

**MEMORANDUM OF UNDERSTANDING BETWEEN THE UTILITIES BOARD OF
THE CITY OF FOLEY d/b/a RIVIERA UTILITIES AND THE CITY OF FOLEY,
ALABAMA, REGARDING THE MAINTENANCE OF CERTAIN FOLEY EVENT
CENTER LIGHTING INSTALLATIONS**

This Memorandum of Understanding (this “MOU”) is made and entered into by and between the Utilities Board of the City of Foley d/b/a Riviera Utilities, a municipal utility (hereinafter “RIVIERA”), and the City of Foley, an Alabama municipal corporation (hereinafter “FOLEY”), both political subdivisions of the State of Alabama. RIVIERA and FOLEY are sometimes referred to collectively as “Parties” or individually as “Party.” This MOU shall become effective on the date it is executed by the latter of RIVIERA and FOLEY (the “Effective Date”).

WITNESSETH:

WHEREAS, RIVIERA and FOLEY desire to enter into an MOU regarding the maintenance of The Foley Event Center lighting owned by FOLEY (sometimes referred to collectively herein as “Lights”).

FOR AND IN CONSIDERATION of the terms and mutual covenants contained herein, the sufficiency of which are hereby acknowledged, RIVIERA and FOLEY hereby agree as follows:

1. Purpose

The purpose of this MOU is to document the relationship between the Parties regarding the maintenance of poles and fixtures at The Foley Event Center which are owned by FOLEY but which RIVIERA may be better equipped to effectively maintain. Benefits include time savings to FOLEY over procuring third party maintenance of said Lights and the avoidance of duplicating efforts, as RIVIERA already owns equipment suitable for maintaining the Lights and has the operational knowledge of performing said maintenance.

2. Independence of Operations

Each Party to this MOU will maintain its own facilities otherwise owned outside the scope of the Lights identified herein.

3. Methods of Cooperation

RIVIERA and FOLEY will establish a single point of contact for each Party that will coordinate with each other to identify lights needing repair or replacement. The single points of contact will also cooperate in standardizing specific poles, fixtures, breakaway bolts, and breakaway fuses suitable for use at The Foley Event Center. RIVIERA will be responsible for procuring and warehousing inventory of spare poles, fixtures, etc. and RIVIERA will be responsible for transporting items from the warehouse location to installation site and the installation of items. FOLEY will be responsible for the operation and maintenance of the lighting control system and the supply of the remotely controlled photocells.

4. Terms

A. In consideration for use of RIVIERA's equipment and personnel to perform maintenance on Lights owned by FOLEY, FOLEY agrees to pay RIVIERA the actual labor and equipment costs incurred in the work to install and remove poles, fixtures, and wiring as requested by FOLEY. RIVIERA shall provide an estimate to FOLEY prior to performing any work, and all such work performed by RIVIERA must be pre-approved in writing by the point of contact established by FOLEY. In the event of an emergency, a verbal approval may be obtained.

B. RIVIERA and FOLEY mutually agree that all outstanding invoices must have been paid before additional work is requested and performed.

5. Term of MOU

The term of this MOU shall begin on the Effective Date, and the term shall end on September 30, 2020, unless this MOU is renewed or extended by mutual agreement of the Parties or terminated by the Parties as set forth herein.

6. Permits

The obligations of the Parties under this MOU are expressly subject to and conditioned upon the satisfaction of the following condition: receipt by the Parties of all necessary permits or other federal, state or local governmental authorizations (the "Permits") necessary for the use of the lighting, including, without limitation, any building, signage, zoning, variances, special use permits, or other Permits deemed necessary in connection with the intended use of the lighting. The Parties shall cooperate with each other in effort to obtain such approvals and shall take no action, which would adversely affect such efforts. In the event that any of such applications should be finally rejected or any certificate, permit, license, or approval issued to a Party or the Parties is canceled, expires, lapses, or is otherwise withdrawn or terminated by any governmental authority, the Parties, or any one of them, shall have the right to terminate this MOU. Notice of such termination shall be given to the other Party in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by the other Party as evidenced by the return receipt. RIVIERA further expects that FOLEY will not charge RIVIERA nor request any permit submissions for any work performed at the request of FOLEY.

7. Assignment

The Parties shall not have the right to assign this MOU or any rights or obligations hereunder without the express written consent of the other Party. No such assignment shall relieve the other Party of its liabilities and obligations herein.

8. Maintenance of Facilities and Equipment

FOLEY agrees to be responsible for the maintenance of photocells, contactors, timers, or other appurtenances beyond the connection point of the utility.

9. Compliance by the Parties

The Parties shall comply with all local, city, county, state, and federal laws, rules, ordinances, statutes, and regulations now in effect or hereafter enacted as the same may apply to the use of the Lights, and shall obtain any licenses, permits, and other approvals required for use of the Lights on roadways maintained by the State of Alabama. The Parties agree to cooperate in obtaining such licenses, permits, or approvals.

10. Limitation of Liability, Disclaimer of Warranties, and Indemnity

A. Disclaimer of Warranties: RIVIERA in no way warrants or guarantees the services and/or equipment installed and/or serviced under this MOU. Reasons that may affect, interrupt, cause failure, or otherwise limit the use of such services and/or equipment include, but are not limited to, the following: a power outage, a power line being cut, equipment not configured properly, and/or any event above and beyond RIVIERA's reasonable control, including without limitation, vehicular accidents, any government actions, fire, work stoppages, civil disturbances, interruptions of power or communications to RIVIERA or any facilities used by or for RIVIERA, natural disasters, acts of God, or acts of terrorism or war. RIVIERA shall not be liable for, and shall be excused from, any failure to deliver or perform, or for any delay in delivery or performance of services due to causes beyond its reasonable control.

B. Indemnity and Hold Harmless: FOLEY shall indemnify, defend, and hold RIVIERA, its Board members, officers, directors, agents, employees and Utility Representatives (collectively referred to in this Section 10.B. as "RIVIERA") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitation, attorneys' fees, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by or imposed upon RIVIERA or any RIVIERA representative, as a result of any entry upon or activity conducted by, or any act or omission, by FOLEY or any FOLEY representative, employee, agent, or subcontractor arising out of providing the subject services, including, but not limited to, the construction, maintenance, upgrade, repair, or removal of any information or equipment from the property and/or facilities, except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the willful misconduct of a RIVIERA employee. RIVIERA does not and shall not waive any rights against FOLEY, which it may have by reason of this indemnification. This indemnification by FOLEY shall apply to all damages, penalties, and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages. Notwithstanding the foregoing, FOLEY does not waive any immunity or damages cap granted to it by statute or otherwise.

C. Further Liability: In no event shall RIVIERA, its Board members, officers, directors, or employees be liable for any direct, incidental, indirect, special, punitive, exemplary, or consequential damages, or for any other damages, including, but not limited to, personal injury, wrongful death, property damage, loss of data, loss of revenue or profits, or damages

arising out of or in connection with the use or inability to use the Lights installed and/or serviced under this Agreement. The limitations set forth herein apply to claims founded in all areas, including, but not limited to, breach of contract, breach of warranty, and product liability, and apply whether or not RIVIERA was informed of the likelihood of any particular type of damages.

D. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR PUNITIVE DAMAGES.

11. Termination

Either Party may terminate this MOU, with or without cause, by giving thirty (30) days' advance, written notice to the other Party.

12. Notices

All notices, demands, requests, consents, and approvals desired, necessary, required, or permitted to be given pursuant to the terms of this MOU shall be in writing and shall be deemed to have been properly given (i) upon actual delivery if delivery is by hand, (ii) on the third day following the date on which each such notice is deposited, postage prepaid, in the United States mail, certified, return receipt requested, or (iii) electronically via email. All notices shall be directed to the other Party at the address indicated below, or to any other address as the Parties may designate by notice delivered pursuant to this provision. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, request or other communication.

RIVIERA: Riviera Utilities
413 E Laurel Ave
Foley, AL 36535
Attn: Scott Sligh
Email: ssligh@rivierautilities.com

FOLEY: City of Foley
P.O. Box 1750
Foley, AL 36535
Attn: Mike Thompson

13. Severability

In the event any one or more of the provisions contained in this MOU shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this MOU shall be continued as if such invalid, illegal, or unenforceable provisions had never been contained herein. There shall be immediately substituted for such invalid, illegal, or unenforceable provision a like, but valid and enforceable, provision which most nearly satisfies and comports with the original intention of the

Parties. Paragraph or section headings used in this MOU are for convenience of reference only and do not affect any provision of this MOU.

14. Entire MOU

This MOU constitutes the full and complete MOU between the Parties hereto with respect to the subject matter hereof, and said Parties shall not be bound by any statement, special condition, or representations not herein expressed. Except as expressly provided herein, no alteration or amendment to this MOU by the Parties hereto shall be effective unless in writing, signed by the Parties, and by reference incorporated into this MOU. Notwithstanding the foregoing, as technology and methods change at a rapid pace, it is imperative that modifications to the equipment be allowed, provided that the designated technical representatives of both RIVIERA and FOLEY agree with such modification to take advantage of technological advancements or to overcome technical issues that may arise. Therefore, this MOU will not need to be modified to implement such modifications, as long as the overall intent and scope of the Lights project are followed and the changes do not substantially burden the resources of either Party. This MOU, and the performance thereof, shall be governed by and construed according to the constitution and laws of the State of Alabama.

15. Non-Waiver

Failure of either Party to exercise any power or rights provided for herein shall not constitute a waiver of said Party's right to demand exact compliance with the terms and conditions of this MOU.

16. Recovery of Expenses

If any action at law or in equity shall be brought for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of, this MOU, the prevailing Party shall be entitled to recover from the other Party court costs and attorneys' fees incurred as a result of said action.

17. No Third Party Beneficiaries

It is the intent of the Parties to this MOU that they be the only parties to the MOU and to expressly exclude third party beneficiaries. Nonparties to the MOU may not claim benefits under the MOU.

18. Additional Parties to MOU

No additional party or parties may be added to this MOU. However, nothing shall limit or prohibit FOLEY from engaging another party to perform same said work outside of this MOU.

IN WITNESS WHEREOF, each of the parties has caused this MOU to be executed in duplicate originals by their duly authorized representatives on the respective dates entered below.

RIVIERA UTILITIES

BY: _____ / _____
Thomas L. DeBell, GM /Date

ATTEST: _____ / _____
Name: /Date
Title:

CITY OF FOLEY, ALABAMA

BY: _____ / _____
John Koniar, Mayor /Date

ATTEST: _____ / _____
Katy Taylor /Date
City Clerk