

**EXCERPTS FROM THE MINUTES OF A REGULAR MEETING
OF THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA**

[Approval of Special Economic Development Grant Agreement]

[SSFoley, LLC]

The City Council of the City of Foley, Alabama met in regular public session at City Hall in the City of Foley, Alabama, at 5:30 p.m. on July 21, 2014.

The meeting was called to order by the Mayor, and the roll was called with the following results:

Present: J. Wayne Trawick
Ralph G. Hellmich
Rick Blackwell
Charles J. Ebert III
Vera J. Quaites

Absent: _____

* * *

The Mayor, Hon. John E. Koniar, was also present.

The Council President stated that a quorum was present and that the meeting was open for the transaction of business.

* * *

Thereupon, the following resolution was introduced in writing by the Council President and considered by the City Council:

RESOLUTION

**A RESOLUTION AUTHORIZING A SPECIAL
ECONOMIC DEVELOPMENT GRANT AGREEMENT
BY THE CITY OF FOLEY, ALABAMA
AND
SSFOLEY, LLC**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA (THE “COUNCIL”), AS GOVERNING BODY OF THE CITY OF FOLEY, ALABAMA (the “City”), as follows:

Section 1. The Council, upon evidence duly presented to and considered by it, has found and determined, and does hereby find, determine and declare as follows:

(a) The City and SSFoley, LLC (the “Owner”) have prepared that certain Special Economic Development Grant Agreement to be dated the date of delivery (the “Special Economic Development Grant Agreement”), as set forth in Exhibit A hereto, for the purposes referenced therein.

(b) The City has the power and authority under Amendment No. 750 of the Constitution of Alabama of 1901, as amended (“Amendment No. 750”) to authorize, deliver and perform the Special Economic Development Grant Agreement.

(c) The expenditure of public funds for the purposes specified in the Special Economic Development Grant Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(d) (1) On July 11, 2014, the City caused to be published in *The Onlooker*, which newspaper has the largest circulation in the City, the notice required by Amendment No. 750, a true and correct copy of which notice is attached to this Resolution as Exhibit B.

(2) The information set forth in said notice is true and correct.

(3) Publication of said notice is hereby ratified and confirmed.

Section 2. The Council does hereby approve, adopt, authorize, direct, ratify and confirm:

(a) the agreements, covenants, and undertakings of the City set forth in the Special Economic Development Grant Agreement, and

(b) the terms and provisions of the Special Economic Development Grant Agreement, in substantially the form and of substantially the content as set forth in Exhibit A hereto, with such changes thereto (by addition or deletion) as the Mayor shall approve and as shall not increase the amount or the term of the obligations of the City thereunder, which approval shall be conclusively evidenced by execution and delivery of the Special Economic Development Grant Agreement as hereinafter provided.

Section 3. (a) The Mayor is hereby authorized and directed to execute and deliver the Special Economic Development Grant Agreement for and on behalf of and in the name of the City. The City Clerk is hereby authorized and directed to affix the official seal of the City to the Special Economic Development Grant Agreement and to attest the same.

(b) The Mayor and the officers of the City are each hereby authorized and directed to take all such actions, and execute, deliver and perform all such agreements, documents, instruments, notices, and petitions and proceedings, with respect to the Special Economic Development Grant Agreement, as the Mayor and such officers shall determine to be necessary or desirable to carry out the provisions of this resolution or the Special Economic Development Grant Agreement or duly and punctually observe and perform all agreements and obligations of the City under the Special Economic Development Grant Agreement.

Section 4. All prior actions taken, and agreements, documents or notices executed and delivered, by the Mayor or any officer or member of the Council or other representative of the City, in connection with the agreements, covenants, and undertakings of the City hereby approved, or in connection with the preparation of the Special Economic Development Grant Agreement and the terms and provisions thereof, are hereby approved, ratified and confirmed.

Section 5. All ordinances, resolutions, orders, or parts of any thereof, of the Council in conflict, or inconsistent, with any provision of this resolution hereby are, to the extent of such conflict or inconsistency, repealed.

Section 6. This resolution shall take effect immediately.

Exhibit A

Special Economic Development Grant Agreement

SPECIAL ECONOMIC DEVELOPMENT GRANT AGREEMENT

Effective Date _____, 2014

by

CITY OF FOLEY, ALABAMA

and

SSFOLEY, LLC

This Special Economic Development Grant Agreement was prepared by Heyward C. Hosch of Maynard, Cooper & Gale, P.C., 1901 Sixth Avenue North, 2400 Regions/Harbert Plaza, Birmingham, Alabama 35203.

SPECIAL ECONOMIC DEVELOPMENT GRANT AGREEMENT

_____, 2014

This **SPECIAL ECONOMIC DEVELOPMENT GRANT AGREEMENT** is made and entered as of the above date by the **CITY OF FOLEY, ALABAMA**, an Alabama municipal corporation (the "City"), and **SSFOLEY, LLC** (the "Owner").

Recitals

The Owner is the Owner of commercial facilities and properties to be located on U.S. Highway 59 in the City, to consist of approximately 13,000 square feet of commercial and retail space for use by the Owner (the "Shoe Station Project").

In connection therewith, the Owner shall advance certain funds necessary to provide capital improvements to public transportation (including without limitation road work and improvement, lighting, signals, and acceleration/deceleration lanes), parking, and utility, facilities of the City which are necessary for the proper and safe operation and use of the Shoe Station Project (the "Shoe Station Public Infrastructure").

The development and operation of the Shoe Station Project is of direct financial benefit to the taxpayers and citizens of the City.

At the request of the Owner, the City has agreed to provide the Owner, as provided herein, the within referenced City Economic Development Funds in consideration of the development, placement in service, and leasing of the Shoe Station Project and for the payment of a portion of the costs of the Shoe Station Public Infrastructure.

Pursuant to Amendment No. 750 of the Constitution of Alabama of 1901, as amended, and the applicable laws of the State of Alabama, for the purposes referenced herein, the City and the Owner have delivered this Agreement.

Agreement

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants and agreements herein contained, the City and the Owner hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS

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

Calendar Quarter shall mean each period of three consecutive calendar months ending on March 31, June 30, September 30, and December 31 in each year, respectively.

City Agreement Expenses shall mean all costs and expenses (including without limitation legal fees) incurred by the City in connection with the authorization and delivery, and administration and enforcement, of this Agreement.

City Economic Development Funds shall mean collectively the amounts made available by the City under this Agreement as proceeds of the Net Project User Fees.

District shall mean The City of Foley Public Facilities Cooperative District and its successors and assigns.

Effective Date shall mean the date of delivery hereof as set forth on the cover page hereof.

Enabling Law shall mean Amendment No. 750 of the Constitution of Alabama of 1901, as amended.

Net Project User Fees shall mean an amount equal to the Project User Fees remaining in the Project User Fee Account after payment from the Project User Fees of all City Agreement Expenses.

Owner shall mean SSFoley, LLC, and the successors and assigns thereof.

Project User Fees shall mean the Project User Fees levied and collected by the District within the Shoe Station Project Area pursuant to Resolution duly adopted thereby on July 21, 2014.

Project User Fee Account shall mean a fund or account, or other accounting, established by the City, on behalf of the District, to hold proceeds of the Net Project User Fees.

Quarterly Accounting Date shall mean the tenth (10) day of the second month of a Calendar Quarter.

Shoe Station Project shall mean the commercial facilities and properties of real and personal property located at 3177 South McKenzie Street in the City, which consists of approximately 13,000 square feet of commercial retail facilities.

Shoe Station Project Area shall mean the area described on Exhibit A hereto.

Shoe Station Public Infrastructure shall have the meaning assigned in the Recitals hereto.

Termination Date shall mean the first to occur of (i) the date on which this Agreement shall be terminated by either party hereto pursuant to Section 6.02(a) or (ii) the date on which the Owner shall have received an aggregate amount of Net Project User Fees equal to \$700,000 or (iii) the Quarterly Accounting Date which next succeeds the fifteenth (15th) anniversary of the Validation Date.

Validation Date shall mean _____, 2014, being that date on which a judgment entered by the Circuit Court of Baldwin County, Alabama validating and confirming the Project User Fees shall have become forever conclusive in accordance with, and as provided in, Section 11-81-220 et seq. of the Code of Alabama 1975.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.01 The City

The City hereby represents as follows:

(a) The City has corporate power and authority to enter into this Agreement, pursuant to the Enabling Law, and to carry out its obligations hereunder and by proper corporate action the City has duly authorized the execution, delivery and performance of this Agreement.

(b) The delivery and performance of this Agreement by the City (i) will result in direct financial benefits to the City, and (ii) will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(c) The total outstanding indebtedness of the City which will be outstanding upon delivery of this Agreement and which is chargeable against the constitutional debt limit of the City under Section 225 of the Constitution of Alabama of 1901, as amended, is less than twenty percent of the assessed valuation of the taxable property within the City for the preceding tax year (ending September 30, 2013).

SECTION 2.02 The Owner

The Owner hereby represents as follows:

(a) The Owner is duly organized and validly existing as a corporation under the laws of the State of Alabama and is duly qualified to do business in the State of Alabama.

(b) The Owner has corporate power and authority to enter into this Agreement and to carry out its obligations hereunder and by proper corporate action the Owner has duly authorized the execution, delivery and performance of this Agreement.

(c) The delivery of this Agreement will result in direct financial benefits to the Owner.

(d) No consent or approval by, or filing with, any governmental authority in the State of Alabama is required for the execution or delivery of this Agreement by the Owner or for the full effectiveness or enforceability thereof under the laws of the State of Alabama.

(e) There is no action, suit, proceeding, inquiry or investigation pending before any court or governmental authority, or threatened in writing against or affecting the Owner, which involves the consummation of the transactions contemplated by, or the validity of, this Agreement.

ARTICLE 3

DURATION OF AGREEMENT

This Agreement and the obligations of the City and the Owner herein shall become effective on the Validation Date and shall remain in effect until the Termination Date, except with respect to any provision or term herein which expressly survives termination of this Agreement and remains in effect from and after the Termination Date.

ARTICLE 4

AGREEMENTS AND OBLIGATIONS OF THE OWNER

SECTION 4.01 Agreements of the Owner Regarding City Economic Development Funds

The Owner covenants and agrees with the City:

(a) The City shall have no obligation to make available any amount of City Economic Development Funds under this Agreement from and after the Termination Date.

(b) The City shall apply all Project User Fees to the payment of all City Agreement Expenses prior to the payment of any Net Project User Fees to the Owner pursuant to Article 5.

(c) The obligation of the City for the payment of any amount of Net Project User Fees under this Agreement:

(1) is a limited obligation payable solely from, and limited to an amount not more than, that amount of Net Project User Fees which are held in the Project User Fee Account on each Quarterly Accounting Date during the term hereof;

(2) 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;

(3) is subject, in accordance with *Johnson v. Sheffield*, 183 So. 265 (Ala. 1938), to the law-imposed requirement that, if necessary, there must first be paid from all Net Project User Fees the legitimate and necessary governmental expenses of operating the City;

(4) shall commence after the Validation Date.

SECTION 4.02 Special Agreements of Owner

The Owner agrees to defend, protect, indemnify, and hold harmless the City, its agents, employees, and members of its governing body, from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any of the following, provided, however, that the foregoing indemnity will not extend to the negligent misconduct of the City, its agents, employees, and members of its governing body: (i) any construction activity performed by Owner, or anyone claiming by through, or under Owner; and (ii) any loss of life, personal injury, or damage to property arising from or in relation to the entry upon, construction, use, operation or occupancy of the Shoe Station Project, including, without limitation, tenants, customers and invitees of the Shoe Station Project and/or Owner. The agreements and covenants in this Section shall survive the termination of this Agreement with respect to events or occurrences happening prior to or upon the termination of this Agreement and shall remain in full force and effect until commencement of an action with respect to any thereof shall be prohibited by law.

ARTICLE 5

AGREEMENTS AND OBLIGATIONS OF THE CITY

The City covenants and agrees with the Owner:

(a) Collection of Project User Fees. The City shall cause the Project User Fees to be levied and collected by the District as provided by law from and after the Validation Date.

(b) Project User Fee Account. The City shall cause the Net Project User Fees to be held in the Project User Fee Account, invested as provided for general funds of the City, and applied, together with investment earnings thereon, in accordance with this Agreement. The City shall, upon written request by the Owner, notify the Owner of the amount on deposit in, or credited to, the Project User Fee Account.

(c) Payment of Net Project User Fees. On _____, 2014 and on each Quarterly Accounting Date thereafter during the term of this Agreement, the City shall transfer to the Owner, solely from amounts on deposit in the Project User Fee Account, subject to and in accordance with the provisions of this Agreement with respect thereto, an amount equal to the Net Project User Fees then on deposit in the Project User Fee Account.

ARTICLE 6

EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01 Events of Default

Any one or more of the following shall constitute an event of default by the City or the Owner hereunder (an “Event of Default”) under this Agreement:

(a) default in the performance, or breach, by the City 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 Owner a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “notice of default” hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the City shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default; or

(b) default in the performance, or breach, by the Owner of any covenant or warranty of the Owner 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 Owner by the City a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “notice of default” hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the Owner 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.

SECTION 6.02 Remedies

(a) Each party may, upon the occurrence of an Event of Default and the expiration of any cure or grace period therefor, by written notice to the other party, terminate this Agreement and the obligations thereof without recourse except with respect to such rights or obligations as shall have theretofore vested or which shall be set forth in agreements or provisions which by the express terms thereof survive such termination of this Agreement.

(b) Each party hereto may proceed to protect its rights and interests 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.

SECTION 6.03 Remedies Subject to Applicable Law

All rights, remedies and powers provided by this Agreement may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE 7

PROVISIONS OF GENERAL APPLICATION

SECTION 7.01 Enforceability

The provisions of this Agreement shall be severable. In the event any provision hereof 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.

SECTION 7.02 Prior Agreements Cancelled

This Agreement shall completely and fully supersede all other prior agreements, both written and oral, by 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.

SECTION 7.03 Counterparts

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

SECTION 7.04 Binding Effect; Governing Law

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

(b) This Agreement shall be governed exclusively by the laws of the State of Alabama.

SECTION 7.05 Notices

(a) 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:

- | | |
|---|---|
| (1) if to the City: | (2) if to the Owner: |
| City Hall
407 East Laurel Avenue
Foley, Alabama | 720 Executive Park Drive
Mobile, Alabama 36606 |

(b) 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.

SECTION 7.06 Delegation and Assignment of this Agreement

(a) The Owner shall not have the authority or power to, and shall not, assign, pledge, or transfer any interest or right of the Owner in or to this Agreement, or assign, delegate or transfer any duty or obligation of the Owner to observe or perform any agreement, covenant or obligation of the Owner under this Agreement, to any person or entity except upon the prior written consent of the City as set forth in a resolution of the governing body of the City with respect thereto.

(b) The City shall not have the authority or power to, and shall not, assign, delegate or transfer any duty or obligation of the City to observe or perform any agreement, covenant or obligation of the City under this Agreement except upon the prior written consent of the Owner, or any successor or assign thereof approved by the City under Section 7.06(a).

SECTION 7.07 Amendments

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

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

CITY OF FOLEY, ALABAMA

SEAL

By _____
Mayor

ATTEST: _____
City Clerk

SSFOLEY, LLC

By: _____

Its: _____

EXHIBIT A

Shoe Station Project Area

The commercial facilities and properties of real and personal property located at 3177 South McKenzie Street in the City, which consists of approximately 13,000 square feet of commercial retail facilities.

EXHIBIT B

Legal Notice

**LEGAL NOTICE OF PUBLIC HEARING
OF
CITY COUNCIL OF FOLEY, ALABAMA**

Notice is hereby given that the City Council (the "Council") of the City of Foley, Alabama (the "City") will meet in public session at 5:30 p.m. on Monday, July 21, 2014 at the City Hall in the City of Foley, Alabama for the purpose of considering the transaction of business that may properly come before the Council such business to include, but not be limited to, the authorization by the Council, pursuant to Amendment No. 750 of the Constitution of Alabama of 1901, as amended, of a resolution approving the execution and delivery of a Special Economic Development Grant Agreement (the "Agreement") by the City and SSFoley, LLC (the "Owner").

Pursuant to said Amendment No. 750 and the Agreement, for the purpose of economic development of the City, the City shall provide to the Owner certain funds of the City (the "City Economic Development Funds"), in consideration, and for the purpose, of the development of commercial retail facilities and properties of approximately 13,000 square feet, to be located within the City, to be owned and operated by the Owner, and known as the "Shoe Station Project".

The City shall pay the City Economic Development Funds to the Owner in quarterly payments solely from the amounts, if any, the City shall have received from Project User Fees which The City of Foley Public Facilities Cooperative District (the "District") shall have levied and collected within the Shoe Station Project and shall have transferred to the City pursuant to agreements therefor. Pursuant to Chapter 99B of Title 11 of the Code of Alabama 1975, and resolutions to be adopted by the District (the "Project Fee Resolution"), the District shall levy on the users of certain public capital infrastructure improvements made and to be made by the City, on behalf of the District, which benefit the Shoe Station Project, certain Project User Fees (generally equivalent to one percent of gross sales within the Shoe Station Project) for a period of approximately fifteen years as set forth in said resolution. The proceeds of the Project User Fees shall be delivered by the District, when and as received, to the City in respect of reimbursement to the City for a portion of the costs of such public capital infrastructure improvements.

The City seeks to achieve, by undertaking its obligations pursuant to the Agreement, to promote the local economic and industrial development of the City, to increase employment in the City, and to increase the tax and revenue base of the City.

The business entity to whom or for whose benefit the City proposes to lend its credit and grant public funds or thing of value will be SSFoley, LLC.

All interested persons may examine and review the Agreement and the Project Fee Resolution, and all relevant proceedings pertaining thereto, and make copies thereof at personal expense, at the offices of the City Administrator, referenced below, during normal business hours, before and after the meeting referenced herein.

Further information concerning the information in this notice can be obtained from the City Administrator at the offices thereof at City Hall, 407 East Laurel Avenue, in the City of Foley, Alabama during normal business hours.

Duly passed and adopted this 21st day of July, 2014.

President of the City Council of the City of
Foley, Alabama

SEAL

Attest: _____
City Clerk / Administrator

Transmitted to and approved by the Mayor on this _____ day of July, 2014.

Mayor of the City of Foley, Alabama

After said resolution had been discussed and considered in full by the Council, it was moved by _____ that said resolution be now placed upon its final passage and adopted. The motion was seconded by _____. The question being put as to the adoption of said motion and the final passage and adoption of said resolution, the roll was called with the following results:

Ayes: J. Wayne Trawick
 Ralph G. Hellmich
 Rick Blackwell
 Vera J. Quaites
 Charles J. Ebert III

Nays: None

The Council President thereupon declared said motion carried and the resolution passed and adopted as introduced and read.

* * *

There being no further business to come before the meeting, it was moved and seconded that the meeting be adjourned. Motion carried.

Minutes approved:

Mayor

Member of Council

S E A L

Attest: _____
City Clerk

STATE OF ALABAMA

BALDWIN COUNTY

CERTIFICATE OF CITY CLERK

I, the undersigned, do hereby certify that: (1) I am the duly elected, qualified and acting Clerk of the City of Foley, Alabama (the "City"), (2) as City Clerk of the City I have access to all original records of the City and I am duly authorized to make certified copies of its records on its behalf, (3) the above and foregoing pages constitute a complete, verbatim and compared copy of excerpts from the minutes of a regular meeting of the City Council of the City duly held on July 21, 2014, the original of which is on file and of record in the minute book of the City Council in my custody, (4) the resolution set forth in such excerpts is a complete, verbatim and compared copy of such resolution as introduced and adopted by the City Council on such date, and (5) said resolution is in full force and effect and has not been repealed, amended or changed.

IN WITNESS WHEREOF, I have hereunto set my hand as Clerk of the City of Foley, Alabama, and have affixed the official seal of the City, this _____ day of _____, 2014.

Clerk of the City of Foley, Alabama

SEAL