

September 11, 2023

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 September 11, 2023 at 4:30 p.m. The meeting was called to order by Councilman Harold Wales, President of the City Council. Upon roll call, the following were found to be present: Councilmembers Chris Seibert, Harold Wales, James E. Lucas, Dana Henry and Wayne Harper. Annette Barnes-Threet, City Clerk, was present and recorded the minutes of the meeting. Councilman Chris Seibert 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 August 28, 2023 City Council Meeting had been submitted for approval. Councilman Harper moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Seibert and was unanimously carried. The Chairperson stated that the Minutes of the August 28, 2023 City Council Work Session Meeting had been submitted for approval. Councilman Harper moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Seibert and was unanimously approved.

Mayor Marks stated that cable lines are down all around town and noted that the City is aware and concerned. The Mayor remarked that the Recreation Department held a tower challenge on Friday, September 8<sup>th</sup>, in honor of 9/11 and praised three firefighters from the City of Athens Fire Department participated. Mayor Marks noted that Superhero Day was a huge success. He announced that Assisted Living Week is September 11<sup>th</sup>-15<sup>th</sup> and invited everyone to pay a visit to someone in these facilities. The Mayor mentioned that Bama Buzz has announced that the city of Athens was listed as a favorite city in the state of Alabama. He gave a shout-out to Athens High School football being 3-0 and then read a proclamation declaring Pickleball Tournament Week as September 22<sup>nd</sup>-24<sup>th</sup>, 2023.

Councilman Seibert reflected on 9/11 and asked everyone to pray for the ones that were involved or affected by the event.

Councilman Lucas echoed Mayor Marks' remarks regarding downed cable lines and that he is pleased to see production on the Vine Street project.

Council President Wales asked James Rich and Michael Griffin for a resolution regarding a turn lane north of Lindsay Lane Baptist Church. He stated that it is very dangerous for citizens turning left onto Hastings Road and Yorkshire. Mr. Wales noted that the turning lane in front of the new subdivision being built on South Lindsay Lane is entirely too short and asked for Public Works to add a turn lane at the first entrance of the subdivision.

**PUBLIC HEARING RELATING TO THE ZONING APPROVAL FOR THE SALE OF ALCOHOL IN THE CITY OF ATHENS BY RO'S GRILLE, 126 NORTH JEFFERSON STREET, ATHENS, ALABAMA**

No one spoke in favor of or against.

The public hearing was closed.

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to reappoint Larry Burlingame to the Board of Equalization for a four year term, expiring on October 1, 2027.

The motion was seconded by Councilman Seibert 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/education expenses for the following personnel of the Customer Accounts Department:

Regina Rager	Mileage	\$ 58.32
Cameron Johnson	Mileage	\$100.87

The motion was seconded by Councilman Seibert 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 payment of budgeted travel/education expenses for specified Water Services employees in the total amount of \$5,325.44.

Brian Daniel	AWPCA Annual Conference Orange Beach, AL August 14-17,2023	\$1,820.31
Marc Courville	Training Chapel Hill, NC August 27-30, 2023	\$2,666.34
Gene Hobson	AWPCA Annual Conference Orange Beach, AL August 14-17, 2023	\$838.79

The motion was seconded by Councilman Seibert 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 a London Fog UVL mosquito sprayer from Vesperis for the Public Works Department. The price shall not exceed \$14,950.00 and shall be funded from the Vector Control account.

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

**Councilwoman Henry introduced the following resolution:**

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, at its meeting on September 11, 2023, that the Council authorizes the amount of \$84,907.56 for the construction of an equipment shed for the Wastewater Collection Division of Water Services, and the Water Services Director, for and on behalf of the City of Athens, is authorized to execute a contract with Summertown Metals, LLC for this construction.

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

**Councilman Seibert introduced the following resolution:**

## **RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the Electric Department Manager, contingent upon receipt of payment or purchase order from the City of Decatur or its authorized agent, to award the Contract 1 – Horton House Move for the negotiated cost of \$450,000.19 to Taylor Electric, Inc.

Councilmember Lucas 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, Lucas, 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 Seibert 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, Lucas, 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 2023 - 1909**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to allow the City to apply for the SMART Stage 1, Strengthening Mobility and Revolutionizing Transportation, federal grants program. There is no match requirement for the ITS planning Stage 1 submittal.

ADOPTED and APPROVED this, the 11<sup>th</sup> day of September, 2023.

/s/ Harold Wales  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

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

**Councilman Lucas introduced the following resolution:**

### **RESOLUTION NUMBER 2023 - 1910**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to allow the City Engineer to enter into an agreement with Kimley-Horn for the purposes of applying for the SMART grant. The estimated costs to the City of Athens is not to exceed \$7,500 from the Engineering Operating Account.

ADOPTED and APPROVED this, the 11<sup>th</sup> day of September, 2023.

/s/ Harold Wales  
PRESIDENT, CITY COUNCIL,  
CITY OF ATHENS, ALABAMA

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

**Councilman Seibert introduced the following resolution:**

### **RESOLUTION NUMBER 2023 - 1911**

**A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT PROJECT RELATING TO THE SALTY COD**

---

**WHEREAS**, The Salty Cod, LLC, an Alabama limited liability company (the “Company”), intends to develop a food and drink establishment on certain property located at 309 West Market Street 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 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: (i) result in the creation of approximately 55 new jobs, (ii) involve a total capital investment of approximately One Million Seven Hundred Thousand Dollars (\$1,700,000), (iii) generate annual taxable sales of approximately Two Million Seven Hundred Thousand Dollars (\$2,700,000), and (iv) involve the renovation and revitalization of historical structures in the downtown Athens area, contributing to the economic development of the City;

**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 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 Salty Cod establishment, net of certain costs, for a period of five (5) years, or until \$200,000.00 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 September 11<sup>TH</sup>, 2023, at 4:30 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 – The Salty Cod”) 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 Agreement.

**ADOPTED** this the 11<sup>th</sup> day of September, 2023.

/s/ Harold Wales  
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 September 11, 2023, at 4:30 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 The Salty Cod, LLC (the “Company”), which intends to develop a food and drink establishment named The Salty Cod, on certain property located at 309 West Market Street 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 55 new jobs, (ii) involve a total capital investment of approximately One Million Seven Hundred Thousand Dollars (\$1,700,000), and (iii) generate annual taxable sales of approximately Two Million Seven Hundred Thousand Dollars (\$2,700,000). The project will also involve the renovation and revitalization of historical structures in the downtown Athens area, contributing to the economic development of the City.*

*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 Salty Cod food and drink establishment, net of certain costs, for a period of five (5) years, or until \$200,000.00 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 Salty Cod establishment by certain dates, as described in more particularity in the Project Agreement.*

*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 (including its members/owners, Shane Brown and Barry O’Connor).*

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

*Publication: September 2, 2023*

**ATTACHMENT B**

**PROJECT AGREEMENT**  
**THE SALTY COD**

This Project Agreement – The Salty Cod (this “**Agreement**”) is entered into as of the \_\_\_ day of September, 2023, by and among the **CITY OF ATHENS, ALABAMA**, an Alabama municipal corporation (the “**City**”) and **THE SALTY COD, 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 food and drink establishment named The Salty Cod, on certain property located at 309 West Market Street in Athens, Alabama, and more particularly, on the real property currently designated by the Limestone County Revenue Commissioner as Parcel # 10-03-08-1-003-019.001 and Parcel # 10-03-08-1-003-019.000. In doing so, the Company reasonably expects that such development will: (i) result in the creation of approximately 55 new jobs, (ii) involve a total capital investment of approximately One Million Seven Hundred Thousand Dollars (\$1,700,000), and (iii) generate annual taxable sales of approximately Two Million Seven Hundred Thousand Dollars (\$2,700,000). The project will also involve the renovation and revitalization of historical structures in the downtown Athens area, contributing to the economic development of the City.

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 the Project within the Project Area.

“**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 food and drink establishment named The Salty Cod in the Project Area. The Project will include a full-service restaurant and bar, offering a wide variety of food and beverages. The Project will encompass approximately 10,100 square feet. The Project will include a restaurant, outdoor dining, a butcher shop, a walk-in dry aged meat room, and a Gelato and dessert store with coffee and tea. The Project will seat approximately 300 people.

**“Project Area”** shall mean the real property located at 309 West Market Street in Athens, Alabama, and more particularly, on the real property currently designated by the Limestone County Revenue Commissioner as Parcel # 10-03-08-1-003-019.001 and Parcel # 10-03-08-1-003-019.000.

**“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 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 from the Project.

**“Series 2023 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 five 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 the Project shall cease to operate 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 Two Hundred Thousand and 00/100 Dollars (\$200,000.00).

## **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 December 31, 2024, 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. **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.

C. **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.

**D. 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 2023 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 2023 Warrant:

- (a) prior to the date on which the Project 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 2023 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 2023 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 2023 Warrant**”).

2. The Series 2023 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 2023 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 2023 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 2023 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) 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) 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, 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 2023 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 2023 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 55 new jobs, (ii) involve a total capital investment of approximately One Million Seven Hundred Thousand Dollars (\$1,700,000), (iii) generate annual taxable sales of approximately Two Million Seven Hundred Thousand Dollars (\$2,700,000), and (iv) involve the renovation and revitalization of historical structures in the downtown Athens area.*

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 2023 Warrant shall be severable. In the event any provision this Agreement or the Series 2023 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*

b. *if to the Company:*

*The Salty Cod, LLC  
117 North Side Square  
Huntsville, AL 35801  
Attention: Shane Brown and Barry  
O'Connor*

*With a copy to:*

*E. Shane Black, Esq.  
Hand Arendall Harrison Sale, LLC  
102 South 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, 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 2023 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.*

**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/  
/warrant exhibit/*

Councilmember Lucas 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, Lucas, 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 Seibert 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, Lucas, 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 2023 - 2281**

**AN ORDINANCE CONCERNING AN ECONOMIC DEVELOPMENT PROJECT WITH THE SALTY COD**

---

**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 The Salty Cod, LLC (the "Company"), relating to the development of a food and drink establishment named The Salty Cod, on certain property located at 309 West Market Street 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 September 11<sup>TH</sup>, 2023, at 4:30 p.m., as follows:

1. The Mayor of the City is hereby authorized and directed, in conjunction with and pursuant to the *Project Agreement – The Salty Cod* 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 11<sup>th</sup> day of September, 2023.

/s/ Harold Wales  
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 Seibert, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, 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 Lucas and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, Henry and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

Allynn Griffin, 1122 East Pryor Street, Athens, addressed the City Council concerning trees in his yard that have been “butchered” by a contractor for Spectrum. Mr. Griffin stated that his trees have been cut back too far and will die. He remarked that he would have contracted someone to trim them if he had been notified.

Tito Redus, 842 Westview Avenue, Athens, AL, addressed the City Council regarding a concern of rocks being piled on his property and possibly causing water to back up on to neighboring properties. Mr. Redus stated that a drain is needed on the backside of the property and that the rocks are not the problem. Mayor Marks noted that he and Councilman Lucas have received several complaints regarding the situation and added that the water problem needs to be addressed. Mr. Redus also remarked that people are walking their dogs in Thatch-Mann Cemetery and using it as a dog park. He does not feel as though it is appropriate and would like to see signs put up to discourage such activity.

Martha Pryor, 1210 Miller Street, Athens, AL, addressed the City Council concerning her property that adjoins Mr. Redus’ property and stated that water is accumulating on her property from the rocks that are piled up. Mayor Marks asked Public Works to look into the matter.

\* \* \*

There being no further business to come before the meeting, Council President Wales asked if there were any objections to adjourning the meeting. There being none, the meeting was duly and properly adjourned.

/s/ Harold Wales  
PRESIDENT, CITY COUNCIL

ATTEST:

/s/ Annette Barnes  
CITY CLERK