a quorum was present and that the meeting was open for transaction of business.

The Chairperson stated that the Minutes of the May 9, 2022 City Council Meeting had been submitted for approval. Councilman Wales moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilwoman Henry and was unanimously carried. The Chairperson stated that the Minutes of the May 9, 2022 City Council Work Session Meeting had been submitted for approval. Councilman Wales moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilwoman Henry and was unanimously carried.

Mayor Marks noted that it was D-Day and asked everyone to remember the ones that have served our country. The Mayor recognized the Athens High School Softball team for winning the 6A State Championship and Coach Barnes for being named 6A Coach of the Year.

Councilman Wales thanked everyone for their prayers during his recent recovery.

Councilwoman Henry and Councilman Harper congratulated the softball team for their win.

Council President Seibert echoed the other councilmembers comments.

**PUBLIC HEARING RELATING TO THE PROPOSED ANNEXATION OF +/-163.9 ACRES OF PROPERTY INTO THE CITY AND ZONE THE PROPERTY B2 (GENERAL BUSINESS DISTRICT) LOCATED ON THE NORTH SIDE OF HUNTSVILLE BROWNSFERRY RD, BETWEEN US HWY 31 AND INTERSTATE 65, WITHIN THE CORPORATE LIMITS OF THE CITY OF ATHENS, ALABAMA (GARY THOMAS DOWNS)**

No one spoke in favor of or against.

The public hearing was closed.

**Councilman Harper introduced the following ordinance:**

**AN ORDINANCE TO ANNEX +/-163.9 ACRES OF PROPERTY INTO THE CITY AND ZONE THE PROPERTY B2 (GENERAL BUSINESS DISTRICT) LOCATED ON THE NORTHSIDE OF HUNTSVILLE BROWNSFERRY RD BETWEEN US HWY 31 & INTERSTATE 65 WITHIN THE CORPORATE LIMITS OF THE CITY OF ATHENS, ALABAMA (GARY THOMAS DOWNS).**

STATE OF ALABAMA  
LIMESTONE COUNTY,  
CITY OF ATHENS

**ORDINANCE NUMBER 2022 – 2218**

WHEREAS, the Planning Commission of the City of Athens, Alabama, has made a recommendation to the City Council of the City of Athens, Alabama, that the hereinafter described areas should be annexed and become part of the City of Athens; and

WHEREAS, the City of Athens has received an annexation petition from Gary Thomas Downs (“Downs”), the owner of the property described herein, and a map of said property showing its relationship to the corporate limits of the City of Athens, Alabama; and

WHEREAS, it is in public interest that said property be annexed into the City of Athens, and all legal requirements for annexing said real property have been met pursuant to Section 11-42-20 through 11-42-24, Code of Ala. 1975; and

WHEREAS, the Planning Commission of the City of Athens, Alabama has reviewed the request, and did further recommend that the City Council approve the annexation and the zoning of the hereinafter described area as B2 (General Business District); and

WHEREAS, this Ordinance if adopted, would annex the property and zone it B2 (General Business District).

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, as follows:**

**SECTION 1:** The City Council of the City of Athens, Alabama, finds and declares as the legislative body of the City that it is in the best interest of the citizens of the City to bring the territory described in Section 2 of this Ordinance into the City of Athens.

**SECTION 2:** The boundary lines of the City of Athens, Alabama are hereby altered or rearranged so as to include all of the territory heretofore encompassed by the corporate limits of the City of Athens, Alabama, and in addition thereto to the following described territory, to wit:

**Legal Description**

COMMENCING AT A RAILROAD SPIKE IN THE CENTERLINE OF HUNTSVILLE-BROWNSFERRY ROAD BEING THE SOUTHEAST CORNER OF SECTION 33 TOWNSHIP 3 SOUTH RANGE 4 WEST IN LIMESTONE COUNTY, ALABAMA; THENCE ALONG SAID CENTERLINE RUN NORTH 89°07'03" WEST AT A DISTANCE OF 402.00 FEET TO A POINT; THENCE LEAVING SAID CENTERLINE RUN NORTH 00°52'57" EAST AT A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTHERN RIGHT OF WAY OF HUNTSVILLE-BROWNSFERRY ROAD, SAID POINT BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE FROM THE POINT OF BEGINNING ALONG SAID RIGHT OF WAY RUN NORTH 89°04'13" WEST AT A DISTANCE OF 569.89 FEET TO A POINT; THENCE LEAVING SAID RIGHT OF WAY RUN NORTH 01°14'39" EAST AT A DISTANCE OF 252.33 FEET TO A POINT ON A FENCE CORNER; THENCE ALONG A FENCE LINE RUN NORTH 87°51'52" WEST AT A DISTANCE OF 358.23 FEET TO A POINT; THENCE RUN NORTH 00°00'33" WEST AT A DISTANCE OF 895.13 FEET TO A CAPPED IRON PIN STAMPED "COFFMAN"; THENCE RUN NORTH 00°00'14" WEST AT A DISTANCE OF 472.70 FEET TO A POINT; THENCE ALONG FENCE LINE RUN NORTH 01°46'52" EAST AT A DISTANCE OF 437.24 FEET TO A POINT; THENCE CONTINUING ALONG SAID FENCE LINE RUN NORTH 01°01'26" EAST AT A DISTANCE OF 283.66 FEET TO A POINT; THENCE ALONG SAID FENCE LINE RUN NORTH 00°20'08" WEST AT A DISTANCE OF 252.98 FEET TO A FENCE POST; THENCE ALONG A FENCE LINE RUN SOUTH 89°06'04" EAST AT A DISTANCE OF 395.73 FEET TO A POINT; THENCE CONTINUING ALONG SAID FENCE LINE RUN SOUTH 88°21'54" EAST AT A DISTANCE OF 365.32 FEET TO A POINT; THENCE ALONG SAID FENCE LINE RUN SOUTH 88°50'32" EAST AT A DISTANCE OF 527.92 FEET TO A POINT ON THE EAST LINE OF SECTION 33 TOWNSHIP 3 SOUTH RANGE 4 WEST, SAID POINT BEING SOUTH 00°44'22" EAST AT A DISTANCE OF 7.82 FEET FROM THE PURPORTED NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 33; THENCE LEAVING SAID FENCELINE RUN SOUTH 89°20'37" EAST AT A DISTANCE OF 1501.38 FEET TO A CAPPED IRON PIN STAMPED "COFFMAN"; THENCE RUN SOUTH 00°17'25" EAST AT A DISTANCE OF 2557.15 FEET TO A POINT ON THE NORTHERN RIGHT OF WAY OF HUNTSVILLE-BROWNSFERRY ROAD; THENCE ALONG SAID RIGHT OF WAY RUN NORTH 89°06'12" WEST AT A DISTANCE OF 1464.08 FEET TO A POINT; THENCE ALONG SAID RIGHT OF WAY RUN SOUTH 74°41'01" WEST AT A DISTANCE OF 156.22 FEET TO A POINT; THENCE ALONG SAID RIGHT OF WAY RUN NORTH 89°25'58" WEST AT A DISTANCE OF 127.05 FEET TO A POINT; THENCE ALONG SAID RIGHT OF WAY RUN NORTH 89°07'02" WEST AT A DISTANCE OF 155.98 FEET TO THE POINT OF BEGINNING;

SAID TRACT CONTAINS 163.9 ACRES, MORE OR LESS.

**SECTION 3:** Upon its annexation into the corporate limits of the City, the property described in Section 2 shall be zoned as B2 (General Business District), in accordance with and defined by the Zoning Ordinance of the City of Athens, Alabama.

**SECTION 4:** The City Clerk shall cause this Ordinance to be published as provided by law upon the City's receipt of notice, on or before August 1, 2022, that the property described in Section 2 has been sold and transferred by Downs to a third party who also consents to the annexation (unless Downs agrees that it may be published prior to the same). Upon such publication, the City shall file notice of the annexation with the Probate Judge of Limestone County, Alabama.

**SECTION 5:** The territory described in this ordinance shall become a part of the corporate limits of Athens, Alabama, upon publication of this ordinance as set forth in Section 4, above.

ADOPTED and APPROVED this, the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

/s/ William R. Marks  
MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes  
CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Henry moved that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Councilmember Wales, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Councilmember Harper thereupon moved that the ordinance be finally adopted, which motion was seconded by Councilmember Henry and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

**PUBLIC HEARING RELATING TO THE PROPOSED ANNEXATION OF +/-102 ACRES OF PROPERTY INTO THE CITY AND ZONE THE PROPERTY INTO A C-PUD (CONVENTIONAL PLANNED UNIT DEVELOPMENT) LOCATED ON THE SOUTH SIDE OF HUNTSVILLE BROWNSFERRY RD, BETWEEN US HWY 31 AND INTERSTATE 65, AND TO ADOPT THE MASTER DEVELOPMENT PLAN OF SOWELL PROPERTY HUNTSVILLE-BROWNSFERRY ROAD (NOLABA LAND HOLDINGS LLC AND GREENBRIER HOLDINGS, LLC)**

No one spoke in favor of or against.

The public hearing was closed.

**Councilman Wales introduced the following ordinance:**

**AN ORDINANCE TO ANNEX +/- 102 ACRES OF PROPERTY INTO THE CITY AND ZONE INTO A C-PUD (CONVENTIONAL PLANNED UNIT DEVELOPMENT) LOCATED ON THE SOUTH SIDE OF HUNTSVILLE BROWNSFERRY RD, BETWEEN US HWY 31 & INTERSTATE 65, AND TO ADOPT THE MASTER DEVELOPMENT PLAN OF SOWELL PROPERTY HUNTSVILLE-BROWNSFERRY ROAD (NOLABA LAND HOLDINGS LLC AND GREENBRIER HOLDINGS, L.L.C**

STATE OF ALABAMA  
LIMESTONE COUNTY,  
CITY OF ATHENS

**ORDINANCE NUMBER 2022 – 2219**

WHEREAS, the Planning Commission of the City of Athens, Alabama, has made a recommendation to the City Council of the City of Athens, Alabama, that the hereinafter described areas should be annexed and become part of the City of Athens; and

WHEREAS, the City of Athens has received an annexation petition from NOLABA Land Holdings LLC and Greenbrier Holdings, L.L.C. (“NOLABA and Greenbrier”), the owners of the property described herein, and a map of said property showing its relationship to the corporate limits of the City of Athens, Alabama; and

WHEREAS, it is in public interest that said property be annexed into the City of Athens, and all legal requirements for annexing said real property have been met pursuant to Section 11-42-20 through 11-42-24, Code of Ala. 1975; and

WHEREAS, the Planning Commission of the City of Athens, Alabama has reviewed the request, and did further recommend that the City Council approve the annexation and the zoning of the hereinafter described areas as C-PUD (Conventional Planned Unit Development); and

WHEREAS, this Ordinance if adopted, would annex the property and zone it C-PUD (Conventional Planned Unit Development).

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, as follows:**

**SECTION 1:** The City Council of the City of Athens, Alabama, finds and declares as the legislative body of the City that it is in the best interest of the citizens of the City to bring the territory described in Section 2 of this Ordinance into the City of Athens.

**SECTION 2:** The boundary lines of the City of Athens, Alabama are hereby altered or rearranged so as to include all of the territory heretofore encompassed by the corporate limits of the City of Athens, Alabama, and in addition thereto to the following described territory, to wit:

**Legal Description**

COMMENCING AT A RAILROAD SPIKE FOUND AT THE NORTHEAST CORNER OF SECTION 4, TOWNSHIP 4 SOUTH, RANGE 4 WEST, LIMESTONE COUNTY, ALABAMA, THENCE RUN SOUTH 01°00'56" WEST AT A DISTANCE OF 125.72 FEET TO A POINT ON THE SOUTHERN RIGHT-OF-WAY FOR HUNTSVILLE-BROWNSFERRY ROAD, SAID POINT ALSO BEING THE POINT OF BEGINNING.

THENCE FROM THE POINT OF BEGINNING RUN SOUTH 00°59'49" WEST AT A DISTANCE OF 321.47 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "DUNIVANT"; THENCE RUN SOUTH 01°00'28" WEST AT A DISTANCE OF 320.08 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "DUNIVANT"; THENCE RUN SOUTH 01°02'13" WEST AT A DISTANCE OF 1867.50 FEET TO A POINT; THENCE RUN NORTH 88°49'55" WEST AT A DISTANCE OF 401.41 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "DUNIVANT"; THENCE RUN NORTH 00°16'28" EAST AT A DISTANCE OF 594.02 FEET TO A POINT; THENCE RUN NORTH 89°15'08" WEST AT A DISTANCE OF 724.02 FEET TO A POINT; THENCE RUN SOUTH 00°15'56" WEST AT A DISTANCE OF 589.00 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "DUNIVANT"; THENCE RUN NORTH 88°50'34" WEST AT A DISTANCE OF 867.15 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "DUNIVANT"; THENCE RUN NORTH 01°28'56" EAST AT A DISTANCE OF 1335.21 FEET TO A FOUND 1" IRON PIPE; THENCE RUN SOUTH 89°14'28" EAST AT A DISTANCE OF 290.25 FEET TO A FOUND 5/8" IRON PIN; THENCE RUN NORTH 03°29'54" EAST AT A DISTANCE OF 50.67 FEET TO A FOUND IRON PIPE; THENCE RUN NORTH 22°44'28" WEST AT A DISTANCE OF 338.15 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "COFFMAN"; THENCE RUN NORTH 23°50'03" WEST AT A DISTANCE OF 387.68 FEET TO A FOUND 5/8" IRON PIN; THENCE RUN NORTH 05°15'36"

WEST AT A DISTANCE OF 458.52 FEET TO A POINT ON SAID RIGHT-OF-WAY; THENCE RUN SOUTH 88°04'02" EAST ALONG SAID RIGHT-OF-WAY AT A DISTANCE OF 230.97 FEET TO A POINT; THENCE RUN SOUTH 89°06'12" EAST ALONG SAID RIGHT-OF-WAY AT A DISTANCE OF 1808.10 FEET BACK TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 102 ACRES, MORE OR LESS.

**SECTION 3:** Upon its annexation into the corporate limits of the City, the property described in Section 2 shall be zoned as C-PUD (Conventional Planned Unit Development), in accordance with and defined by the Zoning Ordinance of the City of Athens, Alabama.

**SECTION 4:** Upon its annexation into the corporate limits of the City, the *Master Development Plan of Sowell Property Huntsville-Brownsferry Road* shall be adopted. (A copy of the same is on file in the Public Works Department, and will also be attached to the minutes of this meeting.)

**SECTION 5:** The City Clerk shall cause this Ordinance to be published as provided by law upon the City's receipt of notice, on or before August 1, 2022, that the property described in Section 2 has been sold and transferred by NOLABA and Greenbrier to a third party who also consents to the annexation (unless NOLABA and Greenbrier agree that it may be published prior to the same). Upon such publication, the City shall file notice of the annexation with the Probate Judge of Limestone County, Alabama.

**SECTION 6:** The territory described in this ordinance shall become a part of the corporate limits of Athens, Alabama, upon publication of this ordinance as set forth in Section 5, above.

ADOPTED and APPROVED this, the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

/s/ William R. Marks  
MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes  
CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Councilmember Henry, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Councilmember Wales thereupon moved that the ordinance be finally adopted, which motion was seconded by Councilmember Henry and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

**PUBLIC HEARING RELATING TO THE PROPOSED REZONE OF +/-45 ACRES LOCATED ON THE WEST SIDE OF HWY 31, BETWEEN NUCLEAR PLANT RD AND ROSIE RD, FROM R-1-1 (LOW DENSITY SINGLE FAMILY RESIDENTIAL DISTRICT) TO M-1 (LIGHT INDUSTRIAL ZONING DISTRICT) (PARCEL #'S: 16-02-09-0-001-053.000 & 16-02-09-0-001-054.001)(K&G HOLDINGS, LLC)**

No one spoke in favor of or against.

The public hearing was closed.

**Councilwoman Henry introduced the following ordinance:**

**AN ORDINANCE TO REZONE +/- 45 ACRES LOCATED ON THE WEST SIDE OF HWY 31, BETWEEN NUCLEAR PLANT RD AND ROSIE RD, FROM R-1-1 (LOW DENSITY SINGLE FAMILY RESIDENTIAL DISTRICT) TO M-1 (LIGHT INDUSTRIAL ZONING DISTRICT) (PARCEL #'S: 16-02-09-0-001-053.000 & 16-02-09-0-001-054.001). (K&G HOLDINGS, LLC)**

STATE OF ALABAMA  
LIMESTONE COUNTY,  
CITY OF ATHENS

**ORDINANCE NUMBER 2022 - 2220**

WHEREAS, the Planning Commission of the City of Athens, Alabama, has made a recommendation to the City Council of the City of Athens, Alabama, that hereinafter described areas should be rezoned from R-1-1 (Low Density Single Family Residential District) to M-1 (Light Industrial Zoning District).

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, as follows:**

That all of the hereinafter described area or real estate is hereby zoned M-1 (Light Industrial Zoning District) in accordance with and defined by the "Zoning Ordinance of the City of Athens, Alabama," and that the property which is zoned as aforesaid is situated in Athens, Limestone County, Alabama, and is more particularly described as follows:

**Legal Description**

Lots 32, 33, 34, 35, 36, 37, and 38 of the Final Plat of Tanner Estates as recorded in Plat Book F Pages 79-82 in the office of the judge of probate for Limestone County, said lots containing 45 acres, more or less.

ADOPTED and APPROVED this, the 6<sup>TH</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

/s/ William R. Marks  
MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes  
CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Councilmember Wales, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Councilmember Henry thereupon moved that the ordinance be finally adopted, which motion was seconded by Councilmember Wales and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

Kirk Parker, 915 Beech Street, Athens, addressed the City Council concerning his community needing street lights, paving and sewer. Mr. Parker invited the Council to visit Strain Road, Ash Street and Beech Street and see how their community is sitting still regarding improvements.

Sharon Wilson, 2035 Luke Street, Athens, addressed the City Council regarding drainage. Ms. Wilson stated that her yard

floods when it rains and that as a result, mold is forming in her home. Council President Seibert addressed her issue to Public Works Director, James Rich and Water/Wastewater Manager, Jimmy Junkin. Ms. Wilson then asked about the deep ditches being cut and who is liable. Council President Seibert asked Public Works Director, James Rich, to get in touch with Ms. Wilson regarding the matter.

Mark Wilson, 18042 North Jefferson Street, Athens, addressed the City Council concerning problems in his community. Mr. Wilson stated that they are in need of sidewalks. He then asked about reimbursement for a sewer line that was installed years ago. Councilman Harper stated that he had talked with Mr. Wilson and Michael Griffin about a survey of the intersection that had been performed and that he was going to meet with the Mayor.

Darrell Taylor, 923 Strain Road, East, Athens, addressed the City Council regarding the ditches in his neighborhood being overgrown. Mr. Taylor stated that the ditches were so overgrown that trees are growing in them. He also echoed Mr. Parker's comments.

Scott Marshall, 212 East Street, Athens, addressed the City Council regarding District 3 and the status of appointing another councilmember to replace Frank Travis. Council President Seibert stated that interviews will take place within the next two weeks and an appointment made at the next meeting. Mr. Marshall noted an issue on Washington Street regarding a ditch in the alley across from High Cotton that is filled in with gravel and stated that it was a dangerous situation. Mr. Marshall remarked that he would like to hear about the abatements on the agenda and that this would pull money from people that have been in business for forty years.

Stoney Burks, 2108 Luke Street, Athens, addressed the City Council concerning the flooding in his community. Mr. Burks stated that he had called many times concerning this issue and that nothing has been done about it. He also asked about sewer being run down Luke Street and Strain Road.

Greg Skipworth, 17530 Springview Drive, Athens, addressed the City Council regarding the use of City vehicles and the City's policy. Mr. Skipworth asked if citizens have access to logs of these vehicles being used and if there was a specific policy regarding elected officials.

Irene Williams, 924 Strain Road, Athens, addressed the City Council concerning speed breakers in her neighborhood. Ms. Williams stated that there is an abandoned building next to her property that has overgrown grass and asked that someone address the issue.

Diane Steele, 809 Hobbs Plaza, Athens, addressed the City Council regarding the issues concerning Luke Street and Strain Road. Ms. Steele stated that she was representing the NAACP, Luke Street residents and Strain Road residents. Ms. Steele remarked that the City had failed these residents by denying them of basic services. She noted that the Council should feel empathy and want what is best for these residents. Ms. Steele requested a meeting with Mayor Marks and monthly meetings thereafter.

David Malone, 1300 Somerest Drive, Athens, addressed the City Council and stated that the residents of Strain Road need a lot of help. Mr. Malone then asked about the Westview project. Mayor Marks noted that it would go to bid later on in the year. Mr. Malone stated that the intersection of Sanderfer Road and Old Decatur Road had not been addressed and also the matter of Miller School.

**Councilwoman Henry introduced the following resolution:**

### **RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve the following applicant for a "Lounge Retail Liquor" alcohol license:

Business Name: MAA UMIYA, Inc.  
Dba: The Liquor Cave 2  
Address: 935-B Highway 72  
Athens, AL 35611

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve the following applicant for a “Retail Beer & Wine Off Premises” alcohol license:

Business Name: Publix Alabama LLC  
Db: Publix Alabama 1790  
Address: 165 US Highway 31, N  
Athens, AL 35611

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY OF ATHENS, ALABAMA, to reappoint Wayne Kuykendall to the Athens Historic Preservation Commission for a three year term, expiring on May 31, 2025.

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve travel expenses for a Birmingham conference for the Human Resources Department.

Marsha Sloss	Mileage May 2-4, 2022	\$110.44
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The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve the following travel/education expenses for the Fire Department:

Lee Marker	Roper II and Inst in Charge Training Decatur, AL December 20–22, 2021 and March 11-13, 2022	\$101.51
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The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, that the travel expenses in the following amount be approved for Electric Department personnel.

Harrison Russell	\$101.07
TVPPA-Substation Lab-Huntsville, Al	
James Gray	\$33.25
Middle Tennessee Meter School-Murfreesboro, TN	

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the purchase of lateral filing cabinets for the Clerk's office and Steelcase turnstone buoy chairs for the Clerk's and Mayor's offices in an amount not to exceed \$3,500 to be funded from the existing General and Administrative capital account.

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve the purchase of one (1) Smithco Sand Star Hydraulic Field Probe Machine from Ladd's Turf, Golf, Utility in the amount not to exceed \$25,000 to be funded from the existing CPR capital account.

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to purchase iRecord Universe IP Turnkey Recording System for the upstairs interview rooms from Applied Digital Solutions. The cost of this equipment will not exceed \$14,999. Funding for this purchase will be from the Police Department's existing capital expenditure account.

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, AL to approve the purchase of 10 sections of Large Diameter Supply Hose and 10 sections of 2.5 inch attack line at a cost not to exceed \$9500.00, to be funded from the existing Fire Department capital account.

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, AL to approve the purchase of 8 sets of Lion Structural Firefighting gear at a cost not to exceed \$45000.00 using GHACBuy Contract Pricing, from NAFECO to be funded from the existing Fire Department capital account.

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS ALABAMA, to **RESET** a Public Hearing for the regular meeting at 5:30PM on June 27, 2022 to review the request of J.C Development Company, LLC to **rezone** +/- 11.6 acres, a portion of the property, located north of Athens-Limestone Dr. from R-1-3 (High Density Single Family Residential District) to R-1-5 (Single Family Townhouse Attached Residential District) WITHIN THE CORPORATE LIMITS OF THE CITY OF ATHENS. (Swint Townhomes)

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS ALABAMA, to **RESET** a Public Hearing for the regular meeting at 5:30PM on June 27, 2022 to review the request of Matt Haney & Keith Haney to **annex** +/- 3/4 acres of property located at 18025 Nuclear Plant RD, into the City limits of Athens AL. 35611, and zone the property: B2 (General Business District). (GK Enterprises Inc.)

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS ALABAMA, to **RESET** a Public Hearing for the regular meeting at 5:30PM on June 27, 2022 to review the request of OF&C Enterprises, Inc. to **rezone** +/- 61.8 acres, located at 2088 Lindsay Lane, on the west side of Lindsay Lane S, east of Interstate 65 (across for the Links at Canebrake) from C-PUD (Conventional Planned Unit Development) to R-1-3 (High-Density Single-Family District) WITHIN THE CORPORATE LIMITS OF THE CITY OF ATHENS. (Johnson Property)

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilman Harper introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1804**

**A RESOLUTION AWARDED A CONTRACT  
FOR THE REPAIR AND RENOVATION OF HOUSTON LIBRARY**

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WHEREAS, the City of Athens, Alabama received sealed bids for the *Repair and Renovation Project – Houston Memorial Library – Athens, Alabama* (the “Project”);

WHEREAS, the City Council finds that the lowest responsible bidder was Tom Little Construction, Inc., who submitted a bid in the amount of \$130,000; and

WHEREAS, the City Council desires to award the contract for the Project, and to authorize execution of the contract for the same.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** while in regular session on June 6, 2022 at 5:30 p.m., as follows:

1. The contract for the Project is hereby awarded to Tom Little Construction, Inc., with respect to its bid of \$130,000.

2. The Mayor (and/or his designee) is authorized to formulate a contract that is in conformity with the bid specifications and proposal of the successful bidder, and to execute it in the name of, and on behalf of, the City. Such contract, at the Mayor's (and/or his designee's) reasonable discretion, may include further and additional terms that accomplish the purpose of this Resolution, to the extent that the same are not inconsistent with the bid specifications and proposal of the successful bidder, and are otherwise permitted by law.

3. The Mayor (and/or his designee) is further authorized to carry out the terms of such contract(s) as soon as may be practicable, and to execute such other and additional documents that may be necessary and/or required in order to facilitate the transaction described herein.

4. The cost of the Project will be funded from the Houston Library line item in the capital projects fund and the Houston Library Board.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

Councilmember Wales moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Henry, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Harper thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Henry and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilman Harper introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1805**

**A RESOLUTION CONCERNING THE PURCHASE OF  
A SUBSTATION POWER TRANSFORMER**

**WHEREAS**, a substation power transformer in the City's electrical system has been damaged and failed due to a powerful storm;

**WHEREAS**, the Athens Electric Department wishes to purchase a new 15 MVA, 46-12.47 kV substation power transformer as a replacement (the "Substation Transformer");

**WHEREAS**, although temporary facilities are being used to provide electrical power in the affected area, this is only a temporary solution and there is a great need to purchase the Substation Transformer without delay so that the source of electrical power is not further threatened in the area;

**WHEREAS**, after consultation and quotes from various vendors, the City has determined that Virginia Transformer Company, Inc. (the "Company") can provide a new Substation Transformer in an acceptable price range;

**WHEREAS**, the City Council find and determines that it is the common and regular practice of the Athens Electric Department that substation power transformers are integrated into the department's electrical distribution system for the transformer's entire lifespan, such that the equipment is utilized until it is worn out and spent with no further remaining value or use to the department;

**WHEREAS**, the City Council find and determines that the purchase of the Substation Transformer is a purchase of equipment needed, used, and consumed in the normal and routine operation of the City's electric system, and the City's electric department does not rely on any revenues derived from taxes or state/county/city appropriations; therefore, this purchase is exempt from competitive bidding requirements of state law;

**WHEREAS**, in any event, the City Council further finds and declares that the need for a replacement substation transformer constitutes an emergency affecting public health, safety, or convenience, such that contracts should be let without public advertisement to avoid further delay in obtaining a replacement; and

**WHEREAS**, the City Council desires to enter into a contract with the Company to provide a new Substation Transformer.

**THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022 at 5:30 p.m., as follows:

1. The Mayor is authorized, for an on behalf of the City of Athens, to purchase a Substation Transformer from the Company for a price of up to \$800,000. In connection with the foregoing, the Mayor (or his designee) is authorized, for and on behalf of the City of Athens, to enter into an agreement with the Company with respect to the purchase of the Substation Transformer.

2. The Mayor is further authorized to carry out the terms of the contract(s) referenced in this Resolution, and to execute such other and additional documents that may be necessary and/or required in order to facilitate the transaction described herein.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

Councilmember Wales moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Henry, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Harper thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Henry and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilman Wales introduced the following resolution:**

#### **RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the Manager of the City of Athens Gas Department to renew Double D. Pipelines Contract and Speegle Contracting for not more than three years that includes no more than three percent increase each calendar year with an expiration date of no later than June 1<sup>st</sup>, 2025 and spread the same on the minutes.

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

#### **RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF ATHENS, ALABAMA to adopt an organizational chart for the Water Services Department, which includes 45 regular status positions.

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

#### **RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF ATHENS, ALABAMA, to adopt the following job descriptions for the Water Services Department:

- Capital Improvement Manager, Grade 24, Job description created 5.17.2022
- Manager of Logistics & Strategic Asset Management, Grade 22, Job description created 5.17.22

The motion was seconded by Councilman Wales and was unanimously carried.

**Councilman Harper introduced the following ordinance:**

**STATE OF ALABAMA  
LIMESTONE COUNTY  
CITY OF ATHENS**

#### **ORDINANCE NUMBER 2022 - 2221**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, that Ordinance Number 888, establishing a classification list for classified employees is hereby amended as follows, effective: 06.06.2022.

Add the following job titles to the list of classified positions for the Water Services Dpt.

- (1) Capital Improvement Program Manager
- (2) Manager of Logistics & Strategic Asset Management

ADOPTED this the 6<sup>th</sup> day of June 2022

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

/s/ William R. Marks  
MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes  
CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Henry moved that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Councilmember Wales, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Councilmember Harper thereupon moved that the ordinance be finally adopted, which motion was seconded by Councilmember Wales and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

**Councilman Harper introduced the following resolution:**

## **RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF ATHENS, ALABAMA to adopt an organizational chart for the Cemetery, Parks, and Recreation Department, which includes 34 regular status positions. The motion was seconded by Councilwoman Henry and was unanimously carried.

**Councilman Harper introduced the following resolution:**

## **RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF ATHENS, ALABAMA** to adopt the revised job description for the Cemeteries, Parks, and Recreation Department:

- Facilities and Grounds Maintenance Supervisor; Job description revised 04/29/2022

The motion was seconded by Councilman Wales and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

## **RESOLUTION**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, at its meeting on June 6, 2022, that the Council authorizes Change Order 1, an additive change order in the amount of \$115,045.47 for the Wilburn Street Pipe Bursting Project contract with RDJE, Inc. and increasing the contract amount from \$498,875.00 to \$613,920.47, and the Water Services Director, for and on behalf of the City of Athens, is authorized to execute this change order.

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Wales, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Henry thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Harper and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilman Wales introduced the following resolution:**

## **RESOLUTION**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, at its meeting on June 6, 2022, that the Council authorizes the purchase of piping materials for the Lower Swan Creek Sanitary Sewer Project Phase 1 in the budgeted capital amount of \$2,093,550.00 to be funded from the 2022 Water and Sewer Bond Series, and the Water Services Director, for and on behalf of the City of Athens, is authorized to purchase the piping materials referenced for the purposes referenced.

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Henry, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Wales thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Harper and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilwoman Henry introduced the following resolution:**

## RESOLUTION

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, at its meeting on June 6, 2022, that the Council authorizes the purchase of piping materials for the Upper Swan Creek Sewer Trunk Line Improvements Project Phase 3 in the amount of \$1,860,000.00 to be funded from the 2022 Water and Sewer Bond Series, and the Water Services Director, for and on behalf of the City of Athens, is authorized to purchase the piping materials referenced for the purposes referenced.

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Wales, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Henry thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Harper and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilman Harper introduced the following resolution:**

### RESOLUTION NUMBER 2022 - 1806

#### A RESOLUTION CONCERNING THE PURCHASE OF ADDITIONAL CYBERSECURITY SOFTWARE

**WHEREAS**, the City Council desires to further enhance the City's cybersecurity systems;

**WHEREAS**, expenditures for cybersecurity systems are qualified expenditures of *Coronavirus State and Local Fiscal Recovery Funds*;

**WHEREAS**, after extensive review of quotes and analysis, the City has determined that CDW•G LLC (the "Company") provides a desirable cybersecurity software system upgrade for the City;

**WHEREAS**, the goods and/or services to be provided pursuant to this Resolution relate to, or have an impact upon security plans and systems, and the security of facilities and infrastructures, and therefore, are exempt from competitive bidding requirements of state law; and

**WHEREAS**, the City Council desires to enter into a contract with the Company to provide a cybersecurity enhancement.

**THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022 at 5:30 p.m., as follows:

1. The Mayor is authorized, for and on behalf of the City of Athens, to purchase cybersecurity software from the Company for a price of up to \$20,000.00 per year for three years. In connection with the foregoing, the Mayor (or his designee) is authorized, for and on behalf of the City of Athens, to enter into an agreement with the Company with respect to the purchase of the cybersecurity software upgrade.
2. The above-referenced purchase price shall be paid from the City's allocation of *Coronavirus State and Local Fiscal Recovery Funds*, to the extent that the same are expended prior to the statutory deadline for such funds.

3. The Mayor is further authorized to carry out the terms of the contract(s) referenced in this Resolution, and to execute such other and additional documents that may be necessary and/or required in order to facilitate the transaction described herein.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

Councilmember Wales moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Henry, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Harper thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Wales and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1807**

**A RESOLUTION CONCERNING THE PURCHASE OF  
AUTHENTICATION CYBERSECURITY SOFTWARE**

**WHEREAS**, the City Council desires to further enhance the City's cybersecurity systems;

**WHEREAS**, expenditures for cybersecurity systems are qualified expenditures of *Coronavirus State and Local Fiscal Recovery Funds*;

**WHEREAS**, after extensive review of quotes and analysis, the City has determined that C Spire Business (the "Company") provides a desirable cybersecurity software system upgrade for the City;

**WHEREAS**, the goods and/or services to be provided pursuant to this Resolution relate to, or have an impact upon security plans and systems, and the security of facilities and infrastructures, and therefore, are exempt from competitive bidding requirements of state law; and

**WHEREAS**, the City Council desires to enter into a contract with the Company to provide a cybersecurity enhancement.

**THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022 at 5:30 p.m., as follows:

1. The Mayor is authorized, for an on behalf of the City of Athens, to purchase a DUO Multi Factor Authentication software/service from the Company for a price of up to \$11,000.00 per year for three years. In connection with the foregoing, the Mayor (or his designee) is authorized, for and on behalf of the City of Athens, to enter into an agreement with the Company with respect to the purchase of the software/service.

2. The above-referenced purchase price shall be paid from the City's allocation of *Coronavirus State and Local Fiscal Recovery Funds*, to the extent that the same are expended prior to the statutory deadline for such funds.

3. The Mayor is further authorized to carry out the terms of the contract(s) referenced in this Resolution, and to execute such other and additional documents that may be necessary and/or required in order to facilitate the transaction described herein.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Wales, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Henry thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Harper and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilman Wales introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1808**

**A RESOLUTION APPROVING AN ANNEXATION/SEWER AGREEMENT WITH ATHENS GDC LLC**

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**WHEREAS**, the City Council of the City of Athens desires to enter into an agreement with ATHENS GDC LLC (the “Company”), whereby it will confirm the Company’s consent to the annexation of certain property upon the City’s assurances that sewer service will be provided to such property; and

**WHEREAS**, it is hereby determined that the agreement described herein will serve valid and sufficient public purposes, including (i) promoting, improving and expanding economic and commercial development/activity within the City, (ii) expanding the corporate limits of the City, and (iii) enhancing the overall quality of life for the citizens of the City, notwithstanding any incidental benefit accruing to any private entity or entities.

**THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022, at 5:30 p.m., as follows:

1. The Mayor of the City is hereby authorized and directed, in the name of and for account of the City, to enter into a contract between the City and the Company, in substantially the same form as is attached hereto (and entitled the “Annexation/Sewer Agreement (NOLABA Property)”) as Attachment 1, with such non-substantive changes or additions thereto or deletions therefrom as the Mayor shall approve, which approval shall be conclusively evidenced by his execution of such instrument. The City Clerk of the City is hereby authorized and directed to affix the official seal of the City to such instrument and to attest the same.

2. The Mayor is authorized to take actions and execute such other and further documents as may be necessary to effect and carry out the transactions contemplated by this Resolution and/or the agreement referenced herein, including but not limited to the expenditure and use of municipal funds as set forth in the agreement; and approving and executing further agreement(s) that are consistent with and involved in carrying out the transactions contemplated by this Resolution.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

**ATTACHMENT 1**

**ANNEXATION / SEWER AGREEMENT (NOLABA PROPERTY)**

This ANNEXATION / SEWER AGREEMENT (NOLABA PROPERTY) (the "Agreement") is hereby made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), between **ATHENS GDC LLC**, an Alabama limited liability company, (the "New Owner") and the City of Athens, Alabama (the "City"). The Owner and the City may from time to time be referred to individually as a "Party" and collectively as the "Parties".

**WITNESSETH:**

**WHEREAS**, NOLABA Land Holdings, LLC and Greenbrier Holdings, L.L.C. petitioned the City for the annexation of the following real property:

*COMMENCING AT A RAILROAD SPIKE FOUND AT THE NORTHEAST CORNER OF SECTION 4, TOWNSHIP 4 SOUTH, RANGE 4 WEST, LIMESTONE COUNTY, ALABAMA, THENCE RUN SOUTH 01°00'56" WEST AT A DISTANCE OF 125.72 FEET TO A POINT ON THE SOUTHERN RIGHT-OF-WAY FOR HUNTSVILLE-BROWNSFERRY ROAD, SAID POINT ALSO BEING THE POINT OF BEGINNING.*

*THENCE FROM THE POINT OF BEGINNING RUN SOUTH 00°59'49" WEST AT A DISTANCE OF 321.47 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "DUNIVANT"; THENCE RUN SOUTH 01°00'28" WEST AT A DISTANCE OF 320.08 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "DUNIVANT"; THENCE RUN SOUTH 01°02'13" WEST AT A DISTANCE OF 1867.50 FEET TO A POINT; THENCE RUN NORTH 88°49'55" WEST AT A DISTANCE OF 401.41 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "DUNIVANT"; THENCE RUN NORTH 00°16'28" EAST AT A DISTANCE OF 594.02 FEET TO A POINT; THENCE RUN NORTH 89°15'08" WEST AT A DISTANCE OF 724.02 FEET TO A POINT; THENCE RUN SOUTH 00°15'56" WEST AT A DISTANCE OF 589.00 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "DUNIVANT"; THENCE RUN NORTH 88°50'34" WEST AT A DISTANCE OF 867.15 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "DUNIVANT"; THENCE RUN NORTH 01°28'56" EAST AT A DISTANCE OF 1335.21 FEET TO A FOUND 1" IRON PIPE; THENCE RUN SOUTH 89°14'28" EAST AT A DISTANCE OF 290.25 FEET TO A FOUND 5/8" IRON PIPE; THENCE RUN NORTH 03°29'54" EAST AT A DISTANCE OF 50.67 FEET TO A FOUND IRON PIPE; THENCE RUN NORTH 22°44'28" WEST AT A DISTANCE OF 338.15 FEET TO A FOUND IRON PIN WITH A CAP STAMPED "COFFMAN"; THENCE RUN NORTH 23°50'03" WEST AT A DISTANCE OF 387.68 FEET TO A FOUND 5/8" IRON PIPE; THENCE RUN NORTH 05°15'36" WEST AT A DISTANCE OF 458.52 FEET TO A POINT ON SAID RIGHT-OF-WAY; THENCE RUN SOUTH 88°04'02" EAST ALONG SAID RIGHT-OF-WAY AT A DISTANCE OF 230.97 FEET TO A POINT; THENCE RUN SOUTH 89°06'12" EAST ALONG SAID RIGHT-OF-WAY AT A DISTANCE OF 1808.10 FEET BACK TO THE POINT OF BEGINNING.*

*SAID TRACT OF LAND CONTAINS 102 ACRES, MORE OR LESS.*

*(the "NOLABA/Greenbrier Property");*

**WHEREAS**, the New Owner is under contract to buy the NOLABA/Greenbrier Property;

**WHEREAS**, the City Council of the City of Athens, Alabama has adopted an ordinance approving the annexation, subject to the condition that the annexation will not be effective unless, generally speaking, the New Owner has purchased the NOLABA/Greenbrier Property and consents to the annexation;

**WHEREAS**, as set forth herein, the New Owner, upon its acquisition of the NOLABA/Greenbrier Property, agrees to give its consent to the City for the NOLABA/Greenbrier Property's annexation, upon the City's assurances of sewer service that are set forth herein; and

**WHEREAS**, the Parties are desirous of setting forth the proposals and respective commitments of the Parties in a valid, binding and enforceable agreement, as more fully described herein.

**NOW, THEREFORE**, upon and in consideration of the respective promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## **I. NEW OWNER'S CONSENT TO ANNEXATION OF PROPERTIES**

Upon the New Owner's acquisition of a property interest in the NOLABA/Greenbrier Property, the New Owner does hereby consent and agree to the annexation of the NOLABA/Greenbrier Property into the corporate limits of the City of Athens, Alabama, and does hereby join in the Petition for Annexation to the City of Athens, Alabama previously submitted to the City by NOLABA Land Holdings LLC and Greenbrier Holdings, L.L.C. Upon the New Owner's acquisition of a property interest in the NOLABA/Greenbrier Property, the New Owner shall, within five (5) days of such acquisition, provide the City with copies of the deed or other conveyance by which it acquired a property interest in the NOLABA/Greenbrier Property, and a written notice reaffirming that the New Owner consents and agrees to the annexation of the NOLABA/Greenbrier Property by the City.

## **II. CITY'S PROVISION OF SEWER SERVICE**

A. **Sewer Service Available to NOLABA Property.** Upon the City's annexation of the NOLABA/Greenbrier Property and the City's receipt of the New Owner's written notice described in Section I, the City will cause the planning, design and construction of a sewer project that will make Athens Utilities public sewer service available to the NOLABA/Greenbrier Property.

B. **City's Consultation with New Owner.** The City agrees to consult in good faith with the New Owner, from time to time, concerning the design, cost, progression and schedule of the sewer project described in Section II(A) (the "Sewer Project"). The New Owner recognizes that while the City cannot warrant or promise any date of completion of the Sewer Project, the City will, commencing upon the City's annexation of the NOLABA/Greenbrier Property and receipt of the written notices as described in Section I, work diligently and in good faith in an effort to cause the Sewer Project to be completed on a reasonable timeline that is acceptable to the New Owner. The City shall keep New Owner reasonably apprised of the progress and estimated time for completion of the Sewer Project. While the City maintains sole control of its Sewer Project, the City agrees to consider in good faith any reasonable objections by the New Owner to the location of the Sewer Project.

C. **New Owner's Grant of Easement to City for Sewer Projects.** The New Owner agrees to grant non-exclusive easements to the City, at no cost to the City, across and under any portion of the NOLABA/Greenbrier Property that is reasonably deemed needed by the City in order to construct the Sewer Project, including but not limited to the grant of an easement of any strip of land not in excess of 15 feet wide on either side of the pipe installed within the Sewer Project that the City's engineers, in their reasonable judgment, deem is needed in order to serve the NOLABA/Greenbrier Property (and adjacent properties) with public sewer service. In conjunction with such easement, the New Owner will provide the City with a courtesy copy of a title commitment and/or policy from a title company showing that the grantor of such easement owns a fee simple interest in the property, subject to the City's permitted exceptions, and has the power and authority to convey the same to the City. The New Owner shall retain the right to construct and/or install parking lots, drive aisles, curbing, vegetation and similar improvements within the easement area (but no structures, unless with the City's express consent), to the extent that the same do not materially interfere with the City's easement, after the City completes the Sewer Project and the City shall be responsible for correcting damage caused to the New Owner's improvements resulting from the City's access to the easement area following completion of the Sewer Project.

D. **Sewer Service Availability on Standard Terms and Conditions.** The City's obligation to make public sewer service available to a property under Section II(A) shall be deemed satisfied when the City has completed the installation of infrastructure that will enable improvements on the NOLABA/Greenbrier Property to connect to the City's

sewer system, in accordance with the City's standards, and the City stands ready and willing to furnish public sewer service to any portion of that property upon the same terms, conditions, fees, and deposits that such public sewer service would be offered to any other similarly-situated property owner within the city whose property adjoins a portion of the City's public sewer service infrastructure that is available for connection.

E. **City's Design and Construction of Public Improvements.** In satisfying its obligations as set forth herein, the City retains its sole authority to design and construct public improvements and public works, and does not, through the operation of this Agreement, delegate, share, or require the approval of any other person or entity with respect to the same. The Sewer Projects will be designed and constructed by the City in a form and manner that satisfies all applicable standards, ordinances, regulations and objectives of the City.

### **III. REPRESENTATIONS AND WARRANTIES**

A. **City's Representations and Warranties.** The City hereby represents and warrants as follows:

1. The City has taken all necessary action required by applicable law to authorize this Agreement and the obligations hereunder, and by proper corporate action the City has duly authorized the execution, delivery and performance of this Agreement.

2. No consent, approval, or authorization from any governmental authority or third party is required to be obtained by the City in connection with the execution, delivery, and performance by City of this Agreement.

3. This Agreement is binding on City and enforceable against City in accordance with its terms. Neither the execution of this Agreement nor consummation of the transactions contemplated hereby will (i) result in a breach of, default under or acceleration of any agreement to which City is a party or by which City is bound, or (ii) violate any restriction, court order, agreement or other legal obligation to which City is subject.

B. **New Owner's Representations, Warranties and Covenants.** The New Owner hereby represents and warrants as follows:

1. The New Owner has all necessary corporate power and authority to enter into and perform its obligations hereunder and by proper action the New Owner has duly authorized the execution, delivery and performance of this Agreement.

2. The New Owner has contracts in place to acquire the NOLABA/Greenbrier Property prior to August 1, 2022.

3. This Agreement, when executed and delivered, will constitute the valid and binding obligations of the New Owner, enforceable in accordance with the terms and conditions set forth herein.

4. The New Owner's execution and delivery of this Agreement and New Owner's compliance with the provisions thereof will not conflict with or constitute a breach of, or a default under, any of the provisions of any applicable law, rule, regulation or order of any court, administrative agency, bureau, board, commission, office, authority, department or other governmental entity.

5. The New Owner is not a party to or bound by any agreement or obligation or subject to any restriction or to any applicable law, rule, regulation or order of any court, administrative agency, bureau, board, commission, office, authority, department or other governmental entity, which it has reason to believe will result in a material impairment of the rights or abilities of New Owner to perform its obligations hereunder.

6. There are no known judgments, orders, suits, actions, garnishments, attachments or proceedings of any nature by or before any court, commission, board or other governmental body pending, or to the knowledge of New Owner threatened, which involve or affect, or could involve or affect: (a) the NOLABA/Greenbrier Property, or any part thereof; (b) the validity or enforceability of this Agreement; or (c) any risk of any judgment or liability being imposed

upon the New Owner which could materially adversely affect the New Owner's ability to observe or perform fully its agreements and obligations hereunder.

**IV. MISCELLANEOUS**

A. **Severability Clause.** *The provisions of this Agreement shall be severable. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof or thereof.*

B. **Prior Agreements Cancelled.** *This Agreement shall completely and fully supersede all other prior agreements, both written and oral, among the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein. (Notwithstanding the foregoing, nothing in this Agreement shall disrupt, amend, impair, or otherwise affect the rights, duties, and/or obligations of the New Owner concerning or relating to zoning, site plan approval, any master development plan, or any other permit or approval concerning the NOLABA/Greenbrier Property.)*

C. **Counterparts.** *This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.*

D. **No Third Party Beneficiaries.** *This Agreement shall inure to the benefit solely of the parties hereto and their permitted successors and assigns, and no other person or entity is an intended beneficiary hereof or shall have any right to enforce the provisions hereof.*

E. **Notice.**

1. *All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:*

a. *if to the City:*

*(If by mail)*  
City Hall  
City of Athens  
PO Box 1089  
Athens, Alabama 35612  
Attention: Mayor  
Attention: City Engineer  
Attention: Manager, Athens Water  
Services

*(if by delivery)*

City Hall  
City of Athens  
200 Hobbs Street W  
Athens, AL 35611

Attention: Mayor  
Attention: City Engineer  
Attention: Manager, Athens Water  
Services

*With a copy to:*

b. *if to the New Owner:*

ATHENS GDC LLC  
2255 Buford Highway, Suite 250,  
Buford, GA, 30518  
Attn: Adam Whitmire

*With a copy to:*

Wendy W. Kraby  
GDCR Law  
2951 Flowers Rd S, Suite 220,  
Atlanta, GA, 30341

E. Shane Black, Esq.  
Hand Arendall Harrison Sale, LLC  
102 S Jefferson Street  
Athens, AL 35611

2. Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

**F. Delegation and Assignment of this Agreement.**

1. The City shall have no authority or power to, and shall not, delegate to any person the duty or obligation to observe or perform any agreement or obligation of the City hereunder. Nothing in this section, however, shall prevent the City from engaging appropriate consultants, contractors, experts, agents or outside representatives to perform the City's obligations under this Agreement on behalf of the City.

2. The City shall not have any authority or power to, and shall not, assign to any person any right of the City hereunder or any interest of the City herein.

3. Except for a Permitted Transferee (defined below)The New Owner may not transfer or assign to any person any or all of its rights, title and interest in this Agreement, without the prior written consent of the Mayor of the City, which consent shall not be unreasonably withheld, conditioned or delayed. In no event shall the City have any obligation to respond to, or give notices to any party other than the New Owner or, after any assignment as permitted hereby, to a single assignee. Notwithstanding the foregoing, New Owner shall have the right, without any consent or approval from the City, to assign this Agreement to a new entity created by New Owner (or any member thereof) for the purpose of acquiring and owning the NOLABA/Greenbrier Property (a "Permitted Transferee").

**G. Amendments.** This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.

**H. No Joint Venture.** Nothing in this Agreement shall create any joint venture, partnership or other relationship between the parties.

**I. Governing Law.** This Agreement shall be governed exclusively by the laws of the State of Alabama, without regard to its conflicts of laws provisions.

**J. Venue / Waiver of Jury Trial.** The Parties consent and submit to the jurisdiction of the state courts of Limestone County, Alabama and/or the United States District Court for the Northern District of Alabama, Northern Division, and expressly agree that the counties in which such courts are situated will be the exclusive venues for any suit, action or proceeding arising out of or related to this Agreement. In any legal proceeding arising from or related to the same, the Parties do hereby waive any right to a trial by jury.

**K. Time of the Essence.** Time is of the essence of each provision of this Agreement.

**L. Waiver.** No waiver of any breach, violation or default of this Agreement shall be construed as a waiver of any subsequent breach, violation or default hereof.

**M. Drafting.** The parties hereto acknowledge that each of them has had the opportunity to contribute to the drafting of this Agreement, and, as a consequence, that the Agreement should not be construed for or against any party to it.

**N. Attorney Fees.** If either party institutes an action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the unsuccessful party to such action or proceeding will reimburse the successful party therein for the reasonable expenses of attorneys' fees and disbursements and litigation expenses incurred by the successful party.

O. **Delay Event.** Notwithstanding anything herein to the contrary, if a Delay Event occurs, the City's and New Owner's respective obligations hereunder will be extended for so long as such Delay Event occurs and is continuing. A "Delay Event" means any cause(s) or matter(s), whether of the kind herein enumerated or otherwise, which is outside of the reasonable control of the affected party, and which the affected party could not reasonably foresee or expect at the time it entered into this Agreement, and which obstructs, impedes or interferes with the affected party's reasonable efforts relating to their respective obligations. Such term includes, but is not limited to: (i) acts of God; (ii) strikes or lockouts; (iii) conditions arising from a change in governmental laws, orders, rules or regulations, provided the City shall not knowingly enact any law or regulation which disproportionately affect its obligations hereunder compared to similarly situated developments; (iv) acts of public enemy, wars, blockades, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, tornados, hurricanes, floods, and/or washouts; (v) unavoidable walkouts of the Parties' employees, and/or their respective engineers, general contractor and subcontractors engaged to perform work related to the obligations hereunder; (vi) any unforeseen soil or other natural conditions that delay or obstruct obligations hereunder; (vii) any unforeseen environmental hazards that delay or prevent construction hereunder; (viii) any governmental permitting or approval process (other than one within the exclusive control of the City) that delays or prevents obligations hereunder; (ix) the inability of the Parties, their respective contractors, or their subcontractors to acquire, after the exercise of due diligence, materials and supplies for the purpose of being used in connection with the obligations hereunder; and/or (x) unforeseeable extreme inclement weather conditions that delay or prevent performance of obligations hereunder. Except as set forth above time shall be the essence with respect to each obligation of the parties hereunder. Each Party shall notify the other Party within a reasonable time upon the occurrence of any Delay Event, including the estimated amount of the delay. The Parties shall use reasonable efforts to mitigate the effects of any Delay Event.

P. **Excluded Liabilities.** Except as expressly set forth herein, or in any other written commitment from the City, the City shall neither assume nor pay for nor be liable for any of the New Owner's agreements, liabilities, debts, responsibilities or obligations with respect to the NOLABA/Greenbrier Property, or otherwise, whether direct, fixed or contingent, and whether existing or arising at any time prior or subsequent to the date of this Agreement. Furthermore, nothing herein shall be construed to exempt the New Owner from any charge, fee, or other cost regularly charged or imposed by the City in connection with utility service.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be executed in its name, under seal, and the same attested, by an officer thereof duly authorized thereunto, and the New Owner has executed this Agreement under seal, and the parties have caused this Agreement to be dated the date and year first above written.

[Signature Lines]

The motion was seconded by Councilman Harper and was unanimously carried.

**Councilman Harper introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1809**

**A RESOLUTION APPROVING AN ANNEXATION/SEWER AGREEMENT WITH M&V RE VENTURES, LLC**

---

**WHEREAS**, the City Council of the City of Athens desires to enter into an agreement with M&V RE VENTURES, LLC (the "Company"), whereby it will confirm the Company's consent to the annexation of certain property upon the City's assurances that sewer service will be provided to such property; and

**WHEREAS**, it is hereby determined that the agreement described herein will serve valid and sufficient public purposes, including (i) promoting, improving and expanding economic and commercial development/activity within the City, (ii) expanding the corporate limits of the City, and (iii) enhancing the overall quality of life for the citizens of the City, notwithstanding any incidental benefit accruing to any private entity or entities.

**THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022, at 5:30 p.m., as follows:

1. The Mayor of the City is hereby authorized and directed, in the name of and for account of the City, to enter into a contract between the City and the Company, in substantially the same form as is attached hereto (and entitled the "Annexation/Sewer Agreement (Downs Property)") as Attachment 1, with such non-substantive changes or additions thereto or deletions therefrom as the Mayor shall approve, which approval shall be conclusively evidenced by his execution of such instrument. The City Clerk of the City is hereby authorized and directed to affix the official seal of the City to such instrument and to attest the same.

2. The Mayor is authorized to take actions and execute such other and further documents as may be necessary to effect and carry out the transactions contemplated by this Resolution and/or the agreement referenced herein, including but not limited to the expenditure and use of municipal funds as set forth in the agreement; and approving and executing further agreement(s) that are consistent with and involved in carrying out the transactions contemplated by this Resolution.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

**ATTACHMENT 1**

**ANNEXATION / SEWER AGREEMENT (DOWNS PROPERTY)**

*This ANNEXATION / SEWER AGREEMENT (DOWNS PROPERTY) (the "Agreement") is hereby made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), between M&V RE VENTURES, LLC, a Delaware limited liability company, (the "New Owner") and the City of Athens, Alabama (the "City"). The Owner and the City may from time to time be referred to individually as a "Party" and collectively as the "Parties".*

**WITNESSETH:**

***WHEREAS, Gary Thomas Downs petitioned the City for the annexation of the following real property: COMMENCING AT A RAILROAD SPIKE IN THE CENTERLINE OF HUNTSVILLE-BROWNSFERRY ROAD BEING THE SOUTHEAST CORNER OF SECTION 33 TOWNSHIP 3 SOUTH RANGE 4 WEST IN LIMESTONE COUNTY, ALABAMA; THENCE ALONG SAID CENTERLINE RUN NORTH 89°07'03" WEST AT A DISTANCE OF 402.00 FEET TO A POINT; THENCE LEAVING SAID CENTERLINE RUN NORTH 00°52'57" EAST AT A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTHERN RIGHT OF WAY OF HUNTSVILLE-BROWNSFERRY ROAD, SAID POINT BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;***

***THENCE FROM THE POINT OF BEGINNING ALONG SAID RIGHT OF WAY RUN NORTH 89°04'13" WEST AT A DISTANCE OF 569.89 FEET TO A POINT; THENCE LEAVING SAID RIGHT OF WAY RUN NORTH 01°14'39" EAST AT A DISTANCE OF 252.33 FEET TO A POINT ON A FENCE CORNER; THENCE ALONG A FENCE LINE RUN NORTH 87°51'52" WEST AT A DISTANCE OF 358.23 FEET TO A POINT; THENCE RUN NORTH 00°00'33" WEST AT A DISTANCE OF 895.13 FEET TO A CAPPED IRON PIN STAMPED "COFFMAN"; THENCE RUN NORTH 00°00'14" WEST AT A DISTANCE OF 472.70 FEET TO A POINT; THENCE ALONG FENCE LINE RUN NORTH 01°46'52" EAST AT A DISTANCE OF 437.24 FEET TO A POINT; THENCE CONTINUING ALONG SAID FENCE LINE RUN NORTH 01°01'26" EAST AT A DISTANCE OF 283.66 FEET TO A POINT; THENCE ALONG SAID FENCE LINE RUN NORTH 00°20'08" WEST AT A DISTANCE OF 252.98 FEET TO A FENCE POST; THENCE ALONG A FENCE LINE RUN SOUTH 89°06'04" EAST AT A DISTANCE OF 395.73 FEET TO A POINT; THENCE CONTINUING ALONG SAID FENCE LINE RUN SOUTH 88°21'54" EAST AT A DISTANCE OF 365.32 FEET TO A POINT; THENCE ALONG SAID FENCE LINE RUN SOUTH 88°50'32" EAST AT A DISTANCE OF 527.92 FEET TO A POINT ON THE EAST LINE OF SECTION 33***

TOWNSHIP 3 SOUTH RANGE 4 WEST, SAID POINT BEING SOUTH 00°44'22" EAST AT A DISTANCE OF 7.82 FEET FROM THE PURPORTED NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 33; THENCE LEAVING SAID FENCELINE RUN SOUTH 89°20'37" EAST AT A DISTANCE OF 1501.38 FEET TO A CAPPED IRON PIN STAMPED "COFFMAN"; THENCE RUN SOUTH 00°17'25" EAST AT A DISTANCE OF 2557.15 FEET TO A POINT ON THE NORTHERN RIGHT OF WAY OF HUNTSVILLE-BROWNSFERRY ROAD; THENCE ALONG SAID RIGHT OF WAY RUN NORTH 89°06'12" WEST AT A DISTANCE OF 1464.08 FEET TO A POINT; THENCE ALONG SAID RIGHT OF WAY RUN SOUTH 74°41'01" WEST AT A DISTANCE OF 156.22 FEET TO A POINT; THENCE ALONG SAID RIGHT OF WAY RUN NORTH 89°25'58" WEST AT A DISTANCE OF 127.05 FEET TO A POINT; THENCE ALONG SAID RIGHT OF WAY RUN NORTH 89°07'02" WEST AT A DISTANCE OF 155.98 FEET TO THE POINT OF BEGINNING;

SAID TRACT CONTAINS 163.9 ACRES, MORE OR LESS.

(the "Downs Property");

**WHEREAS**, the New Owner is under contract to buy the Downs Property;

**WHEREAS**, the City Council of the City of Athens, Alabama has adopted an ordinance approving the annexation, subject to the condition that the annexation will not be effective unless, generally speaking, the New Owner has purchased the Downs Property and consents to the annexation;

**WHEREAS**, as set forth herein, the New Owner, upon its acquisition of the Downs Property, agrees to give its consent to the City for the Downs Property's annexation, upon the City's assurances of sewer service that are set forth herein; and

**WHEREAS**, the Parties are desirous of setting forth the proposals and respective commitments of the Parties in a valid, binding and enforceable agreement, as more fully described herein.

**NOW, THEREFORE**, upon and in consideration of the respective promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## **I. NEW OWNER'S CONSENT TO ANNEXATION OF THE DOWNS PROPERTY**

Upon the New Owner's acquisition of a property interest in the Downs Property, the New Owner does hereby consent and agree to the annexation of the Downs Property into the corporate limits of the City of Athens, Alabama, and does hereby join in the Petition for Annexation to the City of Athens, Alabama previously submitted to the City by Gary Thomas Downs. Upon the New Owner's acquisition of a property interest in the Downs Property, the New Owner shall, within five (5) days of such acquisition, provide the City with copies of the deed or other conveyance by which it acquired a property interest in the Downs Property, and a written notice reaffirming that the New Owner consents and agrees to the annexation of the Downs Property by the City.

## **II. CITY'S PROVISION OF SEWER SERVICE**

A. **Sewer Service Available to Downs Property.** Upon the City's annexation of the Downs Property and the City's receipt of the New Owner's written notice described in Section I, the City will cause the planning, design and construction of a sewer project that will make Athens Utilities public sewer service available to the Downs Property.

B. **City's Consultation with New Owner.** The City agrees to consult in good faith with the New Owner, from time to time, concerning the design, cost, progression and schedule of the sewer project described in Section II(A) (the "Sewer Project"). The New Owner recognizes that while the City cannot warrant or promise any date of completion of the Sewer Project, the City will, commencing upon the City's annexation of the Downs Property and receipt of the written notices as described in Section I, work diligently and in good faith in an effort to cause the Sewer Project to be completed on a reasonable timeline that is acceptable to the New Owner. The City shall keep New Owner reasonably apprised of the

progress and estimated time for completion of the Sewer Project. While the City maintains sole control of its Sewer Project, the City agrees to consider in good faith any reasonable objections by the New Owner to the location of the Sewer Project.

C. **New Owner's Grant of Easement to City for Sewer Project.** The New Owner agrees to grant non-exclusive easements to the City, at no cost to the City, across and under any portion of the Downs Property that is reasonably deemed needed by the City in order to construct the Sewer Project, including but not limited to the grant of an easement of any strip of land not in excess of 15 feet wide on either side of the pipe installed within the Sewer Project that the City's engineers, in their reasonable judgment, deem is needed in order to serve the Downs Property (and adjacent properties) with public sewer service. In conjunction with such easement, the New Owner will provide the City with a courtesy copy of a title commitment and/or policy from a title company showing that the grantor of such easement owns a fee simple interest in the property, subject to the exceptions which do not interfere with the Sewer Project, and has the power and authority to convey the same to the City. The New Owner shall retain the right to construct and/or install parking lots, drive aisles, curbing, vegetation and similar improvements within the easement area (but no structures, unless with the City's express consent), to the extent that the same do not materially interfere with the City's easement, after the City completes the Sewer Project and the City shall be responsible for correcting damage caused to the New Owner's improvements resulting from the City's access to the easement area following completion of the Sewer Project.

D. **Sewer Service Availability on Standard Terms and Conditions.** The City's obligation to make public sewer service available to the Downs Property under Section II(A) shall be deemed satisfied when the City has completed the installation of infrastructure that will enable improvements on the Downs Property to connect to the City's sewer system, in accordance with the City's standards, and the City stands ready and willing to furnish public sewer service to the Downs Property upon the same terms, conditions, fees, and deposits that such public sewer service would be offered to any other similarly-situated property owner within the city whose property adjoins a portion of the City's public sewer service infrastructure that is available for connection.

E. **City's Design and Construction of Public Improvements.** In satisfying its obligations as set forth herein, the City retains its sole authority to design and construct public improvements and public works, and does not, through the operation of this Agreement, delegate, share, or require the approval of any other person or entity with respect to the same. The Sewer Project will be designed and constructed by the City in a form and manner that satisfies all applicable standards, ordinances, regulations and objectives of the City.

### **III. REPRESENTATIONS AND WARRANTIES**

A. **City's Representations and Warranties.** The City hereby represents and warrants as follows:

1. The City has taken all necessary action required by applicable law to authorize this Agreement and the obligations hereunder, and by proper corporate action the City has duly authorized the execution, delivery and performance of this Agreement.

2. No consent, approval, or authorization from any governmental authority or third party is required to be obtained by the City in connection with the execution, delivery, and performance by the City of this Agreement.

3. This Agreement is binding on the City and enforceable against the City in accordance with its terms. Neither the execution of this Agreement nor consummation of the transactions contemplated hereby will (i) result in a breach of, default under or acceleration of any agreement to which the City is a party or by which the City is bound, or (ii) violate any restriction, court order, agreement or other legal obligation to which the City is subject.

B. **New Owner's Representations, Warranties and Covenants.** The New Owner hereby represents and warrants as follows:

1. The New Owner has all necessary corporate power and authority to enter into and perform its obligations hereunder and by proper action the New Owner has duly authorized the execution, delivery and performance of this Agreement.

2. The New Owner has a contract in place to acquire the Downs Property prior to August 1, 2022.

3. This Agreement, when executed and delivered, will constitute the valid and binding obligations of the New Owner, enforceable in accordance with the terms and conditions set forth herein.

4. The New Owner's execution and delivery of this Agreement and New Owner's compliance with the provisions thereof will not conflict with or constitute a breach of, or a default under, any of the provisions of any applicable law, rule, regulation or order of any court, administrative agency, bureau, board, commission, office, authority, department or other governmental entity.

5. The New Owner is not a party to or bound by any agreement or obligation or subject to any restriction or to any applicable law, rule, regulation or order of any court, administrative agency, bureau, board, commission, office, authority, department or other governmental entity, which it has reason to believe will result in a material impairment of the rights or abilities of New Owner to perform its obligations hereunder.

6. There are no known judgments, orders, suits, actions, garnishments, attachments or proceedings of any nature by or before any court, commission, board or other governmental body pending, or to the knowledge of New Owner threatened, which involve or affect, or could involve or affect: (a) the Downs Property, or any part thereof; (b) the validity or enforceability of this Agreement; or (c) any risk of any judgment or liability being imposed upon the New Owner which could materially adversely affect the New Owner's ability to observe or perform fully its agreements and obligations hereunder.

#### IV. MISCELLANEOUS

A. **Severability Clause.** The provisions of this Agreement shall be severable. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof or thereof.

B. **Prior Agreements Cancelled.** This Agreement shall completely and fully supersede all other prior agreements, both written and oral, among the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein. Notwithstanding the foregoing, nothing in this Agreement shall disrupt, amend, impair, or otherwise affect the rights, duties, and/or obligations of the New Owner or the City concerning or relating to zoning, site plan approval, any master development plan, or any other permit or approval concerning the Downs Property.

C. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

D. **No Third Party Beneficiaries.** This Agreement shall inure to the benefit solely of the parties hereto and their permitted successors and assigns, and no other person or entity is an intended beneficiary hereof or shall have any right to enforce the provisions hereof.

E. **Notice.**

1. All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

a. if to the City:

(If by mail)  
City Hall  
City of Athens  
PO Box 1089  
Athens, Alabama 35612  
Attention: Mayor

b. if to the New Owner:

**M&V RE Ventures, LLC**  
112 S. Tryon Street, Suite 200  
Charlotte, NC 28284  
Attn: Jeffrey R. Gifford  
E-mail: jgifford@thevickargroup.com

Attention: City Engineer  
Attention: Manager, Athens Water  
Services

(if by delivery)

City Hall  
City of Athens  
200 Hobbs Street W  
Athens, AL 35611

Attention: Mayor  
Attention: City Engineer  
Attention: Manager, Athens Water  
Services

With a copy to:  
E. Shane Black, Esq.  
Hand Arendall Harrison Sale, LLC  
102 S Jefferson Street  
Athens, AL 35611

With a copy to:

**Maynard, Cooper & Gale, P.C.**  
655 Gallatin Street  
Huntsville, AL 35801  
Attn: Allie Tucker  
E-mail: atucker@maynardcooper.com

2. Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

**F. Delegation and Assignment of this Agreement.**

1. The City shall have no authority or power to, and shall not, delegate to any person the duty or obligation to observe or perform any agreement or obligation of the City hereunder. Nothing in this section, however, shall prevent the City from engaging appropriate consultants, contractors, experts, agents or outside representatives to perform the City's obligations under this Agreement on behalf of the City.

2. The City shall not have any authority or power to, and shall not, assign to any person any right of the City hereunder or any interest of the City herein.

3. Except for a Permitted Transferee (defined below), the New Owner may not transfer or assign to any person any or all of its rights, title and interest in this Agreement, without the prior written consent of the Mayor of the City, which consent shall not be unreasonably withheld, conditioned or delayed. In no event shall the City have any obligation to respond to, or give notices to any party other than the New Owner or, after any assignment as permitted hereby, to a single assignee. Notwithstanding the foregoing, New Owner shall have the right, without any consent or approval from the City, to assign this Agreement to a new entity created by New Owner (or any member thereof) for the purpose of acquiring and owning the Downs Property (a "Permitted Transferee").

G. **Amendments.** This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.

H. **No Joint Venture.** Nothing in this Agreement shall create any joint venture, partnership or other relationship between the parties.

I. **Governing Law.** This Agreement shall be governed exclusively by the laws of the State of Alabama, without regard to its conflicts of laws provisions.

J. **Venue / Waiver of Jury Trial.** The Parties consent and submit to the jurisdiction of the state courts of Limestone County, Alabama and/or the United States District Court for the Northern District of Alabama, Northern Division,

and expressly agree that the counties in which such courts are situated will be the exclusive venues for any suit, action or proceeding arising out of or related to this Agreement. In any legal proceeding arising from or related to the same, the Parties do hereby waive any right to a trial by jury.

K. **Time of the Essence.** Time is of the essence of each provision of this Agreement.

L. **Waiver.** No waiver of any breach, violation or default of this Agreement shall be construed as a waiver of any subsequent breach, violation or default hereof.

M. **Drafting.** The parties hereto acknowledge that each of them has had the opportunity to contribute to the drafting of this Agreement, and, as a consequence, that the Agreement should not be construed for or against any party to it.

N. **Attorney Fees.** If either party institutes an action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the unsuccessful party to such action or proceeding will reimburse the successful party therein for the reasonable expenses of attorneys' fees and disbursements and litigation expenses incurred by the successful party.

O. **Delay Event.** Notwithstanding anything herein to the contrary, if a Delay Event occurs, the City's and New Owner's respective obligations hereunder will be extended for so long as such Delay Event occurs and is continuing. A "**Delay Event**" means any cause(s) or matter(s), whether of the kind herein enumerated or otherwise, which is outside of the reasonable control of the affected party and which the affected party could not reasonably foresee or expect at the time it entered into this Agreement, and which obstructs, impedes or interferes with the affected party's reasonable efforts relating to their respective obligations. Such term includes, but is not limited to: (i) acts of God; (ii) strikes or lockouts; (iii) conditions arising from a change in governmental laws, orders, rules or regulations, provided the City shall not knowingly enact any law or regulation which disproportionately affect its obligations hereunder compared to similarly situated developments; (iv) acts of public enemy, wars, blockades, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, tornados, hurricanes, floods, and/or washouts; (v) unavoidable walkouts of the Parties' employees, and/or their respective engineers, general contractor and subcontractors engaged to perform work related to the obligations hereunder; (vi) any unforeseen soil or other natural conditions that delay or obstruct obligations hereunder; (vii) any unforeseen environmental hazards that delay or prevent construction hereunder; (viii) any governmental permitting or approval process (other than one within the exclusive control of the City) that delays or prevents obligations hereunder; (ix) the inability of the Parties, their respective contractors, or their subcontractors to acquire, after the exercise of due diligence, materials and supplies for the purpose of being used in connection with the obligations hereunder; and/or (x) unforeseeable extreme inclement weather conditions that delay or prevent performance of obligations hereunder. Except as set forth above time shall be the essence with respect to each obligation of the parties hereunder. Each Party shall notify the other Party within a reasonable time upon the occurrence of any Delay Event, including the estimated amount of the delay. The Parties shall use reasonable efforts to mitigate the effects of any Delay Event.

P. **Excluded Liabilities.** Except as expressly set forth herein, or in any other written commitment from the City, the City shall neither assume nor pay for nor be liable for any of the New Owner's agreements, liabilities, debts, responsibilities or obligations with respect to the Downs Property, or otherwise, whether direct, fixed or contingent, and whether existing or arising at any time prior or subsequent to the date of this Agreement. Furthermore, nothing herein shall be construed to exempt the New Owner from any charge, fee, or other cost regularly charged or imposed by the City in connection with utility service.

[Signature Lines]

The motion was seconded by Councilman Wales and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1810**

**A RESOLUTION CONCERNING THE PURCHASE OF  
COMPUTER EQUIPMENT FOR FIVE POLICE CARS**

**WHEREAS**, the City Council desires to equip the five new police cars recently acquired by the City (the “Police Vehicles”) with onboard computers, in-car printers, and related equipment;

**WHEREAS**, expenditures for government services (such as equipping law enforcement with more effective tools and systems to benefit the general public) are qualified expenditures of *Coronavirus State and Local Fiscal Recovery Funds*; and

**WHEREAS**, since the purchases will come from several different vendors and collectively amount to less than \$15,000, they are exempt from the competitive bidding requirements of state law.

**THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022 at 5:30 p.m., as follows:

1. The Mayor (or his designee) is authorized, for an on behalf of the City of Athens, to expend up to \$7,500.00 equipping the Police Vehicles with Surface Pro 7 computers, in-car printers, car chargers, USB hubs, and other related equipment. In connection with the foregoing, the Mayor (or his designee) is authorized, for and on behalf of the City of Athens, to issue purchase orders or enter into agreements with respect to the purchase of the same.

2. The expense of the above-referenced items shall be paid from the City’s allocation of *Coronavirus State and Local Fiscal Recovery Funds*, to the extent that the same are expended prior to the statutory deadline for such funds.

3. The Mayor is further authorized to carry out the terms of the contract(s) referenced in this Resolution, and to execute such other and additional documents that may be necessary and/or required in order to facilitate the transaction described herein.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

Councilmember Wales moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Harper, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Henry thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Harper and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1811**

**A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT PROJECT RELATING TO JACK’S FAMILY RESTAURANTS**

---

**WHEREAS**, Jack’s Family Restaurants, LP, a Delaware limited partnership (the “Company”), intends to construct and operate a Jack’s Hamburgers restaurant at the intersection of Highway 72 West and Lucas Ferry Road in Athens, Alabama (the “Project”);

**WHEREAS**, the City Council (the “Council”) of the City of Athens (the “City”) has determined that it is in the City’s best interest to provide financial assistance to the Company in order to facilitate the acquisition and construction of the Project, and that such expenditure will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to the Company or any other private entities;

**WHEREAS**, the Project is expected to (i) result in the creation of approximately 50 new jobs, (ii) involve a total investment of approximately Three Million Fifty Thousand Dollars (\$3,050,000), and (iii) generate annual taxable sales of approximately One Million Eight Hundred Thousand Dollars (\$1,800,000);

**WHEREAS**, the Council wishes to extend economic development incentives;

**WHEREAS**, the activities to be authorized by this resolution; the public benefits sought to be achieved thereby; and each individual, firm, corporation, and other business entity to whom or for whose benefit the City proposes to lend its credit or grant public funds or thing of value, have been described in reasonable detail and/or identified in a notice published in the *Athens News Courier* (the newspaper that the City Council determines to have the largest circulation in the city) at least seven days prior to this meeting;

**WHEREAS**, such public notice is attached to this Resolution as Attachment A and incorporated hereto as if set forth fully herein;

**WHEREAS**, pursuant to a project development agreement, the City and the Company wish to memorialize the general terms of their agreement with respect to the development of the Project; and

**WHEREAS**, pursuant to such agreement, the City would annually pay the Company in arrears one hundred percent (100%) of the proceeds from the City’s sales tax actually received by the City from the Project, net of certain costs, for a period of up to five (5) years or until the maximum sum of \$200,000.00 is paid by the City to the Company, whichever is first, all as described in more particularity in the Project Development Agreement, among other things.

**THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022 at 5:30 p.m., as follows:

1. The Mayor of the City is hereby authorized and directed, in the name of and for account of the City, to enter into a contract between the City and the Company, in substantially the same form as is attached hereto (and entitled the “Project Development Agreement”) as Attachment B, with such non-substantive changes or additions thereto or deletions therefrom as the Mayor shall approve, which approval shall be conclusively evidenced by his execution of such instrument. The City Clerk of the City is hereby authorized and directed to attest the same.

2. It is hereby determined that the expenditures of public funds for the purposes specified in this resolution (and in Attachment B) will serve valid and sufficient public purposes, including (i) promoting, improving and expanding economic and commercial development/activity, (ii) increasing the number and diversity of employment opportunities for citizens of the City, and (iii) enhancing the overall quality of life for the citizens of the City, notwithstanding any incidental benefit accruing to any private entity or entities.

3. The Mayor is authorized to take actions and execute such other and further documents as may be necessary to effect and carry out the transactions contemplated by this Resolution and/or the agreement referenced herein, including but not limited to authorizing the issuance of warrants; the expenditure and use of municipal funds as set forth in those agreements; and approving and executing further agreement(s) that are consistent with and involved in carrying out the transactions contemplated by this Resolution.

4. This Resolution shall become effective upon the Council's adoption of an accompanying Ordinance directing and authorizing the Mayor to pay sales tax proceeds in the manner specified in the Project Development Agreement.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

#### **ATTACHMENT A**

##### ***NOTICE OF PROPOSED ACTION AT PUBLIC MEETING***

*Notice is hereby given that during a regular meeting, which will be open to the public and will be held on June 6, 2022, at 5:30 o'clock, P.M., Central Time, at the City Council Chambers at Athens City Hall, located at 200 Hobbs Street West, Athens, Alabama 35611, the City Council for the City of Athens, Alabama (the "City") will consider adopting a resolution in connection with an economic development project, described in reasonable detail herein.*

*The economic development project relates to Jack's Family Restaurants, LP (the "Company"), which intends to develop a Jack's Hamburgers restaurant at the intersection of Highway 72 West and Lucas Ferry Road in Athens, Alabama.*

*The City believes that the proposed economic development project will create new jobs in the City, will generate additional tax revenues for the City, will increase commerce in the City, and will generally promote the economic development of the City. It is anticipated that the project will (i) result in the creation of approximately 50 new jobs, (ii) involve a total investment of approximately Three Million Fifty Thousand Dollars (\$3,050,000), and (iii) generate annual taxable sales of approximately One Million Eight Hundred Thousand Dollars (\$1,800,000). The assistance described herein will encourage said economic development and will constitute an economic development project for the City.*

*The City Council will consider the adoption of a resolution authorizing the City of Athens to enter into a Project Development Agreement with the Company. Through the Project Development Agreement, the City would annually pay the Company in arrears one hundred percent (100%) of the proceeds from the City's sales tax (levied pursuant to Chapter 18, Articles 2 and 9 of the City Code) actually received by the City from the project, net of certain costs, for a period of up to five (5) years or until a maximum sum of \$200,000 is paid by the City to the Company, whichever comes first. The obligation of the City in this regard would be evidenced by the issuance of a warrant. The City's payment obligations would be conditioned upon the opening and continued operation of the Jack's Hamburgers restaurant at the above-described property, as described in more particularity in the Project Development Agreement, among other things. The City's granting of public funds or things of value as described herein will benefit the Company.*

**THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA**

*Publication: May 28, 2022*

#### **ATTACHMENT B** **PROJECT DEVELOPMENT AGREEMENT**

This **PROJECT DEVELOPMENT AGREEMENT** (this "**Agreement**") is made and entered as of June \_\_, 2022 between the **CITY OF ATHENS, ALABAMA**, an Alabama municipal corporation (the "**City**"), and **JACK'S FAMILY RESTAURANTS, LP**, a Delaware limited partnership.

**RECITALS:**

Jack's Family Restaurants, LP expects and intends to develop a Jack's Hamburgers restaurant at the southwestern corner of Highway 72 West and Lucas Ferry Road in Athens, Alabama, and, in doing so, reasonably expects that such development will (i) result in the creation of approximately 50 new jobs, (ii) involve a total investment of approximately Three Million Fifty Thousand Dollars (\$3,050,000), and (iii) generate annual taxable sales of approximately One Million Eight Hundred Thousand Dollars (\$1,800,000).

The City has agreed, based upon the expectations set forth above and other benefits to the City, to assist Jack's Family Restaurants, LP as provided herein. Jack's Family Restaurants, LP has agreed to develop, construct, and operate the Project as described herein. Pursuant to the applicable laws of the State of Alabama referenced herein and for the purposes referenced herein, the City and Jack's Family Restaurants, LP have delivered this Agreement.

The City has approved the transaction contemplated hereby after notice to the public in accordance with the requirements of Amendment 772 to the Constitution of Alabama, codified as § 94.01 of the Constitution of Alabama.

**AGREEMENT:**

**NOW, THEREFORE**, for and in consideration of the premises, and the mutual covenants and agreements herein contained, the City and Jack's Family Restaurants, LP hereby covenant and agree as follows:

**Definitions**

For purposes of this Agreement the following terms shall have the following meanings:

**"Annual Period"** shall mean a period of twelve consecutive calendar months, commencing on the same day of the year as the Commencement Date.

**"City Sales Tax"** for any Annual Period shall mean the existing privilege license tax levied by the City during such Annual Period pursuant to §§ 18-51 through 18-58 and §§ 18-351 through 18-356 of Chapter 18, Articles 2 and 9 of the City Code of the City (commonly called and referred to as the "City's \$.03 sales taxes"), or any substitute therefor, which consists of (i) a privilege or license (commonly called sales) tax on persons engaged in the business of selling at retail any tangible personal property within the City (subject to exemption of certain property as provided by law) or in the business of conducting places of amusement or entertainment within the City, generally measured by the gross sales or receipts of such businesses and (ii) an excise (commonly called a use) tax on the storage, use or other consumption of tangible personal property (subject to exemptions of certain property as provided by law) within the City, generally measured by the sales price of such property.

**"City Sales Tax Proceeds"** for any Annual Period shall mean and include all proceeds and receipts of the City Sales Tax actually received by the City from the Project.

**"Commencement Date"** shall mean the date that is the first day of the month following (a) the date of the City's issuance of a municipal business license for the Project, or (b) the date that the Project is opened for the operation of regular business with the general public, whichever is later.

**"Enabling Law"** shall mean, collectively, (1) § 94.01 of the Constitution of Alabama, and (2) § 11-47-2 of the Code of Alabama (1975).

**"Payment Date"** shall be the same day of the year during each year of the Term, beginning with the date that is fourteen (14) months after the Commencement Date, and being the same day of the year of each succeeding year.

**"Project"** shall mean the development and operation of a Jack's Hamburgers restaurant at the Project Area.

**“Project Area”** shall mean the real property that is located at the southwestern corner of Highway 72 West and Lucas Ferry Road in Athens, Alabama, also described as Tax Parcel #11 06 13 1 000 001.000 by the Limestone County Revenue Commissioner.

**“Project City Sales Tax Payments”** shall mean one hundred percent (100%) of the City Sales Tax Proceeds actually received by the City from the Project during the Annual Period for which such amount is determined, net of all costs incurred by the City to collect the City Sales Tax Proceeds from the Project.

**“Series 2022 Warrant”** shall have the meaning set forth in Section 5.3.

**“Subsequent Project Area Owner”** shall mean a person or entity to whom Jacks sells at least 50% of its interest in the Project.

**“Term”** shall mean the period of time beginning on the Commencement Date of this Agreement and ending on the Termination Date.

**“Termination Date”** shall mean:

(1) the earlier of: (a) the first Payment Date that is five years and two months after the Commencement Date (whether or not the aggregate Project City Sales Tax Payments at that time have equaled the Total City Sales Tax Commitment), or (b) the Payment Date on which the City shall have paid as Project City Sales Tax Payments an aggregate amount equal to the Total City Sales Tax Commitment; or

(2) if earlier than the dates specified in clause (1) above, the date after the Commencement Date on which a Jack’s Hamburgers restaurant shall cease to operate or does not regularly operate in the Project Area on a basis of at least five days per week (excluding holidays, remodeling, rebuilding or events of force majeure (strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of Jack’s Family Restaurants LP and excluding temporary reductions in hours or operations as a result of labor shortages or supply chain issues), except that if such cessation of operations shall be the result of casualty (fire, storm, vandalism, malicious mischief or other hazard including, but not limited to pandemic related closures pursuant to law), the Termination Date as so determined shall not occur until the date that is 18 months after the date of cessation of operations.

**“Total City Sales Tax Commitment”** shall mean the amount of Two Hundred Thousand and No/100 Dollars (\$200,000.00).

**“Jacks”** shall mean Jack’s Family Restaurants, LP, a Delaware limited partnership, and the successors and assigns thereof.

#### **Representations and Warranties**

(a) The City hereby represents and warrants as follows:

(1) The City has taken all necessary action required by the Enabling Law to authorize this Agreement and the obligations hereunder, and by proper corporate action the City has duly authorized the execution, delivery and performance of this Agreement.

(2) The Series 2022 Warrant shall be issued, sold and delivered to Jacks, upon condition that this Agreement is enforceable against the City in accordance with the terms hereof.

(3) The issuance of the Series 2022 Warrant for the purposes set forth in this Agreement will result in direct financial benefits to the City.

(b) Jacks hereby represents and warrants as follows:

(1) Jacks is a duly organized and existing Delaware limited partnership, is qualified to do business in the State of Alabama and is in good standing under the laws of the State of Alabama.

(2) *Jacks has all necessary corporate power and authority to enter into and perform its obligations hereunder and by proper action Jacks has duly authorized the execution, delivery and performance of this Agreement.*

(3) *All actions and proceedings required to be taken by or on behalf of Jacks to execute and deliver this Agreement, and to perform the covenants, obligations and agreements of Jacks hereunder, have been duly taken.*

(4) *The execution and performance of this Agreement by Jacks do not constitute and will not result in the breach or violation of any contract, lease, mortgage, bond, indenture, franchise, permit or agreement of any nature to which Jacks is a party.*

(5) *Jacks is either the owner in fee simple of the Project Area, is a party to a contract to purchase such an interest in the Project Area, or is a party to a lease agreement providing for the lease and operation of the Project within the Project Area, and in any case, has all necessary power and authority to carry out the Project as contemplated herein.*

(6) *Jacks reasonably anticipates that the Project will (i) result in the creation of approximately 50 new jobs, (ii) involve a total investment of approximately Three Million Fifty Thousand Dollars (\$3,050,000), and (iii) generate annual taxable sales of approximately One Million Eight Hundred Thousand Dollars (\$1,800,000).*

(7) *The representations, warranties and covenants made by Jacks herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.*

(8) *This Agreement, when executed and delivered, will constitute the valid and binding obligations of Jacks, enforceable in accordance with the terms and conditions set forth herein.*

(9) *Jacks' execution and delivery of this Agreement and Jacks' compliance with the provisions thereof will not conflict with or constitute a breach of, or a default under, any of the provisions of any applicable law, rule, regulation or order of any court, administrative agency, bureau, board, commission, office, authority, department or other governmental entity.*

(10) *Jacks is not a party to or bound by any agreement or obligation or subject to any restriction or to any applicable law, rule, regulation or order of any court, administrative agency, bureau, board, commission, office, authority, department or other governmental entity, which might result in a material impairment of the rights or abilities of Jacks to perform its obligations hereunder.*

(11) *There are no judgments, orders, suits, actions, garnishments, attachments or proceedings of any nature by or before any court, commission, board or other governmental body pending, or to the knowledge of Jacks threatened, which involve or affect, or could involve or affect: (a) the Project Area, or any part thereof; (b) the validity or enforceability of this Agreement; or (c) any risk of any judgment or liability being imposed upon Jacks which could materially adversely affect Jacks' ability to observe or perform fully its agreements and obligations hereunder.*

#### ***Duration of Agreement***

*The obligations of the City and Jacks hereunder shall arise on the date hereof and shall continue until the end of the Term.*

#### ***Obligations of Jacks***

##### ***General***

*In consideration of the agreements and covenants of the City in this Agreement, Jacks covenants and agrees that Jacks shall duly and punctually observe and perform all of the agreements hereof.*

##### ***Deadline for Commencement Date***

*Jacks hereby agrees that the Commencement Date will occur on or before June 1, 2025, or else there shall be an Event of Default hereunder.*

### **Expense Reimbursement Obligations**

Jacks agrees to pay any reasonable out-of-pocket expenses incident to the negotiation, drafting and approval hereof and the performance by the City of its obligations hereunder, including but not limited to the fees and disbursements of legal counsel for the City related to the same. Jacks agrees that, if Jacks has not paid the same prior to the first Payment Date, the City may pay the same by a deduction of set-off from the Project City Sales Tax Payments.

### **SECTION 4.4 Press Releases**

Jacks agrees to solicit input from and work with the City in connection with the preparation and release of all of Jacks' press releases and publications concerning the Project.

### **Agreements and Obligations of the City**

#### **Nature, Amount and Duration of Obligation of City**

(1) The City hereby agrees to pay to Jacks in arrears on each Payment Date during the Term the Project City Sales Tax Payments determined by the City to be due and payable on such Payment Date. The obligation of the City for the payment of the Project City Sales Tax Payments:

- (a) is a limited obligation payable solely from the City Sales Tax Proceeds;
- (b) shall never constitute a general obligation, or a charge against the general credit or taxing powers, of the City within the meaning of any constitutional provision or statutory limitation whatsoever;
- (c) shall commence on the first Payment Date after the Commencement Date; and
- (d) shall not include any payment attributable to Project City Sales Tax Proceeds received by the City after the last day of the last Annual Period in the Term.

(2) The maximum amount of the Project City Sales Tax Payments the City shall pay under this Agreement and the Series 2022 Warrant shall be limited to and shall not exceed the Total City Sales Tax Commitment.

(3) The City shall have no obligation to pay any amount under this Agreement and the Series 2022 Warrant (a) prior to the date on which a Jack's Hamburgers restaurant opens for business in the Project Area, or (b) from and after the Termination Date.

#### **Determination and Payment of Project City Sales Tax Payments**

(1) On each Payment Date, the City shall: (a) determine the Project City Sales Tax Payments (if any) to be made for the then immediately preceding Annual Period; and (b) pay to Jacks, as purchaser of the Series 2022 Warrant, such amount of Project City Sales Tax Payments as determined by the City.

(2) The City will permit any attorneys, accountants or other agents or representatives designated by Jacks to (a) have access to and visit and inspect any of the accounting systems, books of account, and financial records and properties of the City which pertain to the City Sales Tax Proceeds and the determination of Project City Sales Tax Payments, (b) examine and make abstracts from any such accounting systems, books and records, and (c) discuss the affairs, finances and accounts of the City pertaining to the City Sales Tax Proceeds and the determination of Project City Sales Tax Payments, with its officers, employees or agents, all at reasonable business times and upon reasonable notice; provided, however, that nothing herein shall require the disclosure of any information made confidential by law or contract.

#### **The Series 2022 Warrant**

(1) The obligation of the City to pay the Project City Sales Tax Payments hereunder shall be evidenced by a single limited obligation revenue warrant payable solely from, and secured by a pledge of, so much of the City Sales Tax Proceeds as shall be necessary to pay the Project City Sales Tax Payments, in form and of content as the form of warrant attached to this Agreement as Exhibit A.

(2) The Series 2022 Warrant shall not bear interest, shall be issued in the principal amount equal to the Total City Sales Tax Commitment, shall be dated the date of delivery, and shall mature on the Termination Date.

(3) The Series 2022 Warrant shall be duly executed, sealed, and attested by the City, and shall be registered by the City as a conditional claim against so much of the City Sales Tax Proceeds as shall be necessary to pay the Project City Sales Tax Payments with respect to such warrant and the warrant fund established therefor as therein provided.

(4) *The Series 2022 Warrant shall be registered and transferred as provided therein.*

**Special Agreements of the City**

(1) *All proceedings of the governing body of the City heretofore had and taken, and all resolutions and orders adopted pursuant thereto with respect to the levy and collection of the City Sales Tax, are hereby ratified and confirmed in all respects from and after the effective date thereof.*

(2) *The City covenants and agrees:*

(a) *The City shall, as long as this Agreement and the Series 2022 Warrant shall be outstanding, continue to levy and to provide for the assessment and collection of the City Sales Tax at rates not less than those in effect on the date of this Agreement; provided, that nothing herein shall prevent the City from granting any “sales tax holiday” generally applicable to sales of certain categories of items throughout the City.*

(b) *Except to the extent provided hereunder or required by state law, the City shall not apply any of the City Sales Tax Proceeds which are allocable to or included as part of Project City Sales Tax Payments for the payment of any governmental expenses of operating the City other than costs of collection of such taxes, as herein provided.*

**Events of Default and Remedies**

**Events of Default**

*Any one or more of the following shall constitute an event of default by the City or Jacks hereunder (an “Event of Default”) under this Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):*

(a) *default in the performance, or breach, of any covenant or warranty of the City in this Agreement, and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the City by Jacks a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “notice of default” hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the City shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default; or*

(b) *default in the performance, or breach, of any covenant or warranty of Jacks in this Agreement, and (except for the Company’s default of its obligation under Section 4.2) the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to Jacks by the City a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “notice of default” hereunder, provided that (except for the Company’s default of its obligation under Section 4.2) if such default is of a kind which cannot reasonably be cured within such thirty-day period, Jacks shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default.*

**Remedies**

*Each party hereto may proceed to protect its rights and interests with respect to an Event of Default by the use of appropriate remedies as permitted by state law, including by terminating this Agreement, and/or by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of any other party herein contained or in aid of the exercise of any power or remedy available at law or in equity.*

**Provisions of General Application**

**Severability Clause**

*The provisions of this Agreement or the Series 2022 Warrant shall be severable. In the event any provision this Agreement or the Series 2022 Warrant shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof or thereof.*

**Prior Agreements Cancelled**

*This Agreement shall completely and fully supersede all other prior agreements, both written and oral, among the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein.*

**Counterparts**

*This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.*

***Binding Effect; No Third Party Beneficiaries***

*This Agreement shall inure to the benefit solely of the parties hereto and their permitted successors and assigns, and no other person or entity is an intended beneficiary hereof or shall have any right to enforce the provisions hereof.*

***Notices***

(1) *All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:*

- (a) *if to the City:*  
*City Hall*  
*City of Athens*  
*200 West Hobbs Street*  
*Athens, AL 35611*  
*Attn: Mayor*  
*Attn: City Clerk*

*With a copy to:*

*E. Shane Black, Esq.*  
*Hand Arendall Harrison Sale, LLC*  
*102 South Jefferson Street*  
*Athens, AL 35611*

- (b) *If to Jacks:*

*Jack's Family Restaurants, LP*  
*124 West Oxmoor Rd.*  
*Birmingham, AL 35209*

*Attn: Jim Avery*

*With a copy to:*

*James E Hill, Esq.*  
*Hill Gossett, Kemp & Hufford, P.C.*  
*PO Box 310*  
*Moody, AL 35004*

(2) *Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.*

***Delegation and Assignment of this Agreement***

(1) *The City shall have no authority or power to, and shall not, delegate to any person the duty or obligation to observe or perform any agreement or obligation of the City hereunder. Nothing in this section, however, shall prevent the City from engaging appropriate consultants, experts, agents or outside representatives to perform the City's obligations under this Agreement on behalf of the City.*

(2) *The City shall not have any authority or power to, and shall not, assign to any person any right of the City hereunder or any interest of the City herein.*

(3) *Jacks may transfer or assign to any person all of its rights, title and interest in this Agreement only to a Subsequent Project Area Owner that assumes the obligations of Jacks hereunder, or to a lender or collateral agent as security for a loan with respect to the Project, in either case upon not less than thirty (30) days prior written notice to the City. No other assignment or transfer by Jacks of its rights, title or interest in this Agreement may be permitted without the prior written consent of the Mayor of the City, which consent shall not be unreasonably withheld. In no event shall the City*

be required to make payments to or have any obligation to respond to or give notices to any party other than Jacks or, after any assignment as permitted hereby, to a single assignee.

**Amendments**

This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.

**No Joint Venture**

Nothing in this Agreement shall create any joint venture, partnership or other relationship between the parties. The City shall not by virtue of this Agreement be deemed to have any ownership interest in the Project Area or the Project and shall have no liability arising out of the operation of the Project by Jacks, its successors or assigns.

**Governing Law**

This Agreement shall be governed exclusively by the laws of the State of Alabama, without regard to its conflicts of laws provisions.

**SECTION 7.10 Venue/Service of Process**

The City and Jacks consent and submit to the jurisdiction of the state courts of Limestone County, Alabama, and/or the United States District Court for the Northern District of Alabama, Northern Division, and expressly agree that the counties in which such courts are situated will be the exclusive venues for any suit, action or proceeding arising out of or relating to this Agreement. The City and Jacks further agree that personal jurisdiction over them may be effected by service of process by registered or certified mail addressed as provided in this Agreement, and that when so made shall be as if served upon them personally within the State of Alabama.

**SECTION 7.11 Time of the Essence.**

Time is of the essence of each provision of this Agreement.

**SECTION 7.12 Waiver**

No waiver of any breach, violation or default of this Agreement shall be construed as a waiver of any subsequent breach, violation or default hereof.

**SECTION 7.13 Drafting**

The parties hereto acknowledge that each of them has had the opportunity to contribute to the drafting of this Agreement, and, as a consequence, that the Agreement should not be construed for or against any party to it.

**SECTION 7.14 Attorney Fees/Mediation**

If either party institutes an action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the unsuccessful party to such action or proceeding will reimburse the successful party therein for the reasonable expenses of attorneys' fees and disbursements and litigation expenses incurred by the successful party. The parties agree to attempt mediation with a neutral third party at a neutral location to resolve any dispute hereunder.

**SECTION 7.15 Excluded Liabilities**

The City shall neither assume nor pay for nor be liable for any of Jacks' agreements, liabilities, debts, responsibilities or obligations with respect to the Project or otherwise, whether direct, fixed or contingent, and whether existing or arising at any time prior or subsequent to the date of this Agreement, except and only to the extent otherwise provided herein.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and Jacks has executed this Agreement under seal, and the parties have caused this Agreement to be dated the date and year first above written.

[Signature Lines for City and Company]

**EXHIBIT A: Form of Series 2022 Warrant**

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Wales, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Henry thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Wales and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilwoman Henry introduced the following ordinance:**

**ORDINANCE NUMBER 2022 - 2222**

**AN ORDINANCE CONCERNING A PROJECT DEVELOPMENT AGREEMENT AND JACK'S FAMILY RESTAURANTS**

---

**WHEREAS**, the City Council has adopted a Resolution directing the Mayor to execute a Project Development Agreement by and between the City of Athens (the "City") and Jack's Family Restaurants, LP (the "Company"), relating to the operation of a Jack's Hamburgers restaurant at the intersection of Highway 72 West and Lucas Ferry Road in Athens, Alabama (the "Project"); and

**WHEREAS**, the City Council wishes to enact an Ordinance allowing for the Mayor's payment of certain municipal sales tax proceeds to the Company.

**THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022 at 5:30 p.m., as follows:

1. The Mayor of the City is hereby authorized and directed, in conjunction with and pursuant to the Project Development Agreement between the City and the Company, to annually pay the Company in arrears one hundred percent (100%) of the proceeds from the City's sales tax (levied pursuant to Chapter 18, Articles 2 and 9 of the City Code) actually received by the City from the Project, net of certain costs, for a period of up to five (5) years or until the maximum sum of \$200,000.00 is paid by the City to the Company, whichever is first, as is described in more detail in the Project Development Agreement.

2. This Ordinance shall work as an exception to (and not as a repeal of) the application of any other ordinance (or part thereof) that is inconsistent with this Ordinance and the operation of the referenced Project Development Agreement; and in such case, shall be an exception (i) only with respect to the Project, and (ii) only for the duration of the Project Development Agreement.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

/s/ William R. Marks  
MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes  
CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Councilmember Wales, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Councilmember Henry thereupon moved that the ordinance be finally adopted, which motion was seconded by Councilmember Harper and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

**Councilman Wales introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1812**

**A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT PROJECT RELATING TO WESCORP, LLC**

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**WHEREAS**, Wescorp, LLC, an Alabama limited liability company (the “Company”), intends to develop a proposed Chicken Salad Chick restaurant, an ACE Hardware store, and a Valvoline Oil Change on certain property located near the corner of Highway 72 East and Bab Daly Road on Highway 72 East (the “Project”);

**WHEREAS**, the City Council (the “Council”) of the City of Athens (the “City”) has determined that it is in the City’s best interest to provide economic development incentives to the Company in order to facilitate the development, construction and establishment of the Project, and that such expenditure will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to the Company or any other private entities;

**WHEREAS**, the Project is expected to result in (i) the creation of approximately 165 new jobs, (ii) a total capital investment of approximately Ten Million Five Hundred Thousand Dollars (\$10,500,000), and (iii) the generation of annual taxable sales of approximately Six Million Five Hundred Thousand Dollars (\$6,500,000);

**WHEREAS**, the Council wishes to extend economic development incentives to the Project;

**WHEREAS**, the activities to be authorized by this resolution; the public benefits sought to be achieved thereby; and each individual, firm, corporation, and other business entity to whom or for whose benefit the City proposes to lend its credit or grant public funds or thing of value, have been described in reasonable detail and/or identified in a notice published in the *Athens News Courier* (which this City Council finds and determines is the newspaper having the largest circulation in the county or municipality), at least seven days prior to this meeting at least seven days prior to this meeting;

**WHEREAS**, such public notice is attached to this Resolution as Attachment A and incorporated hereto as if set forth fully herein;

**WHEREAS**, pursuant to a project agreement, the City and the Company wish to memorialize the general terms of their agreement with respect to the development of the Project; and

**WHEREAS**, pursuant to such agreement, the City would annually pay the Company in arrears one hundred percent (100%) of the proceeds from the City's sales tax actually received by the City from the Project, net of certain costs, for a period of up to six (6) years or until the maximum sum of \$800,000.00 is paid by the City to the Company, whichever is first, all as described in more particularity in the Project Agreement, among other things.

**THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022, at 5:30 p.m., as follows:

1. The Mayor of the City is hereby authorized and directed, in the name of and for account of the City, to enter into a contract between the City and the Company, in substantially the same form as is attached hereto (and entitled the "Project Agreement") as Attachment B, with such non-substantive changes or additions thereto or deletions therefrom as the Mayor shall approve, which approval shall be conclusively evidenced by his execution of such instrument. The City Clerk of the City is hereby authorized and directed to affix the official seal of the City to such instrument and to attest the same.

2. It is hereby determined that the expenditures of public funds for the purposes specified in this resolution (and in Attachment B) will serve valid and sufficient public purposes, including (i) promoting, improving and expanding economic and commercial development/activity, (ii) increasing the number and diversity of employment opportunities for citizens of the City, and (iii) enhancing the overall quality of life for the citizens of the City, notwithstanding any incidental benefit accruing to any private entity or entities.

3. The Mayor is authorized to take actions and execute such other and further documents as may be necessary to effect and carry out the transactions contemplated by this Resolution and/or the agreement referenced herein, including but not limited to authorizing the issuance of warrants; the expenditure and use of municipal funds as set forth in those agreements; and approving and executing further agreement(s) that are consistent with and involved in carrying out the transactions contemplated by this Resolution.

4. This Resolution shall become effective upon the Council's adoption of an accompanying Ordinance directing and authorizing the Mayor to pay sales tax proceeds in the manner specified in the Project Agreement.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert

PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

#### **ATTACHMENT A**

##### ***NOTICE OF PROPOSED ACTION AT PUBLIC MEETING***

*Notice is hereby given that during a regular meeting, which will be open to the public and will be held on June 6, 2022, at 5:30 o'clock, P.M., Central Time, at the City Council Chambers in Athens City Hall, at 200 Hobbs Street W, Athens, Alabama 35611, the City Council for the City of Athens, Alabama (the "City") will consider adopting a resolution in connection with an economic development project, described in reasonable detail herein.*

*The economic development project relates to Wescorp, LLC (the "Company"), which intends to develop a Chicken Salad Chick restaurant, an ACE Hardware store, and a Valvoline Oil Change location on certain property located near the corner of Highway 72 East and Bab Daly Road.*

*The City believes that the proposed economic development project will create new jobs in the City, will generate additional tax revenues for the City, will increase commerce in the City, and will generally promote the economic development of the City. It is anticipated that the project will (i) result in the creation of approximately 165 new jobs, (ii)*

involve a total capital investment of approximately Ten Million Five Hundred Thousand Dollars (\$10,500,000), and (iii) generate annual taxable sales of approximately Six Million Five Hundred Thousand Dollars (\$6,500,000).

The City Council will consider the adoption of a resolution authorizing the City of Athens to enter into a Project Agreement with the Company. Through the Project Agreement, the City would annually pay the Company in arrears one hundred percent (100%) of the proceeds from the City's sales tax (levied pursuant to Chapter 18, Articles 2 and 9 of the City Code) actually received by the City from the Chicken Salad Chick restaurant, the ACE Hardware store, the Valvoline Oil Change location, and other retail establishments located in the same project area (meeting certain criteria in the judgment of city officials), net of certain costs, for a period of six (6) years, or until \$800,000.00 is paid by the City to the Company, whichever comes first. The obligation of the City in this regard would be evidenced by the issuance of a warrant. The City's payment obligations would be conditioned upon the Company's opening and continued operation of the Chicken Salad Chick restaurant, the ACE Hardware store, and/or the Valvoline Oil Change location by certain dates, as described in more particularity in the Project Agreement. The agreement would also include provisions allowing amendments to replace one or more of the above-named three stores with different comparable stores upon the approval of certain city officials, among other things.

The assistance described herein will encourage economic development and will constitute an economic development project for the City. The City's granting of public funds or things of value as described herein will benefit the Company.

THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA

Publication: May 28, 2022

**ATTACHMENT B**  
**PROJECT AGREEMENT**

This Project Agreement (this "**Agreement**") is entered into as of the \_\_\_ day of June, 2022, by and among the **CITY OF ATHENS, ALABAMA**, an Alabama municipal corporation (the "**City**") and **WESCORP, LLC**, a limited liability company under the laws of the State of Alabama, or its assigns (the "**Company**").

**RECITALS:**

The Company expects and intends to develop a Chicken Salad Chick restaurant, an ACE Hardware store, and a Valvoline Oil Change location on certain property located on Highway 72 East, and more particularly, on the real property currently designated by the Limestone County Revenue Commissioner as Parcel # 10-06-14-0-000-049.000, Parcel # 10-06-14-0-000-051.000, and Parcel # 10-06-14-0-000-050.000. In doing so, the Company reasonably expects that such development will (i) result in the creation of approximately 165 new jobs, (ii) involve a total capital investment of approximately Ten Million Five Hundred Thousand Dollars (\$10,500,000), and (iii) generate annual taxable sales of approximately Six Million Five Hundred Thousand Dollars (\$6,500,000).

The City has agreed, based upon the expectations set forth above and other public benefits to the City, to assist the Company as provided herein. Pursuant to the applicable laws of the State of Alabama referenced herein and for the purposes referenced herein, the City and the Company have entered into this Agreement.

The City has approved the transaction contemplated hereby after notice to the public in accordance with the requirements of Amendment 772 to the Constitution of Alabama, codified as § 94.01 of the Constitution of Alabama.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**I. DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following meanings:

"**Annual Period**" shall mean a period of twelve consecutive calendar months, commencing on the same day of the year as the Commencement Date for Sales Tax.

**“City Sales Tax”** for any Annual Period shall mean the privilege license tax levied by the City during such Annual Period pursuant to Chapter 18, Articles 2 and 9 of the City Code of the City (commonly called sales and use taxes), or any substitute therefor, which consists of (i) a privilege or license (commonly called sales) tax on persons engaged in the business of selling at retail any tangible personal property within the City (subject to exemption of certain property as provided by law) or in the business of conducting places of amusement or entertainment within the City, generally measured by the gross sales or receipts of such businesses and (ii) an excise (commonly called a use) tax on the storage, use or other consumption of tangible personal property (subject to exemptions of certain property as provided by law) within the City, generally measured by the sales price of such property.

**“City Sales Tax Proceeds”** for any Annual Period shall mean and include all proceeds and receipts of the City Sales Tax.

**“Commencement Date for Sales Tax”** shall mean the date that is the first day of the month following the date of the City’s issuance of a municipal business license to any of the following within the Project Area: a Chicken Salad Chick restaurant, an ACE Hardware retail store, or a Valvoline Oil Change.

**“Enabling Law”** shall mean, collectively, (1) § 94.01 of the Constitution of Alabama, and (2) § 11-47-2 of the Code of Alabama (1975).

**“Payment Date”** shall be the same day of the year during each year of the Sales Tax Term, beginning with the date that is fourteen (14) months after the Commencement Date for Sales Tax, and being the same day of the year of each succeeding year.

**“Project”** shall mean the development, establishment, and operation of a Chicken Salad Chick restaurant, an ACE Hardware store, a Valvoline Oil Change location, and possibly one or more additional retail businesses in the Project Area.

**“Project Area”** shall mean the real property currently designated by the Limestone County Revenue Commissioner as Parcel # 10-06-14-0-000-049.000, Parcel # 10-06-14-0-000-051.000 and Parcel # 10-06-14-0-000-050.000.

**“Project City Sales Tax Payments”** shall mean one hundred percent (100%) of the City Sales Tax Proceeds actually received by the City from the Project Area during the Annual Period for which such amount is determined, net of all customary costs incurred by the City to collect the City Sales Tax Proceeds within the Project Area. However, the Project City Sales Tax Payments will not include any City Sales Tax Proceeds received by the City from the Project Area arising from any retail business that, in the sole judgment and discretion of the City’s Mayor, City Clerk, and City Council President (a) has relocated to the Project Area from elsewhere within the city of Athens, Alabama; (b) is of equivalent value to the City’s quality of life, diverse retail offerings, and financial benefit as are Chicken Salad Chick, ACE Hardware, and/or Valvoline Oil Change locations; and (c) does not present negative public policy concerns.

**“Series 2022 Warrant”** shall have the meaning set forth in Article II.G of this Agreement.

**“Subsequent Project Owner”** shall mean a person or entity to whom the Company sells at least 50% of its interest in the Project.

**“Sales Tax Term”** shall mean the period of time beginning on the Commencement Date for Sales Tax and ending on the Sales Tax Termination Date.

**“Sales Tax Termination Date”** shall mean:

(1) the earlier of: (a) the day immediately following the first Payment Date that is six years and two months after the Commencement Date for Sales Tax, whether or not the aggregate Project City Sales Tax Payments at that time have equaled the Total City Sales Tax Commitment; or (b) the Payment Date on which the City shall have paid as Project City Sales Tax Payments an aggregate amount equal to the Total City Sales Tax Commitment; or

(2) if earlier than the dates specified in clause (1) above, the date after the Commencement Date for Sales Tax on which a Chicken Salad Chick restaurant, an ACE Hardware store, or a Valvoline Oil Change location shall cease to operate in the Project Area on a basis of at least five days per week (excluding holidays), except that if such cessation of operations shall be the result of a temporary and voluntary building/store renovation or refresh, or a fire, tornado, storm or other hazard, the Sales Tax Termination Date as so determined shall not occur until the date that is twelve (12) months after the date of cessation of operations.

“**Total City Sales Tax Commitment**” shall mean **Eight Hundred Thousand and 00/100 Dollars (\$800,000.00)**.

## **II. SALES TAX PAYMENTS.**

A. **Deadline for Commencement Date for Sales Tax.** The Company hereby agrees that the Commencement Date for Sales Tax will occur on or before January 1, 2025, or else there shall be an Event of Default hereunder, unless such Event of Default is due to the fault of the City (i.e. the failure or refusal by the City to promptly issue any applicable municipal business license that is otherwise due to be granted per law).

B. **Deadline for Opening of Named Establishments.** The Company hereby agrees that a Chicken Salad Chick restaurant, an ACE Hardware retail store, and a Valvoline Oil Change location shall all have opened for business with the general public in the Project Area on or before January 1, 2025, or else there shall be an Event of Default hereunder, unless such Event of Default is due to the fault of the City (i.e. the failure or refusal by the City to promptly issue any applicable municipal business license that is otherwise due to be granted per law).

C. **Expense Reimbursement Obligations.** The Company agrees to pay any of the City’s reasonable out-of-pocket expenses incident to the negotiation, drafting and approval of this Agreement, including but not limited to the fees and disbursements of legal counsel for the City related to the same. The Company agrees that if the Company has not paid the same prior to the first Payment Date, the City may pay the same by a deduction of set-off from the Project City Sales Tax Payments.

D. **Press Releases.** The Company agrees to cooperate fully with the City in connection with the preparation and release of all of the Company’s press releases and publications concerning the Project.

### **E. Nature, Amount and Duration of Obligation of City.**

1. The City hereby agrees to pay to the Company in arrears on each Payment Date during the Sales Tax Term the Project City Sales Tax Payments determined by the City in accordance with this Agreement to be due and payable on such Payment Date. The obligation of the City for the payment of the Project City Sales Tax Payments:

a. is a limited obligation payable solely from the City Sales Tax Proceeds;

b. shall never constitute a general obligation, or a charge against the general credit or taxing powers, of the City within the meaning of any constitutional provision or statutory limitation whatsoever;

c. shall commence on the first Payment Date after the Commencement Date for Sales Tax;  
and

d. shall not include any payment attributable to Project City Sales Tax Proceeds received by the City after the last day of the last Annual Period in the Sales Tax Term.

2. The maximum amount of the Project City Sales Tax Payments that the City shall pay under this Agreement and the Series 2022 Warrant shall be limited to and shall not exceed the Total City Sales Tax Commitment.

3. Notwithstanding anything herein to the contrary, the City shall have no obligation to pay any amount under this Agreement and the Series 2022 Warrant:

(a) prior to the date on which a Chicken Salad Chick restaurant opens for business in the Project Area, and either an ACE Hardware store or a Valvoline Oil Change location also opens for business in the Project Area, or

(b) from and after the Sales Tax Termination Date.

**F. Determination and Payment of Project City Sales Tax Payments.**

1. On each Payment Date, the City shall: (a) determine in accordance with this Agreement the Project City Sales Tax Payments (if any) to be made for the then immediately preceding Annual Period; and (b) pay to the Company, as owner of the Series 2022 Warrant, such amount of Project City Sales Tax Payments as determined by the City in accordance with this Agreement.

2. The City will permit any attorneys, accountants or other agents or representatives designated by the Company to (a) have access to and visit and inspect any of the accounting systems, books of account, and financial records and properties of the City which pertain to the City Sales Tax Proceeds and the determination of Project City Sales Tax Payments, (b) examine and make abstracts from any such accounting systems, books and records, and (c) discuss the affairs, finances and accounts of the City pertaining to the City Sales Tax Proceeds and the determination of Project City Sales Tax Payments, with its officers, employees or agents, all at reasonable business times and upon reasonable notice; provided, however, that nothing herein shall require the disclosure of any information made confidential by law or contract.

**G. The Series 2022 Warrant**

1. The obligation of the City to pay the Project City Sales Tax Payments hereunder shall be evidenced by a single limited obligation revenue warrant payable solely from, and secured by a pledge of, so much of the City Sales Tax Proceeds as shall be necessary to pay the Project City Sales Tax Payments, in form and of content as the form of warrant attached to this Agreement as **Exhibit A** (the “**Series 2022 Warrant**”).

2. The Series 2022 Warrant shall not bear interest, shall be issued in the principal amount equal to the Total City Sales Tax Commitment, shall be dated the date of delivery, and shall mature on the Sales Tax Termination Date.

3. The Series 2022 Warrant shall be duly executed, sealed, and attested by the City, and shall be registered by the City as a conditional claim against so much of the City Sales Tax Proceeds as shall be necessary to pay the Project City Sales Tax Payments with respect to such warrant and the warrant fund established therefor as therein provided.

4. The Series 2022 Warrant shall be registered and may be transferred as provided therein.

**H. Special Agreements of the City.**

1. All proceedings of the governing body of the City heretofore had and taken, and all resolutions and orders adopted pursuant thereto with respect to the levy and collection of the City Sales Tax, are hereby ratified and confirmed in all respects from and after the effective date thereof.

2. The City covenants and agrees:

a. The City shall, as long as this Agreement and the Series 2022 Warrant shall be outstanding, continue to levy and to provide for the assessment and collection of the City Sales Tax at rates not less than those in effect on the date of this Agreement; provided, that nothing herein shall prevent the City from granting any “sales tax holiday” generally applicable to sales of certain categories of items throughout the City.

b. Except to the extent provided hereunder or required by state law, the City shall not apply any of the City Sales Tax Proceeds which are allocable to or included as part of Project City Sales Tax

*Payments for the payment of any governmental expenses of operating the City other than customary costs of collection of such taxes, as herein provided.*

I. **Duration of Agreement.** *The obligations of the City and the Company hereunder shall arise on the date hereof and shall continue until the end of the Sales Tax Term.*

### **III. EVENTS OF DEFAULT AND REMEDIES.**

A. **Event of Default.** *Any one or more of the following shall constitute an event of default by the City or the Company (an “Event of Default”) under this Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):*

1. *default in the performance, or breach, of any covenant or warranty of the City in this Agreement, and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the City by the Company a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “notice of default” hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the City shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default; or*

2. *default in the performance, or breach, of any covenant of the Company in this Agreement, and (except for the Company’s default of its obligation under Article II.A and/or II.B) the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the Company by the City a written notice specifying such default or breach and stating that such notice is a “notice of default” hereunder, provided that (except for the Company’s default of its obligation under Article II.A and/or II.B) if such default is of a kind which cannot reasonably be cured within such thirty-day period, the Company shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default.*

B. **Remedies.** *Each party hereto may proceed to protect its rights and interests with respect to an Event of Default by the use of appropriate remedies as permitted by state law, including by terminating this Agreement, and/or by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of any other party herein contained or in aid of the exercise of any power or remedy available at law or in equity. (Notwithstanding the foregoing, however, the City shall not be entitled to seek legal or equitable relief as redress for the Company’s default of its obligations under Article II.A and/or II.B, but in such event, the City’s sole and exclusive remedy shall be to terminate this Agreement by written notice to the Company, in which event the parties’ rights and obligations under this Agreement shall cease and terminate effective as of the termination date.)*

### **V. REPRESENTATIONS AND WARRANTIES**

A. **City’s Representations and Warranties.** *The City hereby represents and warrants as follows:*

1. *The City has taken all necessary action required by the Enabling Law or any other applicable law to authorize this Agreement and the obligations hereunder, and by proper corporate action the City has duly authorized the execution, delivery and performance of this Agreement.*

2. *The Series 2022 Warrant shall be issued and delivered to the Company, upon condition that this Agreement is enforceable against the City in accordance with the terms hereof.*

3. *The issuance of the Series 2022 Warrant for the purposes set forth in this Agreement will result in direct financial benefits to the City.*

B. **Company’s Representations, Warranties and Covenants.** *The Company hereby represents and warrants as follows:*

1. *The Company is a duly organized and existing Alabama limited liability company, is qualified to do business in the State of Alabama and is in good standing under the laws of the State of Alabama.*

2. *The Company has all necessary corporate power and authority to enter into and perform its obligations hereunder and by proper action the Company has duly authorized the execution, delivery and performance of this Agreement.*

3. *All actions and proceedings required to be taken by or on behalf of the Company to execute and deliver this Agreement, and to perform the covenants, obligations and agreements of the Company hereunder, have been duly taken.*

4. *The execution and performance of this Agreement by the Company does not constitute and will not result in the breach or violation of any contract, lease, mortgage, bond, indenture, franchise, permit or agreement of any nature to which the Company is a party.*

5. *The Company is either the owner in fee simple of the Project Area, is a party to a contract to purchase such an interest in the Project Area, or is a party to a lease agreement providing for the lease and operation of the Project within the Project Area, and in either case, has all necessary power and authority to carry out the Project as contemplated herein.*

6. *The Company reasonably anticipates that the Project will (i) result in the creation of approximately 165 new jobs, (ii) involve a total capital investment of approximately Ten Million Five Hundred Thousand Dollars (\$10,500,000), and (iii) generate annual taxable sales of approximately Six Million Five Hundred Thousand Dollars (\$6,500,000).*

7. *The representations, warranties and covenants made by the Company herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.*

8. *This Agreement, when executed and delivered, will constitute the valid and binding obligations of the Company, enforceable in accordance with the terms and conditions set forth herein.*

9. *The Company's execution and delivery of this Agreement and the Company's compliance with the provisions thereof will not conflict with or constitute a breach of, or a default under, any of the provisions of any applicable law, rule, regulation or order of any court, administrative agency, bureau, board, commission, office, authority, department or other governmental entity.*

10. *The Company is not a party to or bound by any agreement or obligation or subject to any restriction or to any applicable law, rule, regulation or order of any court, administrative agency, bureau, board, commission, office, authority, department or other governmental entity, which might result in a material impairment of the rights or abilities of Company to perform its obligations hereunder.*

11. *There are no judgments, orders, suits, actions, garnishments, attachments or proceedings of any nature by or before any court, commission, board or other governmental body pending, or to the knowledge of Company threatened, which involve or affect, or could involve or affect: (a) the Project Area, or any part thereof; (b) the validity or enforceability of this Agreement; or (c) any risk of any judgment or liability being imposed upon Company which could materially adversely affect Company's ability to observe or perform fully its agreements and obligations hereunder.*

## **VI. MISCELLANEOUS**

A. **Severability Clause.** *The provisions of this Agreement or the Series 2022 Warrant shall be severable. In the event any provision this Agreement or the Series 2022 Warrant shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof or thereof.*

B. **Prior Agreements Cancelled.** This Agreement shall completely and fully supersede all other prior agreements, both written and oral, among the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein.

C. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

D. **No Third Party Beneficiaries.** This Agreement shall inure to the benefit solely of the parties hereto and their permitted successors and assigns, and no other person or entity is an intended beneficiary hereof or shall have any right to enforce the provisions hereof.

E. **Notice.**

1. All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

a. if to the City:

City Hall  
City of Athens  
200 West Hobbs Street  
Athens, Alabama 35611  
Attention: Mayor  
Attention: City Clerk

With a copy to:  
E. Shane Black, Esq.

Hand Arendall Harrison Sale, LLC

102 South Jefferson Street

Athens, AL 35611

b. if to the Company:

WEScorp, LLC  
116 N Marion St.  
Athens, AL 35611  
Attention: William C. Ming

2. Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

F. **Delegation and Assignment of this Agreement.**

1. The City shall have no authority or power to, and shall not, delegate to any person the duty or obligation to observe or perform any agreement or obligation of the City hereunder. Nothing in this section, however, shall prevent the City from engaging appropriate consultants, experts, agents or outside representatives to perform the City's obligations under this Agreement on behalf of the City.

2. The City shall not have any authority or power to, and shall not, assign to any person any right of the City hereunder or any interest of the City herein.

3. The Company may transfer or assign to any person all of its rights, title and interest in this Agreement, including the Series 2022 Warrant, only to a Subsequent Project Owner that expressly assumes the obligations of the Company hereunder, or to a lender or collateral agent as security for a loan with respect to the Project, in either case upon not less than thirty (30) days prior written notice to the City. No other assignment or

transfer by the Company of its rights, title or interest in this Agreement is permitted without the prior written consent of the Mayor of the City, which consent shall not be unreasonably withheld. In no event shall the City be required to make payments to or have any obligation to respond to or give notices to any party other than the Company or, after any assignment as permitted hereby, to a single assignee.

G. **Amendments.** This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.

H. **No Joint Venture.** Nothing in this Agreement shall create any joint venture, partnership or other relationship between the parties. The City shall not by virtue of this Agreement be deemed to have any ownership interest in the Project Area or the Project and shall have no liability arising out of the operation of the Project by the Company, its successors or assigns.

I. **Governing Law.** This Agreement shall be governed exclusively by the laws of the State of Alabama, without regard to its conflicts of laws provisions.

J. **Venue/Service of Process.** The City and the Company consent and submit to the jurisdiction of the state courts of Limestone County, Alabama, and/or the United States District Court for the Northern District of Alabama, Northern Division, and expressly agree that the counties in which such courts are situated will be the exclusive venues for any suit, action or proceeding arising out of or relating to this Agreement. The City and the Company further agree that personal jurisdiction over them may be effected by service of process by registered or certified mail addressed as provided in this Agreement, and that when so made shall be as if served upon them personally within the State of Alabama.

J. **Time of the Essence.** Time is of the essence of each provision of this Agreement.

K. **Waiver.** No waiver of any breach, violation or default of this Agreement shall be construed as a waiver of any subsequent breach, violation or default hereof.

L. **Drafting.** The parties hereto acknowledge that each of them has had the opportunity to contribute to the drafting of this Agreement, and, as a consequence, that the Agreement should not be construed for or against any party to it.

M. **Attorney Fees/Mediation.** If either party institutes an action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the unsuccessful party to such action or proceeding will reimburse the successful party therein for the reasonable expenses of attorneys' fees and disbursements and litigation expenses incurred by the successful party. The parties agree to attempt mediation with a neutral third party at a neutral location to resolve any dispute hereunder.

N. **Excluded Liabilities.** The City shall neither assume nor pay for nor be liable for any of the Company's agreements, liabilities, debts, responsibilities or obligations with respect to the Project or otherwise, whether direct, fixed or contingent, and whether existing or arising at any time prior or subsequent to the date of this Agreement, except and only to the extent otherwise provided herein.

O. **Replacement Stores.** The Company may request in writing that this Agreement be amended such that a different retail establishment(s) may be substituted in the place of one or more of the commercial retail establishments that are named in this Agreement (i.e., Chicken Salad Chick, ACE Hardware, and Valvoline Oil Change). Upon such request by the Company, the City's Mayor, City Clerk, and City Council President will determine, in their sole judgment and discretion, whether to agree to such amendment, and in making their decision, may consider whether the different retail establishment (a) has relocated to the Project Area from elsewhere within the city of Athens, Alabama (and if so, it shall not be permitted as a substitute); (b) is of equivalent value to the City's quality of life, diverse retail offerings, and financial benefit as are Chicken Salad Chick, ACE Hardware, and/or Valvoline Oil Change locations; and (c) does not present negative public policy concerns, among such other considerations as they may determine appropriate.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be executed in its name, under seal, and the same attested, by an officer thereof duly authorized thereunto, and the Company has executed this Agreement under seal, and the parties have caused this Agreement to be dated the date and year first above written.

*[Signature Lines for City and Company]*

**EXHIBIT A: Form of Series 2022 Warrant**

Councilmember Henry moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Harper, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Wales thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Harper and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said resolution had been unanimously carried.

**Councilman Wales introduced the following ordinance:**

**ORDINANCE NUMBER 2022 - 2223**

**AN ORDINANCE CONCERNING AN ECONOMIC DEVELOPMENT PROJECT WITH WESCORP, LLC**

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**WHEREAS**, the City Council has adopted a Resolution directing the Mayor to execute a Project Agreement by and between the City of Athens (the “City”) and Wescorp, LLC (the “Company”), relating to the development of a proposed Chicken Salad Chick restaurant, an ACE Hardware store, and a Valvoline Oil Change location on Highway 72 East (the “Project”); and

**WHEREAS**, the City Council wishes to enact an Ordinance allowing for the Mayor’s payment of certain municipal sales tax proceeds to the Company.

**THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022, at 5:30 p.m., as follows:

1. The Mayor of the City is hereby authorized and directed, in conjunction with and pursuant to the Project Agreement between the City and the Company, to annually pay the Company in arrears one hundred percent (100%) of the proceeds from the City’s sales tax (levied pursuant to Chapter 18, Articles 2 and 9 of the City Code) actually received by the City from the Project, net of certain costs, for a limited period of time and under certain restrictions, in the manner that is fully described in the Project Agreement.

2. This Ordinance shall work as an exception to (and not as a repeal of) the application of any other ordinance (or part thereof) that is inconsistent with this Ordinance and the operation of the referenced Project Agreement; and in such case, shall be an exception only for the duration of the Project Agreement.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

/s/ William R. Marks  
MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

/s/ Annette Barnes  
CITY CLERK, CITY OF ATHENS, ALABAMA

Councilmember Harper moved that unanimous consent be given for immediate consideration of and action on said ordinance, which motion was seconded by Councilmember Henry, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said ordinance had been unanimously carried. Councilmember Wales thereupon moved that the ordinance be finally adopted, which motion was seconded by Councilmember Harper and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

**Councilman Wales introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1813**

**A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT PROJECT RELATING TO NOON ATHENS  
P3, LLC**

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**WHEREAS**, Noon Athens P3, LLC, an Alabama limited liability company (the “Company”), intends to develop a proposed TJ Maxx, Ross Dress for Less, Old Navy, Ulta Beauty, and Five Below retail stores on certain property located on Highway 72 East near Interstate 65 (the “Project”);

**WHEREAS**, the City Council (the “Council”) of the City of Athens (the “City”) has determined that it is in the City’s best interest to provide economic development incentives to the Company in order to facilitate the development, construction and establishment of the Project, and that such expenditure will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to the Company or any other private entities;

**WHEREAS**, the Project is expected to result in the creation of more than 125 new jobs, and will generate annual taxable sales of roughly Twenty Million Dollars (\$20,000,000);

**WHEREAS**, the Council wishes to extend economic development incentives to the Project;

**WHEREAS**, the activities to be authorized by this resolution; the public benefits sought to be achieved thereby; and each individual, firm, corporation, and other business entity to whom or for whose benefit the City proposes to lend its credit or grant public funds or thing of value, have been described in reasonable detail and/or identified in a notice published in the *Athens News Courier* (which this City Council finds and determines is the newspaper having the largest circulation in the county or municipality), at least seven days prior to this meeting at least seven days prior to this meeting;

**WHEREAS**, such public notice is attached to this Resolution as Attachment A and incorporated hereto as if set forth fully herein;

**WHEREAS**, pursuant to an economic development project agreement, the City and the Company wish to memorialize the general terms of their agreement with respect to the development of the Project; and

**WHEREAS**, pursuant to such agreement, the City would pay the Company \$2,000,000 after the above-named five stores open for business at the project site, an additional \$2,000,000 when the stores had been open for 1 year, and an additional \$2,000,000 when the stores had been open for 2 years (for a total of \$6,000,000), all as described in more particularity in the Economic Development Project Agreement, among other things.

**THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022, at 5:30 p.m., as follows:

1. The Mayor of the City is hereby authorized and directed, in the name of and for account of the City, to enter into a contract between the City and the Company, in substantially the same form as is attached hereto (and entitled the “Economic Development Project Agreement”) as Attachment B, with such non-substantive changes or additions thereto or deletions therefrom as the Mayor shall approve, which approval shall be conclusively evidenced by his execution of such instrument. The City Clerk of the City is hereby authorized and directed to affix the official seal of the City to such instrument and to attest the same.

2. It is hereby determined that the expenditures of public funds for the purposes specified in this resolution (and in Attachment B) will serve valid and sufficient public purposes, including (i) promoting, improving and expanding economic and commercial development/activity, (ii) increasing the number and diversity of employment opportunities for citizens of the City, and (iii) enhancing the overall quality of life for the citizens of the City, notwithstanding any incidental benefit accruing to any private entity or entities.

3. The Mayor is authorized to take actions and execute such other and further documents as may be necessary to effect and carry out the transactions contemplated by this Resolution and/or the agreement referenced herein, including but not limited to authorizing the issuance of warrants; the expenditure and use of municipal funds as set forth in those agreements; and approving and executing further agreement(s) that are consistent with and involved in carrying out the transactions contemplated by this Resolution.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

**ATTACHMENT A**

**NOTICE OF PROPOSED ACTION AT PUBLIC MEETING**

*Notice is hereby given that during a regular meeting, which will be open to the public and will be held on June 6, 2022, at 5:30 o'clock, P.M., Central Time, at the City Council Chambers in Athens City Hall, at 200 Hobbs Street W, Athens, Alabama 35611, the City Council for the City of Athens, Alabama (the “City”) will consider adopting a resolution in connection with an economic development project, described in reasonable detail herein.*

*The economic development project relates to Noon Athens P3, LLC (the "Company"), which intends to develop TJ Maxx, Ross Dress for Less, Old Navy, Ulta Beauty, and Five Below retail stores on certain property located on Highway 72 East near Interstate 65.*

*The City believes that the proposed economic development project will create new jobs in the City, will generate additional tax revenues for the City, will increase commerce in the City, and will generally promote the economic development of the City. It is anticipated that the project will result in the creation of more than 125 new jobs, and will generate annual taxable sales of roughly Twenty Million Dollars (\$20,000,000).*

*The City Council will consider the adoption of a resolution authorizing the City of Athens to enter into an Economic Development Project Agreement with the Company. Through that agreement, the City would pay the Company \$2,000,000 after the five stores open for business at the project site, an additional \$2,000,000 when the stores had been open for 1 year, and an additional \$2,000,000 when the stores had been open for 2 years (for a total of \$6,000,000). The City's payment obligations would be conditioned upon the Company's opening and continued operation of the TJ Maxx, Ross Dress for Less, Old Navy, Ulta Beauty, and Five Below retail stores at the project site, and the Company's provision of required documentation to the City, as described in more particularity in the agreement, among other things. The agreement also provides for: (a) allowances for temporary interruptions of business, (b) allowances for the replacement of stores with other stores, and delays in payments to the Company as a result thereof, and (c) a provision that the City has no payment obligation unless the opening date for all of the stores has occurred within four years of the agreement, among other provisions.*

*The assistance described herein will encourage economic development and will constitute an economic development project for the City. The City's granting of public funds or things of value as described herein will benefit the Company.*

**THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA**

Publication: May 28, 2022

## **ATTACHMENT B**

### **ECONOMIC DEVELOPMENT PROJECT AGREEMENT**

*This Economic Development Project Agreement (this "**Agreement**") is entered into as of the \_\_\_ day of June, 2022, by and among the **CITY OF ATHENS, ALABAMA**, an Alabama municipal corporation (the "**City**") and **NOON ATHENS P3, LLC**, an Alabama limited liability company (the "**Company**"). The City and the Company are sometimes referred to herein as the "**Parties**".*

#### **RECITALS:**

*This Agreement relates to the following real property that is located in Athens, Alabama, and identified by the Limestone County Revenue Commissioner's office as of the date of this Agreement as Tax Parcel #10-05-15-1-000-001.000 (the "**Property**"). The Property is under contract by and will be owned by persons or entities operating in conjunction with, or under the control of, the Company.*

*The Company expects and intends to develop a commercial retail shopping center located on the Property. The commercial shopping center will contain roughly 79,000 square feet of retail tenant space, and one approximately 1.25 acre outparcel space. The following retail businesses will be established and operate in the commercial shopping center: TJ Maxx (at least 21,000 square feet), Ross Dress for Less (at least 17,000 square feet), Old Navy (at least 11,500 square feet), Ulta Beauty (at least 9,000 square feet) and Five Below (at least 8,500 square feet) (as further defined in Section 3(k) hereof, the "**Stores**"). The Company reasonably expects, based on the Company and its associates' experience in developing similar projects, and has represented to the City, that the operation of the commercial shopping center and the Stores at the Property (the "**Project**") will result in the creation of more than 125 new jobs, and is anticipated to generate annual taxable sales of roughly Twenty Million Dollars (\$20,000,000).*

*The City has agreed, based upon the expectations set forth above and other benefits to the City, to assist the Company as provided herein. The Company has agreed to construct and establish the Project as provided herein. Pursuant*

to the applicable laws of the State of Alabama referenced herein and for the purposes referenced herein, the City and the Company have delivered this Agreement.

The City has approved the transaction contemplated hereby after notice to the public in accordance with the requirements of Amendment 772 to the Constitution of Alabama, codified as § 94.01 of the Constitution of Alabama.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Section 1. Undertakings of the Company.** The Company agrees, represents, and warrants:

(a) that it shall use its commercially reasonable efforts to develop and establish the Project such that the Project results in the creation of at least 125 new jobs, and generates annual taxable sales of roughly Twenty Million Dollars (\$20,000,000).

(b) that it shall cause any construction activities regarding the Project to be conducted in compliance with all applicable laws, ordinances, rules and regulations and approved variances of any governmental authority, including, without limitation, all applicable licenses, permits, building codes, restrictive covenants, zoning and subdivision ordinances and flood, disaster and environmental protection laws. The Company shall require any architect, general contractor, subcontractor or other business performing any work in connection with the Project to obtain all necessary permits, licenses and approvals to construct the same.

(c) that it shall be in material compliance with all applicable laws, ordinances, rules and regulations and approved variances of the City and, further, shall be current in payment of any and all taxes, fees, and other charges imposed by the City unless such payments are the subject of a bona fide dispute and are being challenged by the Company.

(d) that it is duly organized and validly existing as a limited liability under the laws of the State of Alabama and has duly authorized its execution, delivery and performance of this Agreement.

(e) that neither the execution and delivery of this Agreement, nor the performance hereof, by the Company requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity (including, but not limited to, any governmental or quasi-governmental entity), except for such consents, filings, notices and hearings described herein, or already held or maintained.

(f) that neither the authorization, execution and delivery of, nor the performance of, this Agreement by the Company violates, constitutes a default under or a breach of (i) the Company's certificate of incorporation or other organizational documents of the Company, (ii) any agreement, instrument, contract, mortgage or indenture to which the Company is a party or to which the Company or its assets are subject, or (iii) any judgment, decree, order, ordinance, regulation, consent or resolution applicable to the Company or any of its assets.

(g) that there is not now pending nor, to the knowledge of the Company, threatened, any litigation affecting the Company which questions the validity or organization of the Company, or any of the representations and warranties of the Company contained herein.

**Section 2. City's Incentive Payments.**

(a) **Incentive Payments.** In consideration of the Company's agreements, warranties, and representations set forth in Section 1 of this Agreement, the City agrees that:

(i) Upon receipt of Documentation (as defined below) and confirmation by the Mayor of the City that all of the Stores have opened (and remain open as of the "Opening Date", defined below) for business to the general public at the Property (not including those interruptions that are deemed by the Mayor of the City, in his/her reasonable discretion, to be temporary interruptions of business due to fire, calamity, pandemic, natural disaster, or other act of God), the City shall pay to the Company the sum of Two Million and 00/100 Dollars (\$2,000,000.00). The date

upon which all of the Stores open for business to the general public at the Property (which would be the date that the last of the Stores open, if the Stores do not all open on the same date) shall be referred to hereunder as the “**Opening Date**”. The Company must send the Documentation to the City within thirty (30) days of the Opening Date.

(ii) Upon receipt of Documentation (as defined below) and confirmation by the Mayor of the City that all of the Stores have remained open and have continuously and regularly been doing business with the general public at the Property (not including those interruptions that are deemed by the Mayor of the City, in his/her reasonable discretion, to be temporary interruptions of business due to fire, calamity, pandemic, natural disaster, act of God or other circumstance beyond the reasonable control of the Company (collectively, “**Temporary Interruptions**”)) for a period of 1 year (i.e., 365 days) since the Opening Date, the City shall pay to the Company an additional sum of Two Million and 00/100 Dollars (\$2,000,000.00). The Company must send the Documentation to the City within 395 days (i.e., 1 year, plus thirty (30) days) of the Opening Date. Notwithstanding the foregoing, should one or more Stores, other than for Temporary Interruptions, cease to be open and continuously and regularly doing business with the general public at the Property prior to the expiration of such 1-year period, then (1) the Company shall be entitled to replace the Store(s) with one or more substitute Stores pursuant to Section 3(k)(vi), below, (2) the Company shall be entitled to submit the Documentation to the City within thirty (30) days after the date on which each of the initial and substitute Stores has been open and doing business with the general public at the Property, continuously or not continuously, for a period of 1 year since the Opening Date (including any Temporary Interruptions), and (3) upon receipt of the Documentation and confirmation by the Mayor of the City that each of the initial and substitute Stores has been open and doing business with the general public at the Property for a period of 1 year since the Opening Date, the City shall pay to the Company an additional sum of Two Million and 00/100 Dollars (\$2,000,000.00). By way of example, if one (1) of the Stores ceases to be open and continuously and regularly doing business with the general public at the Property (other than for Temporary Interruptions) on the date that is ten (10) months from and after the Opening Date, and a substitute Store commences doing business with the general public at the Property on the date that is twelve (12) months from and after the Opening Date and is open and doing business with the general public at the Property continuously and regularly for two (2) additional months (including any Temporary Interruptions), then the Company shall be entitled to submit the Documentation within thirty (30) days from and after the expiration of such 2-month period.

(iii) Upon receipt of Documentation (as defined below) and confirmation by the Mayor of the City that all of the Stores have remained opened and have continuously and regularly been doing business to the general public at the Property (not including Temporary Interruptions) for a period of 2 years (i.e., 730 days) since the Opening Date, the City shall pay to the Company an additional sum of Two Million and 00/100 Dollars (\$2,000,000.00). The Company must send the Documentation to the City within 760 days (i.e., 2 years, plus thirty (30) days) of the Opening Date. Notwithstanding the foregoing, should one or more Stores, other than for Temporary Interruptions, cease to be open and continuously and regularly doing business with the general public at the Property prior to the expiration of such 2-year period, then (1) the Company shall be entitled to replace the Store(s) with one or more substitute Stores pursuant to Section 3(k)(vi), below, (2) the Company shall be entitled to submit the Documentation to the City within thirty (30) days after the date on which each of the initial and substitute Stores has been open and doing business with the general public at the Property, continuously or not continuously, for a period of 2 years since the Opening Date (including any Temporary Interruptions), and (3) upon receipt of the Documentation and confirmation by the Mayor of the City that each of the initial and substitute Stores has been open and doing business with the general public at the Property for a period of 2 years since the Opening Date, the City shall pay to the Company an additional sum of Two Million and 00/100 Dollars (\$2,000,000.00). By way of example, if one (1) of the Stores ceases to be open and continuously and regularly doing business with the general public at the Property (other than for Temporary Interruptions) on the date that is twenty-two (22) months from and after the Opening Date, and a substitute Store commences doing business with the general public at the Property on the date that is twenty-four (24) months from and after the Opening Date and is open and doing business with the general public at the Property continuously and regularly for two (2) additional months (including any Temporary Interruptions), then the Company shall be entitled to submit the Documentation within thirty (30) days from and after the expiration of such 2-month period.

(b) Documentation. As used herein “**Documentation**” shall mean: (i) a schedule showing the date that each of the Stores opened for regular business with the general public at the Property; (ii) a statement that all of the Stores have remained open and have continuously and regularly been doing business with the general public at the Property since and

from the time of each of their openings through the date of the Documentation (not including those interruptions that the Company suggests were temporary interruptions of business due to fire, calamity, pandemic, natural disaster, other act of God, or substitution by a different Store as permitted by Section 3(k)(vi) (which will be described fully)); (iii) a certificate of the president or vice president of the Company as to the accuracy of such schedule and statement; and (iv) if requested by the City, such additional documentation as shall reasonably be required to demonstrate compliance with the requirements of this Section.

(c) *Payment Manner and Method.* Each payment required by subsection (a) of this Section 2 shall be paid by check or draft by the City to the Company not later than thirty (30) days following the City's receipt of the Documentation.

(d) *Termination of City's Obligations.* The obligations of the City to make any payments to the Company pursuant to this Section 2 shall terminate unless the Opening Date shall have occurred on or before the date which is four (4) years following the date of this Agreement.

(e) *No City Obligation upon Certain Events.* The City shall have no obligation to make any payment pursuant to this Section 2 if it determines, in its reasonable discretion, that the Company has breached or violated any of the Company's agreements, representations, or warranties that are set forth in Section 1 of this Agreement; if any of the information in the Documentation is incorrect such that the requirements of Section 2(a) have not been satisfied; or if any of the other requirements of Section 2(a) have not been satisfied.

(f) *Limitation on City's Payment.* The City shall not be required to pay the Company more than a cumulative total of Six Million and 00/100 Dollars (\$6,000,000.00) pursuant to this Agreement.

(g) *Expense Reimbursement Obligations.* The Company agrees to pay any actually incurred out-of-pocket expenses incident to the negotiation, drafting and approval of this Agreement, including but not limited to the fees and disbursements of legal counsel for the City related to the same. The Company agrees that if the Company has not paid the same to the City prior to the City's payment to the Company under Section 2(a)(i), the City may pay such expenses by a deduction or set-off from such payment. Notwithstanding the foregoing, the Company's maximum exposure on these actually incurred out-of-pocket expenses shall be capped at \$15,000.00.

(h) *Notice and Right to Cure Certain Breaches.* In the event that the City determines that it is not obligated to make any payment contemplated under Section 2(a) of this Agreement due to (i) a breach or violation of any of the Company's agreements, representations, or warranties that are set forth in Section 1 of this Agreement, or (ii) a breach or violation due to the Company's failure to timely send the Documentation to the City as required in Section 2(a) of this Agreement, (each, a "**Certain Company Breach**"), the City shall promptly thereafter notify the Company in writing of the City's determination, which notice shall describe in reasonable detail each Certain Company Breach. The Company shall have sixty (60) days from and after delivery of the City's notification to cure each Certain Company Breach (the "**Cure Period**"). If each Certain Company Breach is cured within the Cure Period, then the City will be obligated to make the payment and such payment will be made within thirty (30) days after the cure is completed (assuming that the City is otherwise obligated to do so hereunder).

### **Section 3. Miscellaneous.**

(a) *Severability.* The provisions of this Agreement shall be severable. In the event any provision this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof or thereof.

(b) *Prior Agreements.* This Agreement shall completely and fully supersede all other prior agreements, both written and oral, among the parties hereto relating to the matters contained herein, and none of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein.

(c) *Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

(d) *Binding Effect.* This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns except as otherwise provided herein.

(e) *Governing Law.* This Agreement shall be governed exclusively by the laws of the State of Alabama, without regard to its conflict of laws provisions.

(f) *Notices.* All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, when mailed by registered or certified mail, postage prepaid, or when sent by overnight courier, addressed as follows:

*If to the City:*

City of Athens, Alabama  
Attn: Mayor  
PO Box 1089  
Athens, AL 35612  
Email: [rmarks@athensal.us](mailto:rmarks@athensal.us)

City of Athens, Alabama  
Attn: City Clerk  
PO Box 1089  
Athens, AL 35612  
Email: [abarnes@athensal.us](mailto:abarnes@athensal.us)

*with a copy to:*

Shane Black, Esq.  
Hand Arendall Harrison Sale LLC  
102 South Jefferson Street  
Athens, AL 35611  
Email: [sblack@handfirm.com](mailto:sblack@handfirm.com)

*If to the Company:*

Noon Athens P3, LLC  
c/o Noon Real Estate, LLC  
832 Georgia Avenue, Suite 300  
Chattanooga, TN 37402  
Attn: Kevin Jennings  
Email: [kevin.jennings@noonre.com](mailto:kevin.jennings@noonre.com)

*with a copy to:*

Noon Management, LLC  
832 Georgia Avenue, Suite 300  
Chattanooga, TN 37402  
Attn: General Counsel  
Email: [chuck.fisher@noonmanagementllc.com](mailto:chuck.fisher@noonmanagementllc.com) and  
[zach.morris@noonmanagementllc.com](mailto:zach.morris@noonmanagementllc.com)

Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier. In addition to the chosen method of giving notice, such notice shall also be e-mailed to the address(es) shown above.

(g) *Assignment.* None of the rights hereunder or the duties undertaken hereby may be assigned or delegated by any party hereto without the prior, written consent of the other parties. However, the Company may in its discretion without the consent of the other parties (i) assign its rights hereunder to a bank or other lending institution as a collateral assignment or pledge, (ii) assign its rights and delegate its duties to a third party in which the Company has an ownership interest or which is affiliated by common ownership with the Company.

(h) *Electronic Signature.* This Agreement and any additional amendments to this Agreement may be executed only by hand-signatures; however, such signatures may be transmitted by facsimile or email, and any such electronic

transmissions of the signatures shall be deemed to constitute originals. In addition, either party may rely upon any electronic transmission of any document that is properly executed by the other party. The signature of any party thereon shall be considered for those purposes as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of any party, a facsimile or scanned email document shall be re-executed by all parties in original form. No party may raise the use of a facsimile machine or scanned email, or the fact that any signature was transmitted through the use of a facsimile or scanned email as a defense to the enforcement of this Agreement.

(i) *Amendment.* This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.

(j) *Forum-Selection Clause; Waiver of Jury Trial.* The Parties consent and submit to the jurisdiction of the state courts of Limestone County, Alabama and/or the United States District Court for the Northern District of Alabama, Northern Division, and expressly agree that the counties in which such courts are situated will be the exclusive venues for any suit, action or proceeding arising out of or related to this Agreement. In any legal proceeding arising from or related to the same, the Parties do hereby waive any right to a trial by jury.

(k) *Stores.*

(i) As discussed above, TJ Maxx is one of the Stores. TJ Maxx refers to that certain commercial retail establishment operated by TJX Companies, Inc. under the "TJ Maxx" name brand, a leading off-price apparel and home fashions retailer in the United States, with more than 4,500 stores in nine countries, and to no other substitute, affiliate, or derivative.

(ii) As discussed above, Ross Dress for Less is one of the Stores. Ross Dress for Less refers to that certain commercial retail establishment operated by Ross Stores, Inc. under the "Ross Dress for Less" name brand, a leading off-price department store retailer, with more than 1,600 stores in the United States and US Territories, and to no other substitute, affiliate, or derivative thereof.

(iii) As discussed above, Old Navy is one of the Stores. Old Navy refers to that certain commercial retail establishment operated by Gap Inc. under the "Old Navy" name brand, a leading American clothing and accessories retailer, with over 1,000 locations, and to no other substitute, affiliate, or derivative thereof.

(iv) As discussed above, Five Below is one of the Stores. Five Below refers to that certain commercial retail establishment operated by Five Below, Inc. under the "Five Below" name brand, a leading American value retailer, with over 1,100 locations in 40 states, and to no other substitute, affiliate, or derivative thereof.

(v) As discussed above, Ulta Beauty is one of the Stores. Ulta Beauty refers to that certain commercial retail establishment operated by Ulta Beauty, Inc. under the "Ulta Beauty" name brand, a leading American beauty and cosmetics retailer with over 1,300 locations, and to no other substitute, affiliate, or derivative thereof.

(vi) Upon the written request of the Company and the written approval of the Mayor, City Council President, and City Clerk/Treasurer of the City (collectively, the "**Approving Parties**"), the definition of "Stores" hereunder may be amended at any time so as to substitute a different commercial retail establishment(s) in the place of one or more of the commercial retail establishments that are named in this Agreement. Upon such request by the Company, the Mayor, the City Council President, and City Clerk/Treasurer of the City will determine, in their sole discretion, whether to issue such approval and in doing so, may consider the value of the brand of the different commercial retail establishment, the anticipated revenue stream to the City from the operations of the different commercial retail establishment, and such other considerations as they may determine appropriate. Notwithstanding the foregoing, in the event that an initial Store identified in Section 3(k)(i-v) hereof (i.e., Ulta Beauty, TJ Maxx, Ross Dress for Less, Old Navy, and Five Below) has opened for business but then ceased operations at the Project, then any of the commercial retail establishments listed in **Exhibit A** are deemed approved by the Approving Parties to be an acceptable replacement for that initial Store (and for elimination of doubt the approval process set forth above in this Section 3(k)(vi) shall not be required for any of those establishments as

*substitutes for then-existing tenants of the Project) so long as the substitute commercial retail establishment(s) occupy(ies) at least seventy percent (70%) of the retail space that was occupied by the Store that it is replacing.*

***IN WITNESS WHEREOF**, the City has caused this Agreement to be executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and the Company has executed this Agreement under seal, and the parties have caused this Agreement to be dated the date and year first above written.*

*/signature lines for the Company and the City/*

**EXHIBIT A**

*TJX concepts - Marshalls, HomeGoods, HomeSense and Sierra Trading Post  
Burlington  
PopShelf  
PetSmart  
Dick's Sporting Goods  
Academy Sports  
Designer Shoe Warehouse  
Gap  
Cost Plus World Market  
Hobby Lobby  
Michaels  
Buy Buy Baby  
Bed Bath & Beyond  
Kirklands  
Shoe Carnival  
Sketchers  
Shoe Department  
Famous Footwear  
Encore Shoes  
Shoe Station  
Best Buy  
Electronics Express  
Apple  
Petco  
Pet Supermarket  
Ashley Furniture  
Kohl's  
Target  
Nordstrom Rack  
Ethan Allen  
Target  
Martin's Family Clothing*

Councilmember Henry moved that unanimous consent be given for immediate consideration of and action on said resolution, which motion was seconded by Councilmember Harper, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Henry and Harper; NAYS: None. The President thereupon declared that the motion for unanimous consent for immediate consideration of and action on the said resolution had been unanimously carried. Councilmember Wales thereupon moved that the resolution be finally adopted, which motion was seconded by Councilmember Henry and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, and Henry; NAYS: Councilmember Harper. The President thereupon announced that the motion for the adoption of the said resolution had been carried.

**Councilman Harper introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1814**

**A RESOLUTION CONCERNING OLD BLACK BEAR BREWING COMPANY  
AND ITS TAX ABATEMENT AGREEMENT**

**WHEREAS**, on May 9, 2022, the City Council approved Resolution #2022-1801 (the “Resolution”) authorizing a Tax Abatement Agreement with Old Black Bear Brewing Company, relating to the abatement of certain state and local non-educational taxes (the “Agreement”); and

**WHEREAS**, the City has received a request that the Resolution and Agreement be revised to replace the name “Old Black Bear Brewing Company” with “Old Black Bear Brewing Company, LLC and URSA Major Properties, LLC”, the entities which will lease and own the property, respectively; and

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA** on June 6, 2022 at 5:30 p.m., the Resolution is hereby amended to replace the name “Old Black Bear Brewing Company” is replaced by “Old Black Bear Brewing Company, LLC and URSA Major Properties, LLC”, and that the Mayor is authorized to enter into an amendment of the Agreement which makes the same replacement.

**ADOPTED** this the 6<sup>th</sup> day of June, 2022.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

The motion was seconded by Councilwoman Henry and was unanimously carried.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1815**

This Resolution made this 6<sup>th</sup> day of June, 2022 (the “Effective Date”) by the City of Athens, Alabama (the “Granting Authority”), to grant a tax abatement to Turner LLC (the “Company”).

WHEREAS, the Company has announced plans for a (check one):

new project or  major addition to their existing facility (the “Project”), located within the jurisdiction of the Granting Authority; and

WHEREAS, pursuant to the Tax Incentive Reform Act of 1992 (Section 40-9B-1 et seq., Code of Alabama 1975) (the Act), the Company has requested from the Granting Authority an abatement of (check all that apply):

- all state and local non-educational property taxes,
- all construction related transaction taxes, except those local construction related transaction taxes levied for educational purposes or for capital improvements for education, and /or
- all mortgage and recording taxes; and

WHEREAS, the Company has requested that the abatement of state and local non-educational property taxes (if applicable) be extended for a period of 10 years, in accordance with the Act; and

WHEREAS, the Granting Authority has considered the request of the Company and the completed applications (copy attached) filed with the Granting Authority by the Company, in connection with its request; and

WHEREAS, the Granting Authority has found the information contained in the Company’s

application to be sufficient to permit the Granting Authority to make a reasonable cost/benefit analysis of the proposed project and to determine the economic benefits to the community; and

WHEREAS, the construction of the project will involve a capital investment of \$6,000,000; and

WHEREAS, the Company is duly qualified to do business in the State of Alabama, and has powers to enter into, and to perform and observe the agreements and covenants on its part contained in the Tax Abatement Agreement; and

WHEREAS, the Granting Authority represents and warrants to the Company that it has power under that constitution and laws of the State of Alabama (including particularly the provisions of the Act) to carry out provisions of the Tax Abatement Agreement;

NOW THEREFORE, be it resolved by the Granting Authority as follows:

Section 1. Approval is hereby given to the application of the Company and abatement is hereby granted of (check all that apply):

- all state and local non-educational property taxes,
- all construction related transaction taxes, except those construction related transaction taxes levied for educational purposes or for capital improvements for education, and /or
- all mortgage and recording taxes

as the same may apply to the fullest extent permitted by the Act. The period of abatement for the non-educational property taxes (if applicable) shall extend for a period of 10 years measured as provided in Section 40-9B-3(a)(12) of the Act.

Section 2. The Mayor of the City of Athens, for and on behalf of the City, as authorized by the Granting Authority, shall enter into an abatement agreement with the Company to provide for the abatement granted in Section 1.

Section 3. A certified copy of this resolution, with the application and abatement agreement, shall be forwarded to the Company to deliver to the appropriate local taxing authorities (if applicable) and to the Alabama Department of Revenue in accordance with the Act.

Section 4. The Mayor of the City of Athens is authorized to take any and all actions necessary or desirable to accomplish the purpose of the foregoing of this resolution.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

I hereby certify that the above and foregoing was duly adopted by the City Council of Athens, Alabama at a meeting held on the 6th day of June, 2022.

/s/ Annette Barnes  
CITY CLERK, CITY OF ATHENS, ALABAMA

/s/ William R. Marks  
MAYOR, CITY OF ATHENS, ALABAMA

The motion was seconded by Councilman Wales and was unanimously carried.

**Councilman Wales introduced the following resolution:**

**RESOLUTION NUMBER 2022 - 1816**

This Resolution made this 6 day of June, 2022 (the Effective Date) by the City Council of Athens, Alabama (the "Granting Authority"), to grant a tax abatement to Turner Medical, Inc. (d/b/a "InTech Athens") (the "Company").

WHEREAS, the Company has announced plans for a (check one):

new project or  major addition to their existing facility (the Project), located within the jurisdiction of the Granting Authority; and

WHEREAS, pursuant to the Tax Incentive Reform Act of 1992 (Section 40-9B-1 et seq., Code of Alabama 1975) (the "Act"), the Company has requested from the Granting Authority an abatement of (check all that apply):

- all state and local non-educational property taxes,
- all construction related transaction taxes, except those local construction related transaction taxes levied for educational purposes or for capital improvements for education, and /or
- all mortgage and recording taxes; and

WHEREAS, the Company has requested that the abatement of state and local non-educational property taxes (if applicable) be extended for a period of 10 years, in accordance with the Act; and

WHEREAS, the Granting Authority has considered the request of the Company and the completed applications (copy attached) filed with the Granting Authority by the Company, in connection with its request; and

WHEREAS, the Granting Authority has found the information contained in the Company's application to be sufficient to permit the Granting Authority to make a reasonable cost/benefit analysis of the proposed project and to determine the economic benefits to the community; and

WHEREAS, the construction of the project will involve a capital investment of \$17,500,000; and

WHEREAS, the Company is duly qualified to do business in the State of Alabama, and has powers to enter into, and to perform and observe the agreements and covenants on its part contained in the Tax Abatement Agreement; and

WHEREAS, the Granting Authority represents and warrants to the Company that it has power under that constitution and laws of the State of Alabama (including particularly the provisions of the Act) to carry out provisions of the Tax Abatement Agreement;

NOW THEREFORE, be it resolved by the Granting Authority as follows:

Section 1. Approval is hereby given to the application of the Company and abatement is hereby granted of (check all that apply):

- all state and local non-educational property taxes,
- all construction related transaction taxes, except those construction related transaction taxes levied for educational purposes or for capital improvements for education, and /or
- all mortgage and recording taxes

as the same may apply to the fullest extent permitted by the Act. The period of abatement for the non-educational property taxes (if applicable) shall extend for a period of 10 years measured as provided in Section 40-9B-3(a)(12) of the Act.

Section 2. The Mayor of the City of Athens, for and on behalf of the City, as authorized by the Granting Authority, shall enter into an abatement agreement with the Company to provide for the abatement granted in Section 1.

Section 3. A certified copy of this resolution, with the application and abatement agreement, shall be forwarded to the Company to deliver to the appropriate local taxing authorities (if applicable) and to the Alabama Department of Revenue in accordance with the Act.

Section 4. The Mayor of the City of Athens is authorized to take any and all actions necessary or desirable to accomplish the purpose of the foregoing of this resolution.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

I hereby certify that the above and foregoing was duly adopted by the City Council of Athens, Alabama at a meeting held on the 6 day of June, 2022.

/s/ Annette Barnes  
CITY CLERK, CITY OF ATHENS, ALABAMA

/s/ William R. Marks  
MAYOR, CITY OF ATHENS, ALABAMA

The motion was seconded by Councilman Harper and was unanimously carried.

Christopher Burks, founder of Juneteenth Festival, addressed the Council regarding funding for the festival. Council President Seibert asked Mr. Burks to email the Mayor and Council details regarding the event.

\* \* \*

There being no further business to come before the meeting, Council President Seibert declared the meeting duly and properly adjourned.

/s/ Chris Seibert  
PRESIDENT, CITY COUNCIL

ATTEST:

/s/ Annette Barnes  
CITY CLERK