

October 22, 2018

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 in the said City on October 22, 2018, at 5:30 p.m. The meeting was called to order by Councilman Chris Seibert, President of the Council. Upon roll call, the following were found to be present: Councilmembers Wayne Harper, Harold Wales, Chris Seibert, Frank Travis and Joseph Cannon. Mayor Marks led the Pledge of Allegiance. Annette Barnes, City Clerk, was present and recorded the minutes of the meeting. Joseph Cannon offered the invocation. 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 October 8, 2018 City Council Meeting had been submitted for approval. Councilman Wales moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Harper and was unanimously carried. The Chairperson stated that the Minutes of the October 8, 2018 City Council Work Session Meeting had been submitted for approval. Councilman Wales moved that the reading of the Minutes be suspended and that the Minutes be approved as recorded. The motion was seconded by Councilman Harper and was unanimously carried.

A public hearing was held to hear comments concerning an ordinance amending and updating Chapter 10 (Animals and Fowl) of the City Code.

Dr. Robert Pitman, D.V.M., Limestone Veterinary Clinic, Athens, spoke in support of an anti-tethering provision in the proposed dog ordinance. He stated that tethering leads to aggressive behaviors and lack of socialization in dogs and can cause serious bodily harm to dogs' necks. He also stated that many dogs are bred to seize, attack, fight and kill and that tethering encourages these behaviors. He also cited the Federal Animal Welfare Act and stated that the Act contains a provision prohibiting tethering.

Karen Bethea, 1528 North Lindsay Lane, Athens, also addressed the Council in support of an anti-tethering ordinance citing research that supports the assertion that tethering is harmful.

Kathleen Ross, 501 South Houston Street, Athens, also voiced her opposition to tethering.

James Lucas, 704 Lucas Street, Athens, spoke in opposition to banning tethering. He stated that each person has a right to choose how they keep their animals, as long as no harm is being caused to them.

Suzanne Carter, 908 Sanderfer Road, Athens, spoke in opposition to tethering. She stated that she has served as a volunteer at the Athens animal shelter for the past ten years and has witnessed the harm caused to animals as a result of tethering. She also cited the existence of animal cruelty laws prohibiting tethering an animal without access to food, water and shelter.

Dr. Janice Thornton-Manning, Madison, also spoke in opposition to allowing tethering of animals and provided a photograph to the Council of a tethered animal near her mother's home in Athens.

Councilman Travis then inquired about the difference in the socialization component of tethering versus enclosing an animal in a confined space. Mayor Marks followed up with a concern about the language in the proposed ordinance that requires an enclosure of not less than 10' x 10' for an animal over 30 pounds. Karen Bethea stated that the dimensions in the proposed ordinance were taken from the current ordinance in Florence, Alabama. A lengthy discussion then followed about the adequacy of space based on the size of an animal. Councilman Cannon then raised the issue of invisible fencing and inquired as to why this type of enclosure is not included in the proposed ordinance as an acceptable means of enclosing a pet. City Attorney, Shane Black, was instructed to obtain input from Dr. Robert Pitman and to make revisions to the ordinance with respect to the minimum required enclosure dimensions based on an animal's size as well as to add language to include a provision for invisible fencing.

Councilman Travis then stated, for the record, he is generally in favor of allowing tethering due to the economic hardships this requirement will impose on some residents and pet owners.

The public hearing was closed.

Terry Love, 207 Cloverleaf Drive, Athens, addressed the Council concerning another provision in the proposed dog ordinance. She took issue with the provision that prohibits keeping a dog in a garage or enclosed carport.

Scott Marshall, 23349 Piney Creek Drive, Athens, addressed the Council concerning the agenda item for repaving Roselawn Cemetery. He wanted to point out that if the asphalt had been removed from the brick pavers around the square, the City could have recycled that asphalt and used it to repave the cemetery.

David Malone, 1300 Somerest Drive, Athens, spoke in opposition to banning tethering in the proposed dog ordinance citing the economic hardships this requirement will impose. Mr. Malone then thanked the City Council and the Gas Department for their support of the softball tournament held over the weekend at the Trinity/Fort Henderson complex.

Councilman Cannon introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve travel expenses for the following personnel of the Electric Department.

Donnie Powers 2018 TVPPA Safety and Security Conference – Chattanooga, TN	\$ 52.67
Rodney Campbell 2018 TVPPA Safety and Security Conference – Chattanooga, TN	\$ 68.73
Joseph Hoenig TVPPA Substation Maintenance Lab B – Chattanooga, TN	\$173.65
Matt Lannom TVPPA Substation Maintenance Lab B – Chattanooga TN	\$165.04

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

Councilman Cannon introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve travel expenses for the following personnel from the Police Department.

Katrina Flanagan	Training Montgomery, AL October 1-3, 2018	\$ 54.86
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The motion was seconded by Councilman Wales and was unanimously carried.

Councilman Cannon introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to approve travel expenses for the following personnel from the Fire Department.

Coty Collins	Alabama Fire College Huntsville, AL	\$ 38.41
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September 24 - September 28, 2018

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

Councilman Cannon introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF ATHENS, ALABAMA, to designate Friday, November 23, 2018 as an additional holiday for calendar year 2018.

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

Councilman Cannon introduced the following resolution:

RESOLUTON

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to reschedule the regular council meeting on November 12, 2018 to November 5, 2018, at the same time and place.

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

Councilman Cannon 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 Water Services.

Tim Norman (Wastewater)	WEFTEC Annual Conference New Orleans, LA September 30-October 3, 2018	\$84.13
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The motion was seconded by Councilman Wales and was unanimously carried.

Councilman Travis introduced the following resolution:

RESOLUTON

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to authorize the Mayor's Office to apply for an Assistance to Firefighters Grant to provide current NFPA standard SCBA/cylinders/face pieces for Athens Fire and Rescue to replace equipment that will be 13 years old and three NFPA safety standards behind by 2019. The project estimate is \$224,000. The grant request is for \$201,600 and then 10 percent grant match require by the city is \$22,400. The awards will be announced in late spring/early summer 2019.

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

Councilman Wales introduced the following resolution:

RESOLUTION NUMBER 2018 - 1592

WHEREAS, T-Mobile has requested to modify their equipment on an existing telecommunications facility located at 108 East Elm Street , Athens, AL to provide wireless services essentially within the corporate limits of the City of Athens;

WHEREAS, T-Mobile has complied with the City's Ordinance No. 1999-1320 and has demonstrated the need for the modification of this wireless facility to deliver consistently reliable services in the identified area, and;

WHEREAS, both the City and T-Mobile customers in Athens will benefit from improved service; and;

WHEREAS, the City's consultant, The Center for Municipal Solutions (CMS), recommends the granting of a conditional Special Use Permit for the modification at this facility located at 108 East Elm Street, Athens, AL, which consists of a 200' ft. Guyed tower;

THEREFORE, BE IT RESOLVED by the City Council of the City of Athens, Alabama that T-Mobile is hereby granted a Special Use Permit to modify their equipment at 108 East Elm Street, Athens, AL. T-Mobile is proposing to add the following equipment: three (3) Nokia Air Scale Dual RRH 4T4R B25/66 320W AHFIB, three (3) Commscope FFHH-65C-R3, One (1) Raycap RNSNDC-7771-PF-48, three (3) Nokia Air Scale Dual RRH 4T4R B12/71 240W AHLOA, three (3) RFS ATM1900D-1A20 and one (1) 1.58" Hybrid cable to improve service in the area. The height of the tower will remain the same as will the footprint of the tower also. As recommended by CMS, the Special Use Permit is subject to compliance with the following conditions prior to the issuance of said permit and/or a Certificate of Completion:

1. To prevent warehousing of permits or authorizations and to assure the best service to the City's residents as expeditiously as possible, the facility must be built, activated and be providing service *no later than one hundred eighty (180) days after the issuance of the Special Use Permit or other applicable authorization, subject to commonly accepted force majeure exceptions acceptable to the City.* T-Mobile may petition the City of an extension of this for good cause shown, but the decision whether or not to grant the extension shall exclusively be the prerogative of the City.
2. T-Mobile must provide contractor information with a construction schedule to the City and to CMS prior to the issuance of the Building Permit. The contractor must notify the City's consultant for all inspections.
3. Prior to the issuance of the Certificate of Completion, T-Mobile or the tower owner must remediate the following safety issues, noted at the pre-application site visit:
 - a. Heavy vegetation along access road needs to be removed
 - b. Guyed wire anchor compound fences are not grounded.
 - c. Vegetation within main compound and heavy vegetation within and around guyed wire anchor compound fences.
4. At the completion of construction, the Applicant must notify the City's consultant and provide proof that all inspections have been satisfactorily completed and the project is ready for a final on-site inspection. Upon passing the final inspection, a recommendation to issue a Certificate of Occupancy shall be made.
5. T-Mobile shall not be permitted to actually provide service commercially until the Certificate of Occupancy or its functional equivalent is issued or risk forfeiting its Permit.
6. The Certificate of Occupancy shall not be issued until all fees and costs associated with this Permit, including inspections, have been paid.
7. A Certificate of Occupancy for the work permitted under this permit shall be a prerequisite for any future work by T-Mobile at this facility.

ADOPTED and APPROVED this, the 22ND day of October, 2018.

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

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

ATTEST:

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

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

Councilman Wales introduced the following resolution:

RESOLUTION NUMBER 2018 - 1593

WHEREAS, T-Mobile has requested to modify their equipment on an existing telecommunications facility located at 107 Stewart Drive , Athens, AL to provide wireless services essentially within the corporate limits of the City of Athens;

WHEREAS, T-Mobile has complied with the City's Ordinance No. 1999-1320 and has demonstrated the need for the modification of this wireless facility to deliver consistently reliable services in the identified area, and;

WHEREAS, both the City and T-Mobile customers in Athens will benefit from improved service; and;

WHEREAS, the City's consultant, The Center for Municipal Solutions (CMS), recommends the granting of a conditional Special Use Permit for the modification at this facility located at 107 Stewart Drive, Athens, AL, which consists of a 250' ft. Self-Support tower;

THEREFORE, BE IT RESOLVED by the City Council of the City of Athens, Alabama that T-Mobile is hereby granted a Special Use Permit to modify their equipment at 107 Stewart Drive, Athens, T-Mobile proposes to upgrade their existing 4G cellular service in the area. The upgrade will consist of T-Mobile swapping out their existing antennas and RRU's installed at 217' centerline on the tower with new antennas and RRU's. T-Mobile's existing lease area footprint within the compound will remain the same. As recommended by CMS, the Special Use Permit is subject to compliance with the following conditions prior to the issuance of said permit and/or a Certificate of Completion:

1. To prevent warehousing of permits or authorizations and to assure the best service to the City's residents as expeditiously a possible, the facility must be built, activated and be providing service *no later than one hundred eighty (180) days after the issuance of the Special Use Permit or other applicable authorization, subject to commonly accepted force majeure exceptions acceptable to the City.* T-Mobile may petition the City of an extension of this for good cause shown, but the decision whether or not to grant the extension shall exclusively be the prerogative of the City.
2. T-Mobile must provide contractor information with a construction schedule to the City and to CMS prior to the issuance of the Building Permit. The contractor must notify the City's consultant for all inspections.
3. Prior to the issuance of the Certificate of Completion, T-Mobile or the tower owner must remediate the following safety issues, noted at the pre-application site visit:
 - a. Broken conduit under meter box.
4. At the completion of construction, the Applicant must notify the City's consultant and provide proof that all inspections have been satisfactorily completed and the project is ready for a final on-site inspection. Upon passing the final inspection, a recommendation to issue a Certificate of Occupancy shall be made.
5. T-Mobile shall not be permitted to actually provide service commercially until the Certificate of Occupancy or its functional equivalent is issued or risk forfeiting its Permit.
6. The Certificate of Occupancy shall not be issued until all fees and costs associated with this Permit, including inspections, have been paid.
7. A Certificate of Occupancy for the work permitted under this permit shall be a prerequisite for any future work by T-Mobile at this facility.

ADOPTED and APPROVED this, the 22nd day of October, 2018.

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

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

ATTEST:

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

The motion was seconded by Councilman Harper 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 funding of re-pavement of roads in Roselawn Cemetery, in the amount not to exceed \$160,000, to be funded from the existing Perpetual Care Trust Fund established for the use of maintenance in the City of Athens cemeteries.

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

Councilman Travis introduced the following ordinance:

ORDINANCE NUMBER 2018 - 2056

AN ORDINANCE OF THE CITY OF ATHENS, ALABAMA, TO EXEMPT CERTAIN "COVERED ITEMS" FROM THE MUNICIPAL SALES AND USE TAX DURING THE LAST WEEKEND OF FEBRUARY, 2019, AS AUTHORIZED BY ACT 2012-256, GENERALLY REFERRED TO AS THE STATE SEVERE WEATHER PREPAREDNESS SALES TAX HOLIDAY LEGISLATION.

BE IT ORDAINED BY THE CITY COUNCIL OF ATHENS, ALABAMA, AS FOLLOWS:

Section 1. In conformity with the provisions of Act 2012-256 enacted by the Alabama Legislature during the 2012 Regular Session, providing for a State Severe Weather Preparedness Sales Tax Holiday, the City of Athens, Alabama, exempts "covered items" from municipal sales and use tax during the same period, beginning at 12:01 a.m. on the last Friday in February 2019 (February 22, 2019) and ending at twelve midnight the following Sunday (February 24, 2019).

Section 2. This ordinance shall be subject to all terms, conditions, definitions, time periods, and rules as provided by Act 2012-256, except that the time period shall only be as specified in Section 1 above and **not for all years thereafter.**

Section 3. The City Clerk is hereby authorized and directed to certify a copy of this ordinance under the seal of the City of Athens, Alabama, and to forward said certified copy to the Alabama Department of Revenue to be recorded and posted on the Department website.

Section 4. This ordinance shall become effective on October 25, 2018.

ADOPTED AND APPROVED THIS 22nd DAY OF OCTOBER, 2018.

/s/William R. Marks
Mayor

/s/Chris Seibert
City Council President

/s/Annette Barnes

City Clerk

STATE OF ALABAMA
COUNTY OF LIMESTONE

I, Annette Barnes, City Clerk of the City of Athens, Alabama, do hereby certify that this is a true and correct copy of Ordinance Number 2018-2056 adopted by the City Council of the City of Athens, Alabama, on the 22nd day of October 2018.

Witness my hand and seal of this office this the 22nd day of October, 2018.

/s/Annette Barnes
City Clerk

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

Councilman Wales introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, that the Mayor is authorized to enter into an agreement, on behalf of the City of Athens, Alabama, with EASTSIDE JUNCTION, LLC; IREIT ATHENS EASTSIDE, L.L.C.; NORTH ALABAMA RETAIL, LLC; and BANK INDEPENDENT, concerning the maintenance of certain storm drainage facilities, in substantially the same form as set forth in the "Storm Drainage Facilities Maintenance Agreement" attached hereto as **Exhibit A**. The Mayor is authorized to take all actions and execute such other and further documents as may be necessary to effect and carry out and enforce the terms of said agreement and the transactions contemplated by this Resolution.

EXHIBIT "A"

LEGAL DESCRIPTION

STORM DRAINAGE FACILITIES MAINTENANCE AGREEMENT BETWEEN EASTSIDE JUNCTION, LLC, IREIT ATHENS EASTSIDE, L.L.C., NORTH ALABAMA RETAIL, LLC, BANK INDEPENDENT AND THE CITY OF ATHENS, ALABAMA

**STORM DRAINAGE FACILITIES
MAINTENANCE AGREEMENT**

This **STORM DRAINAGE FACILITIES MAINTENANCE AGREEMENT** ("Agreement"), made and entered into this ____ day of _____, 2018 by and between EASTSIDE JUNCTION, LLC ("Eastside"), IREIT ATHENS EASTSIDE, L.L.C., NORTH ALABAMA RETAIL, LLC, and BANK INDEPENDENT (collectively, the "Owner") and The City of Athens, Alabama (the "City").

WITNESSETH:

WHEREAS, Owner is the owner of that certain tract of land in Limestone County, Alabama, more particularly described on Exhibit A attached hereto and incorporated by this reference (the "Owner Property") upon which a subdivision of land and related improvements is located (the "Development"); and

WHEREAS, Owner has constructed certain **Storm Drainage Facilities**, which may include but not be limited to swales, berms, pipes, and related appurtenances, upon the Owner Property (collectively, the "Detention Facilities");

WHEREAS, Eastside is the current owner of Lot 5 of Eastside Junction as shown on the Final Plat of Eastside Junction recorded in the Office of the Limestone County Judge of Probate in Plat Book H, Page 104 ("Lot 5"), where the storm water detention pond for the Owner Property is located;

WHEREAS, the City has requested that Owner enter into this Agreement to provide for the maintenance of the Detention Facilities;

NOW, THEREFORE, for Ten and 00/100 Dollars and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Maintenance and Detention Facilities.** Eastside, as the current owner of Lot 5, agrees to maintain the Detention Facilities in good working order acceptable to the City Engineering Department. Such obligation shall be a covenant running with Lot 5 and shall be binding upon all successor owners of Lot 5. The City acknowledges that the Detention Facilities were constructed pursuant to plans and specifications approved by the City. Upon Eastside's failure to perform such maintenance obligations, the City shall have the right but not the obligation to perform the same pursuant to the easement granted in Section

President of the City Council of
the City of Athens, Alabama
Date: _____

2 below and shall have the right to receive reimbursement from Owner for the costs of such maintenance as set forth in Section 3 below.

2. **Grant of Easement.** Owner does hereby grant, bargain, sell and convey unto the City, its successors and assigns, a permanent and perpetual, non-exclusive easement in and to that portion of the Owner Property as may be required for the City to perform inspection of the Detention Facilities whenever deemed necessary and to perform maintenance of the Detention Facilities if at any time Eastside, after notice and opportunity to cure if notice and opportunity to cure are required herein, fails to maintain the Detention Facilities in accordance with Section 1 hereof; provided, however, that in the exercise of such easement rights, the City shall use its best efforts to minimize any disruption to Owner's use and operation of the Owner Property, or the tenants or other occupants thereof. Further, Owner does hereby grant, bargain, sell and convey unto Eastside, its successors and assigns, a permanent and perpetual, non-exclusive easement in and to that portion of the Owner Property as may be required for Eastside to perform inspection of the Detention Facilities whenever deemed necessary and to perform maintenance of the Detention Facilities as required by Section 1 hereof; provided, however, that in the exercise of such easement rights, Eastside shall use its best efforts to minimize any disruption to Owner's use and operation of the Owner Property, or the tenants or other occupants thereof.

3. **Maintenance Costs.** In the event Owner, after notice and opportunity to cure if notice and opportunity to cure are required herein, fails to perform its maintenance obligations pursuant to Section 1 hereof and the City performs such maintenance of the Detention Facilities after such failure, Owner agrees to promptly reimburse the City for all reasonable costs incurred by the City in maintaining the Detention Facilities. Each Owner shall reimburse Eastside upon written demand for such Owner's pro rata share of all reasonable costs incurred by Eastside in maintaining the Detention Facilities. As used herein, each Owner's pro rata share shall mean a percentage equal to the area of such Owner's property being served by the Detention Facilities compared to all of Owner's Property being served by the Detention Facilities. For clarification, Lot 5 is not served by the Detention Facilities, and the area of Lot 5 shall not be included in the calculation of each Owner's pro rata share. The owner of Lot 5 shall not be responsible for any share of the cost associated with repairing or maintaining the Detention Facilities, and shall be reimbursed by the owners of the remaining lots for 100% of the costs incurred by the owner of Lot 5 pursuant to Section 1, provided that if the owner of Lot 5 owns other lots in the Development, the foregoing will not relieve such owner of responsibility for the pro rata share associated with such other lots. Notwithstanding the foregoing, in the event any maintenance or repair of the

Detention Facilities is necessitated by the negligent or willful misconduct of any Owner, or its tenants, agents, invitees, customers, contractors or employees, such Owner shall be responsible for 100% of the cost of such maintenance or repair.

4. Indemnity/Liability. Each Owner hereby agrees to indemnify and hold harmless and does indemnify and hold harmless the City and the remaining Owners, their successors and assigns, and their respective present and future officials, officers, boards, commissions, employees, agents, attorneys, contractors, and subcontractors from and against any and all claims, actions, judgments, damages, fines, costs, liabilities, interest or losses (including reasonable attorneys' fees and expenses and court costs and fees), together with all costs and expenses of any kind or nature, which arise directly or indirectly from such Owner's intentional or negligent acts, either sole or concurrent, with respect to the use or maintenance of the Detention Facilities and any other obligations imposed upon such Owner under the terms of this Agreement (including the intentional or negligent acts, either sole or concurrent, of Owner's employees, agents, contractors, subcontractors, tenants, subtenants, invitees, licensees, transferees, successors and assigns).

In no event shall the City, its successors and assigns, and their respective present and future officials, officers, boards, commissions, employees, agents, attorneys, contractors, and subcontractors (collectively referred to hereafter for purposes of this paragraph as "City") be liable to the Owner, its employees, agents, contractors, subcontractors, tenants, subtenants, invitees, licensees, transferees, successors and assigns, for any act or omission of the City in the event the City performs the maintenance obligations imposed on the Owner under the terms of this Agreement and Owner shall indemnify and hold harmless the City for same in accordance with the provisions of this paragraph 4.

Nothing contained in this paragraph 4 shall be construed as a waiver of any immunity of statutory protection of the City and no third party may expand any recovery against the City due to the Owner's duty of indemnification.

5. Notice and Cure. Notwithstanding anything to the contrary contained herein, the City shall not exercise any of its rights pursuant to Section 2 or Section 3 above until the City has provided written notice of Owner's failure to perform its obligations hereunder as set forth herein and Owner has had thirty (30) days in which to cure such failure; provided, however, in the event there is an immediate threat to the health or safety of the public or to public property, then the City shall not be required to give Owner notice or an opportunity to cure. All notices and communications required, necessary or desired to be given to Owner pursuant to this Agreement, including a change of address for purposes of such notices and communications, shall be in writing and shall be given by personal delivery, overnight commercial courier, facsimile transmission or by United States mail, certified, return receipt requested, postage prepaid and addressed as follows:

OWNER: EASTSIDE JUNCTION, LLC
PO Box 1084
Athens, AL 35612
TELEPHONE: 256-232-3001

OWNER: IREIT ATHENS EASTSIDE, LLC

TELEPHONE: _____
FAX : _____

OWNER: NORTH ALABAMA RETAIL, LLC

TELEPHONE: _____
FAX : _____

OWNER: BANK INDEPENDENT

FAX : _____

or to the then-current owner of the Owner Property, as recorded in the Limestone County, Alabama Tax Assessors Office.

6. Owner Remedies. In the event any Owner fails to perform its obligations hereunder within thirty (30) days of receiving written notice of such default, the non-defaulting Owners shall have all rights and remedies available at law or in equity for such default.

7. Representations. Each party represents and warrants that it has the full right, power and authority to enter into, execute and deliver this Agreement and to convey the aforesaid easements and related rights and to be bound hereby and hereto.

8. Estoppel Certificate. The City agrees that it will, within sixty (60) days of receipt of written request by Owner, execute and deliver any estoppel certificate reasonably requested by Owner, for the benefit of Owner's mortgagee or prospective assigns, certifying that, to the best of the City's knowledge, information and belief, no amounts are due and owing under this Agreement and the Owner is in compliance with all of its obligations hereunder. Such written request shall be sent by personal delivery, overnight commercial carrier, or by U.S. Mail, certified, return receipt requested, postage prepaid and addressed as follows:

Public Works Department
City of Athens
P.O. Box 1089
Athens, Alabama 35611

9. Non-Waiver. Failure of the City or any Owner to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but the City and each Owner shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

10. Successors and Assigns. This Agreement is a covenant running with the land/Owner Property and shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns, and shall pass with the conveyance of all or any portion of such property, whether specifically referred to or not.

11. Choice of Law. Any and all disputes arising out of this agreement shall be governed, construed and enforced in accordance with the laws of the State of Alabama. All actions related to the validity, construction, interpretation and enforcement of this agreement shall be instituted and litigated in the courts of Alabama. Owner submits to the jurisdiction of the courts of Alabama located in Limestone County, Alabama.

12. Entire Agreement. This Agreement contains the sole and entire agreement of the parties with respect to matters contemplated hereunder, and no representations, inducement, promise or agreement, oral or written, between Owner and the City and not incorporated herein shall be of any force or effect. Any amendment to this Agreement shall be in writing and executed by Owner and the City.

13. Running With Land. The easement contained herein shall run with the land as a burden to the Owner Property, and shall pass with the conveyance of all or any portion of such property, whether specifically referred to or not.

14. Severability. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement.

15. Attorney's Fees. In the event any legal action is commenced to enforce the terms of this Agreement against an Owner, the prevailing party in such action shall, in addition to the relief granted, be entitled to the payment of reasonable attorneys' fees actually incurred by the prevailing party in connection therewith and the court having jurisdiction in such action is hereby authorized and directed to award such attorneys' fees to the prevailing party.

16. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute the same instrument.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Storm Drainage Facilities Maintenance Agreement to be executed under seal and delivered as of the date first above written.

OWNER:

EASTSIDE JUNCTION, LLC

By: _____(Seal)

Name: William C. Ming

Title: Manager

STATE OF ALABAMA
COUNTY OF _____

I, the undersigned, a Notary Public in and for said County in/and said State, hereby certify that before me personally appeared William C. Ming, whose name as Manager of EASTSIDE JUNCTION, LLC, an Alabama limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he, as such officer and with full authority executed the same voluntarily for said limited liability company.

GIVEN under my hand and seal this _____ day of _____, 2018.

Notary Public
My Commission expires: _____

[Signature page to Storm Drainage Facilities Maintenance Agreement]

OWNER:

IREIT ATHENS EASTSIDE, L.L.C.

By: _____(Seal)

Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

I, the undersigned, a Notary Public in and for said County in/and said State, hereby certify that before me personally appeared _____, whose name as _____ of IREIT ATHENS EASTSIDE, L.L.C., a Delaware limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, s/he, as such officer and with full authority executed the same voluntarily for said limited liability company.

GIVEN under my hand and seal this _____ day of _____, 2018.

Notary Public
My Commission expires: _____

[Signature page to Storm Drainage Facilities Maintenance Agreement]

OWNER:

NORTH ALABAMA RETAIL, LLC

By: _____(Seal)
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

I, the undersigned, a Notary Public in and for said County in/and said State, hereby certify that before me personally appeared _____, whose name as _____ of NORTH ALABAMA RETAIL, LLC, an Alabama limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, s/he, as such officer and with full authority executed the same voluntarily for said limited liability company.

GIVEN under my hand and seal this _____ day of _____, 2018.

Notary Public
My Commission expires: _____

[Signature page to Storm Drainage Facilities Maintenance Agreement]

OWNER:

BANK INDEPENDENT

By: _____(Seal)
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

I, the undersigned, a Notary Public in and for said County in/and said State, hereby certify that before me personally appeared _____, whose name as _____ of BANK INDEPENDENT, an Alabama banking corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, s/he, as such officer and with full authority executed the same voluntarily for said banking corporation.

GIVEN under my hand and seal this _____ day of _____, 2018.

Notary Public
My Commission expires: _____

[Signature page to Storm Drainage Facilities Maintenance Agreement]

CITY:

THE CITY OF ATHENS, ALABAMA

By: _____
William Marks
Its: Mayor

ATTEST:

Annette Barnes
City Clerk

STATE OF ALABAMA

COUNTY OF LIMESTONE

Before me, the undersigned, a Notary Public in and for said County in said State, personally appeared William Marks, whose name as Mayor of the City of Athens, Alabama, and Annette Barnes, whose name as City Clerk of the City of Athens, Alabama, are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, they, as such officers and with full authority executed the same voluntarily for and as the act of said City of Athens, Alabama.

GIVEN under my hand and seal this _____ day of _____, 2018.

Notary Public
My Commission expires: _____

MORTGAGEE CONSENT

Mortgagee is the owner and holder of a certain Mortgage recorded in the Office of the Judge of Probate of Limestone County between _____ and Mortgagee (the "Mortgage"), which Mortgage encumbers property described in this Storm Drainage Facilities Maintenance Agreement. Mortgagee joins in the execution and delivery of this instrument for the sole purposes of (i) consenting to the conveyance of the easements and rights described herein; and (ii) subordinating the lien of the Mortgage to the easements and rights herein granted. The agreements by the Mortgagee as set forth in this paragraph are only intended as a subordination of the Mortgage to the easements and rights described therein, and the execution of this instrument by the Mortgagee shall in no way impair or affect the lien or security of the Mortgage.

MORTGAGEE:

By: _____ (Seal)
Name: _____
Title: _____

STATE OF ALABAMA)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of _____ Bank, a _____ state banking corporation, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, [s]he executed the same voluntarily on the day the same bears date for and as the act of said banking corporation.

GIVEN under my hand and official seal on this the _____ day of _____, 2018.

[SEAL]

Notary Public
My Commission Expires: _____

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

Councilman Cannon introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to set a public hearing for the regular meeting of November 26, 2018 concerning John D. Furline & Teresa Dawn Furline's request to rezone +/- 19 acres of property on the east side of Lindsay Lane South immediately north of Indian Trace Subdivision from the R-1-1 Single Family Residential District to a C-PUD, Conventional Planned Unit Development District.

The motion was seconded by Councilman Wales 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 set a public hearing for the regular meeting of November 26, 2018 concerning Athens City Board of Education's request to rezone property on the Southwest corner of Pryor Street and US Highway 31 North, from the B-2 General Business District to a TB Traditional Business District.

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

Councilman Cannon introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, to set a public hearing for the regular meeting of November 26, 2018 concerning Athens Land Company's request to rezone +/- 24 acres of property on the west side of Lindsay Lane South immediately north of Whitfield Colony Subdivision from the B-2 General Business District to the R-2 Multi Family District. The council notes that its approval is not required for the initiation of action related to Athens Land Company's new rezoning application, because the council did not previously initiate any action to approve or deny the prior application. Nonetheless, for the sake of argument, the council finds that circumstances/conditions relevant to the request have changed significantly since the prior hearing such that action may be initiated upon the new request.

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

Councilman Cannon introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, as follows: Harold Wales is hereby elected as President of the City Council for a term of November 5th, 2018 through October 31st, 2019.

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

Councilman Cannon introduced the following resolution:

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ATHENS, ALABAMA, as follows: Frank Travis is hereby elected as President Pro Tem of the City Council for a term of November 5th, 2018 through October 31st, 2018.

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

* * *

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

/s/ Chris Seibert
PRESIDENT, CITY COUNCIL

ATTEST:

/s/ Annette Barnes
CITY CLERK

