

July 17, 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 July 17, 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, and Wayne Harper. Councilwoman Henry was absent. Annette Barnes-Threet, City Clerk, was present and recorded the minutes of the meeting. Harold Wales 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 June 26, 2023 City Council Meeting had been submitted for approval. Councilman Seibert moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Harper and was unanimously carried. The Chairperson stated that the Minutes of the June 26, 2023 City Council Work Session Meeting had been submitted for approval. Councilman Seibert moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Harper and was unanimously approved.

Mayor Marks announced that 417 people participated in Mud Volleyball this year and that Trinity Fun Fest was held the previous weekend.

Councilman Lucas thanked the Mayor and everyone responsible for cleaning out the ditch in front of Trinity School.

Councilman Harper remarked that he had received a few complaints about parking around the square and also, problems with the local postal service.

Colonel Paul Reeves, 613 Norton Drive, Athens, addressed the City Council relating to safety issues with the parking lot and sidewalk at the Limestone County Archives building.

Councilman Lucas introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve the purchase of a Snap-On Zeus Plus LC Workstation at a cost, net of trade-in discount on existing equipment, not to exceed \$10,000 to be funded from the existing Street Department capital account.

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

Councilman Harper 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 Information Technology Department:

Dale Haymon	Mileage April 24, 2023 through June 28, 2023	\$ 147.38
Seth Siniard	Mileage April 24, 2023 through June 28, 2023	\$ 421.82
Christian McDonald	Mileage April 24, 2023 through June 28, 2023	\$ 400.86

Chandler Morell

Mileage
May 2, 2023 through June 28, 2023

\$ 227.94

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

Councilman Seibert introduced the following ordinance:

ORDINANCE NUMBER 2023 - 2276

AN ORDINANCE CONCERNING THE CITY'S LODGING TAX

WHEREAS, the City Council recognizes the value and impact of the growing tourism industry in our community, including the positive economic impact upon local businesses and governments;

WHEREAS, the City's local lodging tax is imposed on the rental of hotel and motel rooms (for periods of less than 180 days) in a manner that is parallel to the State's lodging tax, and it generates revenue that is used to support tourism-related endeavors by the City, as well as city services, infrastructure, and other general expenditures;

WHEREAS, § 18-201 of the *Code of Ordinances of the City of Athens, Alabama* currently provides for a levy of a seven percent (7%) lodging tax upon all hotel rooms and other accommodations, and a \$1.00 charge per room; and

WHEREAS, the City Council desires to amend § 18-201 to increase the lodging tax rate to nine percent (9%) and the per room charge to \$2.00.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, while in regular session on July 17th, 2023, at 4:30 p.m., as follows:

Section 1. Section 18-201 of the *Code of Ordinances of the City of Athens* is hereby amended so that it reads as follows:

Sec. 18-201. - Levy of tax in the city.

(a) There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person, firm, or corporation engaging in the business of renting or furnishing any room or rooms, lodgings, or accommodations to transients in any hotel, motel, inn, tourist camp, tourist cabin, space for mobile campers or recreational vehicles, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration, in an amount to be determined by the application of the rate of **nine** percent of the charge for such room, rooms, lodgings, or accommodations, including the charge for use or rental of personal property and services furnished in such room. Provided, however, that charges for property sold or services furnished which are required to be included in the computation of the tax levied under the provisions of article II of this chapter, levying the city sales and use tax, shall not be included in computing the tax levied in this article. The tax shall not apply to rooms, lodgings or accommodations supplied for a period of 180 continuous days or more in any place.

(b) As part of the levy of this section and subject to the provisions of subparagraph (a) above, there is hereby levied the additional sum of **\$2.00** per such rented or furnished room for each day of its occupancy.

Section 2. This Ordinance shall be published in accordance with law, and it shall thereafter become effective on October 1, 2023.

Section 3. The City Clerk shall provide notice of this Ordinance to the Alabama Department of Revenue and to Avenu.

Section 4. If any provision of this ordinance, or the application thereof to any person, thing or circumstances, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the provisions or application of this ordinance that can be given effect without the invalid provisions or application, and to this end, the provisions of this ordinance are declared to be severable.

Section 5. The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the City of Athens as an addition or amendment thereto, and shall be appropriately renumbered as necessary to conform to the uniform numbering system of the Code.

ADOPTED this the 17TH day of July, 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 Lucas, and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, 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 Seibert 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, Lucas, and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

Councilman Seibert made for “Introduction Only” the following ordinance:

ORDINANCE NUMBER 2023 - _____

AN ORDINANCE CONCERNING AN APPROPRIATION TO THE BOYS AND GIRLS CLUBS OF NORTH ALABAMA

WHEREAS, the City of Athens is authorized by law to provide educational, recreational, social and cultural facilities, services and programs, for its citizens;

WHEREAS, the City Council finds that the item listed below serves a valuable public purpose that has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, and/or the general welfare of the community.

THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA on

_____, 2023, at 4:30 p.m., as follows:

1. The Mayor and City Clerk/Treasurer, for and on behalf of the City of Athens, are directed to enter into a contract with the Athens branch of the Boys & Girls Clubs of North Alabama (the “Club”) in such form and manner that is acceptable to the same, whereby the City will pay \$120,000 to the Center as a one-time appropriation to be used solely in connection with the addition and new construction of an educational facility at the Club’s location within the city of Athens.

Upon entering into such contract, the Mayor and City Clerk/Treasurer are authorized to release said funds at their discretion.

2. The appropriation described in this Ordinance shall be derived from the “alcohol revenues” described in Section 6-111 of the *City Code of the City of Athens, Alabama*, notwithstanding any other or different allocation described in Sections 6-111, 6-112, or 6-113 of that code.

3. This Ordinance shall work as an exception to (and not as a repeal of) the application of Section 6-111, Section 6-112, Section 6-113, and any other ordinance (or part thereof) that is inconsistent with this Ordinance; and shall be an exception limited to and only with respect to the matters described herein.

ADOPTED this the ___ day of July, 2023.

HAROLD G. WALES, CITY COUNCIL PRESIDENT

WILLIAM R. MARKS, MAYOR

ATTEST:

ANNETTE BARNES-THREET, CITY CLERK

Councilman Lucas made for “Introduction Only” the following ordinance:

ORDINANCE NUMBER 2023 - _____

AN ORDINANCE CONCERNING AN APPROPRIATION TO THE MENTAL HEALTH CENTER OF NORTH CENTRAL ALABAMA, INC.

WHEREAS, the City of Athens is authorized by law to safeguard the public health and promote sanitation within the corporate limits of the municipality; to make appropriations for public health work; and to make appropriations to aid hospitals, rehabilitation centers, and other related health care institutions in maintaining and taking care of the sick and wounded; and

WHEREAS, the City Council finds that the item listed below serves a valuable public purpose that has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, and/or the general welfare of the community.

THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA on _____, 2023, at 4:30 p.m., as follows:

1. The Mayor and City Clerk/Treasurer, for and on behalf of the City of Athens, are directed to enter into a contract with the Mental Health Center of North Central Alabama, Inc. (the “Center”) in such form and manner that is acceptable to the same, whereby the City will pay \$480,000 to the Center as a one-time appropriation to be used solely in connection with the construction of additional space at the Center’s property on Elm Street to accommodate working with teens. Upon entering into such contract, the Mayor and City Clerk/Treasurer are authorized to release said funds at their discretion.

2. The appropriation described in this Ordinance shall be derived from the “alcohol revenues” described in Section 6-111 of the *City Code of the City of Athens, Alabama*, notwithstanding any other or different allocation described in Sections 6-111, 6-112, or 6-113 of that code.

3. This Ordinance shall work as an exception to (and not as a repeal of) the application of Section 6-111, Section 6-112, Section 6-113, and any other ordinance (or part thereof) that is inconsistent with this Ordinance; and shall be an exception limited to and only with respect to the matters described herein.

ADOPTED this the ___ day of July, 2023.

HAROLD G. WALES, CITY COUNCIL PRESIDENT

WILLIAM R. MARKS, MAYOR

ATTEST

ANNETTE BARNES-THREET, CITY CLERK

Councilman Seibert introduced the following resolution:

RESOLUTION NUMBER 2023 - 1896

A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT PROJECT RELATING TO OLD BLACK BEAR

WHEREAS, Old Black Bear Brewing Company, LLC, an Alabama limited liability company (the “Company”), intends to develop a restaurant on certain property located at 309 & 311 S Marion 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 result in (i) result in the creation of approximately 45 new jobs, (ii) involve a total capital investment of approximately Two Million Dollars (\$2,000,000), (iii) generate annual taxable sales of approximately Two Million Five Hundred Thousand Dollars (\$2,500,000), and (iv) involve the renovation and revitalization of historical structures in the downtown Athens area that were in disrepair, 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 Old Black Bear Brewing Company restaurant, net of certain costs, for a period of five (5) years, or until \$100,000.00 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 July 17TH, 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 - Old Black Bear Brewing Company”) 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 17th day of July, 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 July 17, 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 Old Black Bear Brewing Company, LLC (the “Company”), which intends to develop an Old Black Bear Brewing Company restaurant, on certain property located at 309 & 311 S Marion 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 45 new jobs, (ii) involve a total capital investment of approximately Two Million Dollars (\$2,000,000), and (iii) generate annual taxable sales of approximately Two Million Five Hundred Thousand Dollars (\$2,500,000). The project will also involve the renovation and revitalization of historical structures in the downtown Athens area that were in disrepair, 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 Old Black Bear Brewing Company restaurant, net of certain costs, for a period of five (5) years, or until \$100,000.00 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 Old Black Bear Brewing Company restaurant 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.

THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA

Publication: July 8, 2023

ATTACHMENT B

PROJECT AGREEMENT
OLD BLACK BEAR BREWING COMPANY

This Project Agreement – Old Black Bear Brewing Company (this “*Agreement*”) is entered into as of the ___ day of July, 2023, by and among the **CITY OF ATHENS, ALABAMA**, an Alabama municipal corporation (the “*City*”) and **OLD BLACK BEAR BREWING COMPANY, 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 an Old Black Bear Brewing Company restaurant, on certain property located at 309 & 311 S Marion Street in Athens, Alabama, and more particularly, on the real property currently designated by the Limestone County Revenue Commissioner as Parcel # 10-03-08-1-002-091.000 and Parcel # 10-03-08-1-002-092.000. In doing so, the Company reasonably expects that such development will (i) result in the creation of approximately 45 new jobs, (ii) involve a total capital investment of approximately Two Million Dollars (\$2,000,000), and (iii) generate annual taxable sales of approximately Two Million Five Hundred Thousand Dollars (\$2,500,000). The project will also involve the renovation and revitalization of historical structures in the downtown Athens area that were in disrepair, 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 an Old Black Bear Brewing Company restaurant in the Project Area. The Project will include a full-service restaurant and bar, offering a wide variety of food and beverages. At least 8,000 square feet of the Project’s facility will be devoted to brewery operations, manufacturing beer and other beverages for consumption at the restaurant, as well as for sales at other Old Black Bear locations. The Project will seat approximately 160 people, and will have a dining area of approximately 9,000 square feet.

“**Project Area**” shall mean the real property located at 309 & 311 S Marion Street in Athens, Alabama, and more particularly, on the real property currently designated by the Limestone County Revenue Commissioner as Parcel # 10-03-08-1-002-091.000 and Parcel # 10-03-08-1-002-092.000.

“**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 One Hundred Thousand and 00/100 Dollars (\$100,000.00).

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 45 new jobs, (ii) involve a total capital investment of approximately Two Million Dollars (\$2,000,000), (iii) generate annual taxable sales of approximately Two Million Five Hundred Thousand Dollars (\$2,500,000), and (iv) involve the renovation and revitalization of historical structures in the downtown Athens area that were in disrepair.

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:

Old Black Bear Brewing Company,
LLC
201 Eastside Square Suite 11
Huntsville, AL 35801
Attention: John T. Seaton

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/*

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

Councilman Harper introduced the following ordinance:

ORDINANCE NUMBER 2023 - 2277

AN ORDINANCE CONCERNING AN ECONOMIC DEVELOPMENT PROJECT WITH OLD BLACK BEAR

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 Old Black Bear Brewing Company, LLC (the “Company”), relating to the development of an Old Black Bear restaurant, on certain property located at 309 & 311 S Marion Street in Athens, Alabama (the “Project”);

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 July 17TH, 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 – Old Black Bear Brewing Company* 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 17th day of July, 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 Lucas 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, 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 Seibert and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, and Harper; NAYS: None. The President thereupon announced that the motion for the adoption of the said ordinance had been unanimously carried.

Councilman Lucas introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, at its meeting on July 17, 2023, that the Council authorizes an unbudgeted amount of \$16,800.00 to be funded from the Water Services Department cash reserves for Stacy Carter to perform emergency repairs to the home at 2004 South Hine Street, and the Water Services Department Director, for and on behalf of the City of Athens, is authorized to expend the funds to complete this repair.

Councilmember Seibert 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, 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 Lucas 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, Lucas, 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

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, at its meeting on July 17, 2023, that the Council authorizes an unbudgeted capital amount of \$41,900.00 to be funded from the Water Services Department cash reserves for Krebs Engineering, Inc. to perform consulting services including the development of a scope of work to conduct partial sludge dredging from the WWTP west lagoon and oversee those services, and the Water Services Department Director, for and on behalf of the City of Athens, is authorized to enter into this contract to complete this work.

Councilmember Lucas moved that unanimous consent be given for immediate consideration of and action on said resolution, 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, 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 Seibert and upon the said motion being put to vote the following vote was recorded: YEAS: Councilmembers Seibert, Wales, Lucas, 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 - 1897

A RESOLUTION APPOINTING AN INTERIM POLICE CHIEF

WHEREAS, Floyd Johnson is retiring as the Chief of Police of the Athens Police Department, and the City Council desires to appoint an interim police chief on a temporary basis until a permanent replacement is identified for the position.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA on July 17th, 2023 at 4:30 p.m., that Anthony Pressnell is appointed as the Police Chief of the City of Athens Police Department on an interim basis beginning upon the effective date of Chief Floyd Johnson's retirement and continuing for an indefinite term until further and/or different action is taken by the Athens City Council.

ADOPTED this the 17th day of July, 2023.

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

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

Mayor Marks thanked Captain Pressnell for stepping up as Interim Chief of Police and noted that Chief Johnson will be missed.

Council President Wales echoed Mayor Marks' remarks and welcomed Captain Pressnell.

Councilman Harper noted that Chief Johnson deserves to enjoy retirement and that he believes that the City Council made the right decision by appointing Captain Pressnell.

Tere Richardson, Athens Main Street Director, read a statement regarding Police Chief Floyd Johnson's upcoming retirement and remarked that he will be greatly missed.

Marc Courville, Manager of Logistics and Strategic Asset Management with the Water Services Department, addressed the City Council with an update on the smoke testing that is being performed by their department.

Bill Davis, Utah Street, addressed the City Council and complimented law enforcement of the City of Athens and Limestone County.

Colonel Paul Reeves, 613 Norton Drive, Athens, addressed the City Council and complemented them and the Mayor on the marvelous job they have done building the City.

* * *

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