ORDINANCE NO. 2017-_____

AN ORDINANCE AMENDING THE *CODE OF ORDINANCES, OF THE CITY OF PHENIX CITY, ALABAMA,* ADDING CHAPTER 10 ½ STORMWATER MANAGEMENT, TO REGULATE DISCHARGES AND CONNECTIONS TO STORM SEWER SYSTEM WITHIN THE CORPORATE LIMITS OF THE CITY OF PHENIX CITY

WHEREAS, the City of Phenix City, Alabama, is required under Federal and State regulations to implement a Stormwater Management Plan (SWMP) to address Pollutants which may be discharged from the public Municipal Separate Storm Sewer System (MS4); and

WHEREAS, the purpose of this Ordinance is for the health, safety, and general welfare of the citizens of the City of Phenix City through the regulation of Non-Stormwater Discharges to the Storm Drainage System to the maximum extent practicable as required by federal and state law; and

WHEREAS, this Ordinance establishes methods for controlling the introduction of Pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process; and

WHEREAS, the objectives of this Ordinance are:

1) To regulate the contribution of Pollutants to the MS4 by stormwater discharges by any user;
2) To prohibit Illicit Connections and Discharges to the MS4; and
3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Phenix City, Alabama, that the *Code of Ordinances, City of Phenix City, Alabama,* is hereby amended by the creation and inclusion of the following chapter:

"CHAPTER 10 ½ - STORMWATER MANAGEMENT

ARTICLE I. GENERAL

Sec. 10 1/2-1. Purpose.

It is the purpose of this chapter to:

(a) Protect, maintain and enhance the health, safety, and general welfare of the citizens and environment of the City of Phenix City, Alabama through the regulation of Non-Stormwater Discharges to the Storm Drainage System to the maximum extent practicable as required by federal and state law; and

(b) Implement a Stormwater Management Plan to address pollutants which may be discharged from the public Municipal Separate Storm Sewer System (MS4); and

(c) To regulate the contribution of Pollutants to the MS4 by stormwater discharges by any user;

(d) To prohibit Illicit Connections and Discharges to the MS4; and

(e) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Ordinance.

ARTICLE II. MUNICIPAL SEPARATE STORM SEWER SYSTEM

Sec. 10 ½ - 1. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section:

Alabama Department of Environmental Management (ADEM) means the state agency which administers all major federal environmental laws, including the Clean Air, Clean Water and Safe Drinking Water Acts and federal solid and hazardous waste laws.

Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas (Handbook) means the published document which provides guidance for preventing or minimizing the related problems of erosion, sediment, and stormwater on construction sites and eroding urban areas. The *Handbook* provides a basis for developing sound plans and implementing appropriate measures, commonly referred to as Best Management Practices (BMPs).

Authorized Enforcement Agent (*Agent*) means an agent, whether corporate or individual, which has been designated by the City Manager as being responsible for enforcement of this article.

Best Management Practices (BMPs) means activities, prohibitions of practices, maintenance procedures, and other management practices implemented to prevent or reduce the discharge of pollutants to waters of the State. BMPs also include treatment systems, operating procedures, and practices to control facility runoff, spillage or leaks, sludge or water disposal, or drainage from raw material storage.

City means the City of Phenix City, Alabama, a municipal corporation.

City Engineer means the director of the City of Phenix City Engineering Department or his/her designee.

Clean Water Act means the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*), and any subsequent amendments thereto.

Construction Activity means construction projects resulting in land disturbance of one (1) acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

Hazardous Waste means a solid waste, or combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

a. Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

Illicit Connection means any man-made conveyance connecting a non-stormwater discharge directly to a municipal separate storm sewer system.

Illicit Discharge means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to an NPDES permit.

Industrial Activity means any activity subject to NPDES Industrial Permits as defined in 40 CFR, § 122.26 (b)(14).

Municipal Separate Storm Sewer System (MS4) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined in ADEM Administrative Code 355-6-6.02(pp). *See* 40 CFR Part 122.26(b)(8).

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit means a permit issued by the EPA (or by a state under authority delegated pursuant to 33 USC Section 1342(b)) that authorizes the discharge of Pollutants to Waters of the United States and Waters of the State, whether the permit is applicable to an individual, group, or general area-wide basis.

Non-Stormwater Discharge means any discharge to the City's MS4 that is not composed entirely of stormwater.

Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner of the premises or as the owner's agent.

Pollutant means the pollutants specified in *Ala. Code* § 22-22-1(b)(3) (1975) and any other effluent characteristics specified in a permit, including anything which causes or contributes to pollution. A pollutant includes but is not limited to dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. Pollutant does not mean (a) sewage from vessels; or (b) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state, and if the commission determines that such injection or disposal will not result in the degradation of ground or surface water resources.

Premises means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including facilities, adjacent sidewalks, and parking strips located thereon and includes all land uses.

Storm Drainage System means publicly and/or privately owned facilities by which stormwater is collected and/or conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and hand-made or altered drainage channels, reservoirs, and other drainage structures.

Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation. Stormwater is that portion of the rainfall and resulting surface flow that is in excess of which can be absorbed through the infiltration capacity of the surface of the basin.

Stormwater Management Program (SWMP) means a program developed by the City that covers the duration of the NPDES Permit and that addresses the BMPs, control techniques and systems, design and engineering methods, public participation and education, monitoring, and other appropriate provisions designed to reduce the discharge of Pollutants from the MS4 to the maximum extent practicable. The SWMP includes controls necessary to reduce the discharge of Pollutants from its MS4 consistent with § 402(p)(3)(B) of the Clean Water Act and 40 CFR Part 122.26.

United States Environmental Protection Agency (EPA) means the agency of the United States Federal Government whose mission is to protect human and environmental health.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Waters of the State means the waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership, or corporation unless such waters are used in interstate commerce as defined in *Ala. Code* § 22-22-1(b)(2) (1975).

Waters of the United States means surface watercourses and water bodies as defined in 40 CFR.

Sec. 10 ½ - 2. Applicability.

This article shall apply to all water entering the municipal separate storm sewer system generated on any developed and undeveloped lands, unless explicitly exempted by the Agent.

Sec. 10 ½ - 3. Responsibility for administration.

The City shall administer, implement, and enforce the provisions of this article through the Agent.

Sec. 10 ½ -4. Severability.

The provisions of the ordinance enacting this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of said ordinance, or the application thereof to any person, establishment, or circumstances, shall be held invalid, such invalidity shall not affect the other provisions or application of this article.

Sec. 10 ½ -5. Ultimate responsibility.

The standards set forth in this article and promulgated thereby are minimum standards; therefore this article does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of Pollutants.

Sec. 10 ½ -6. Discharge prohibitions.

(a) No person shall discharge or cause to be discharged into the MS4 or watercourses any materials, including, but not limited to, Pollutants or waters containing any Pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. The commencement, conduct, or continuance of any Illicit Discharge to the storm drain system is prohibited, with the exception of the following discharges:

(1) Water line flushing or other potable water sources; landscape irrigation or lawn watering (not consisting of treated or untreated wastewater unless authorized by the Agent); diverted stream flows; rising ground water; uncontaminated ground water infiltration to storm drains; uncontaminated pumped ground water; foundation or footing drains (not including active groundwater dewatering systems); crawl space pumps; air conditioning condensation; springs; individual residential car washing, to include charitable car washes; natural riparian habitat or wet-land flows; swimming pools (if dechlorinated, typically less than one (1) PPM chlorine); saltwater swimming pool discharges; discharge or flows from firefighting activities (including fire hydrant flushing); residual street wash water; and any other water source not containing Pollutants.

(2) Discharges specified in writing by the Agent as being necessary to protect public health and safety.

(3) Dye testing, provided verbal notification has been given to the Agent prior to the time of the test.

(4) Any Non-Stormwater Discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(5) Any Non-Stormwater Discharge excluded by the Clean Water Act.

(b) The construction, use, maintenance or continued existence of Illicit Connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, Illicit Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

Sec. 10 ½-7. Suspension of MS4 access.

(a) In the event of an emergency, the City may suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment; the health or welfare of persons; the MS4, Waters of the State or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Agent may take such steps as deemed necessary to prevent or minimize damage to the MS4, Waters of the State or Waters of the United States, or to minimize danger to persons.

(b) Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce the Illicit Discharge. The Agent will notify a

violator of the proposed termination of its MS4 access. The violator may petition the Agent for reconsideration. If the violator and the Agent do not agree on such matters the violator may petition ADEM for final ruling.

(c) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior written approval of the Agent.

Sec. 10 1/2-8. Industrial or construction activity discharges.

Any person subject to an NPDES Industrial Permit or an NPDES Construction General Permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Agent prior to the allowing of discharges to the MS4.

Sec. 10 1/2-9. Monitoring of discharges.

(a) This section applies to all facilities that have stormwater discharges associated with Industrial Activity, including Construction Activity.

(b) The Agent shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance. If a facility has security measures in force which require proper identification and clearance before entry into its premises, the facility operator shall make the necessary arrangements to allow access to the Agent.

(c) Facility operators shall allow the Agent ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by State and Federal law.

(d) The Agent shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Agent to conduct monitoring and/or sampling of the facility's stormwater discharge.

(e) The Agent has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(f) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Agent and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(g) Unreasonable delays in allowing the Agent access to a permitted facility is a violation of a stormwater discharge permit and of this article. A person who is the operator of a facility with an NPDES permit to discharge stormwater associated with Industrial Activity commits an offense if the person denies the Agent reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this article.

(h) If the Agent has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued, or to protect the overall

public health, safety, and welfare of the community, then the Agent may seek issuance of a search warrant from any court of competent jurisdiction in Russell County or Lee County, Alabama.

Sec. 10 1/2-10. Requirement to prevent, control, and reduce stormwater pollutants by use of BMPs.

BMPs for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, Waters of the State, or Waters of the United States, shall meet the design criteria set forth in the most recent edition of the *Handbook* and defined in the City's SWMP, as necessary for compliance with requirements of the NPDES permit. The owner or operator of a commercial or industrial establishment shall provide, at its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an Illicit Discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs, designed by a certified professional licensed in the State of Alabama, such as Professional Engineers, Landscape Architects, or Certified Erosion Control Specialist and approved by the Agent, to prevent the further discharge of Pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with Industrial Activity, to the extent practicable, shall be deemed compliant with the provisions of this section.

Sec. 10 1/2-11. Watercourse protection.

Every person owning property through which a watercourse passes shall keep that part of the watercourse within said property free of trash, debris, excessive vegetation, and other obstacles originating from that property which would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner shall maintain existing privately-owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Sec. 10 1/2-12. Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in Illicit Discharges or Pollutants discharging into the MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of Hazardous Waste, said person shall immediately notify emergency response agencies of the occurrence by means of emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Agent in person or by phone or email no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Agent within three (3) business days of the notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for a minimum of three (3) years.

Sec. 10 1/2-13. Notice of violation (NOV).

Whenever the Agent finds that a person has violated a prohibition or failed to meet a requirement of this article, the Agent may order compliance by written notice of violation to the responsible person. Such notice may include, but not be limited to:

(1) The performance of monitoring, analyses, and reporting;
(2) The elimination of Illicit Connections or Illicit Discharges;
(3) That violating discharges, practices, or operations shall cease and desist;
(4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; per § **Sec. 10 1/2-10.**
(5) Payment of a fine to cover administrative and remediation costs; and
(6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline for completion of the remediation or restoration, as determined by the Agent. Said notice shall further advise that, should the violator fail to either (i) remediate or restore within the established deadline or (ii) petition for reconsideration in accordance with § 10 ½ -14, the work will be done by the City or its designee at the expense of the violator.

Sec. 10 1/2-14. Reconsideration after notice of violation.

(a) Any person receiving a Notice of Violation may petition the Agent for reconsideration by submitting to the City Engineer a written request for the same within fifteen (15) days of the date of the Notice of Violation. A hearing for reconsideration shall take place within fifteen (15) days of the date of the City Engineer's receipt of the written request.

(b) Upon conclusion of the hearing, the Agent will advise the violator of his/her approval or disapproval of the violator's submittal for reconsideration.

(1) If the Agent approves the resubmittal, he/she shall set forth in writing the terms and conditions of his/her approval, including deadlines for compliance. If the violator fails to remediate or restore according to the terms of the approved resubmittal, the work will be done by the City or its designee at the expense of the violator.

(2) If the Agent does not approve the resubmittal, then, within thirty (30) days of the Agent's decision, the violator must either correct the violations or appeal the Agent's decision to ADEM for a final determination.

a. Should the violator choose to correct the violations, he must timely remediate or restore as directed in the original Notice of Violation. If he fails to do so, the work will be done by the City or its designee at the expense of the violator.

b. Should the violator choose to appeal, all directives of the Agent will be stayed until a decision is rendered by ADEM.

1. If the appeal is successful, the violator shall then be responsible for compliance with any orders issued by ADEM and no further action will be taken by the Agent on that particular Notice of Violation.

c. If the appeal is unsuccessful, the violator must correct all violations pursuant to the requirements set forth in the original Notice of Violation and do so within thirty (30) days of the issuance of ADEM's ruling. If he/she fails to do so, the work will be done by the City or its designee at the expense of the violator.

Sec. 10 1/2-15. Enforcement.

If any violation is not corrected in accordance with the applicable requirements and time standards as set forth by § 10 1/2-14, then the Agent is hereby authorized to enter upon the subject private property and to take any and all measures necessary to abate the violation. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Agent to enter upon the premises for the purposes set forth above.

Sec. 10 1/2-16. Cost of City's abatement of violation.

(a) Should the City undertake abatement of a violation, the owner of the property will be notified of the documented costs, including any applicable administrative costs, within thirty (30) days of completion. Upon receipt of the notification of costs from the City, if the owner does not pay the amount due within thirty (30) days, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. The lien shall remain in place until paid in full.

Sec. 10 1/2-17. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the Agent may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Sec. 10 1/2-18. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided in this article, any condition caused or permitted to exist in violation of any of the provisions of this article is declared a threat to public health, safety, and welfare, and is hereby deemed a public nuisance which may be summarily abated or restored at the violator's expense. At the City's discretion, a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Sec. 10 1/2-19. Criminal prosecution.

Any person who violates this article or provisions of a BMP plan issued under this article shall be reported to ADEM, for prosecution to the fullest extent of the law.

Sec. 10 1/2-20. Remedies not exclusive.

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the Agent to seek cumulative remedies.

Sec. 10 1/2-21. Repeal of conflicting provisions.

All current provisions of the *Code* and any prior ordinances or parts of ordinances which are in conflict with this article are hereby repealed.

Sec. 10 1/2-22. Adoption of *Handbook.*

The *Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas*, as most recently revised, which is on file in the City of Phenix City Engineering Department, is hereby adopted for use by the City of Phenix City, owners, developers, utilities, and all other interested parties to regulate and govern the prevention and minimization of the related problems of erosion, sediment, and stormwater on construction sites and eroding urban areas. Every regulation, provision, condition, and term contained therein is made a part of this *Code* as if fully set out herein."

Section 2. That there are hereby reserved in the *Code* Sections 10 ½ - 23 through 10 ½-40 and that the codifier is hereby instructed to reflect the same.

Section 3. That this Ordinance shall become effective immediately upon proper publication as required by law.

PASSED, ADOPTED, AND APPROVED this 7th day of February, 2017.

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MAYOR

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MEMBERS OF THE CITY COUNCIL OF THE CITY OF PHENIX CITY, ALABAMA.

ATTEST:

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CITY CLERK