

ORDINANCE NO. 1196-12



AN ORDINANCE AMENDING THE TERMS OF CONVEYANCE OF PROPERTY AND RELATED TRANSACTIONS FOR THE ESTABLISHMENT OF AN ARMORY FOR THE ALABAMA NATIONAL GUARD BY THE ARMORY COMMISSION OF ALABAMA IN THE CITY OF FOLEY, ALABAMA

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA (the "City") as follows:

1. The City has heretofore, upon evidence duly presented to and considered by it, found and determined, and does hereby find, determine and declare that:

(a) Pursuant to Ordinance No. 1162-11 ("Ordinance 1162-11") adopted by the City Council on February 7, 2011, the City authorized the conveyance of certain real property owned by the City and more particularly described therein (the "Proposed Armory Site") to The Armory Commission of Alabama (the "Armory Commission") to acquire and construct a new armory for the Alabama National Guard;

(b) Ordinance 1162-11 authorized the conveyance by the City of the Proposed Armory Site to the Armory Commission, without consideration, by statutory warranty deed, subject to certain terms and conditions specified in such statutory warranty deed; and

(c) Upon further discussions with the Armory Commission, the City desires to revise certain terms and conditions in the statutory warranty deed which was previously approved by the City Council pursuant to Ordinance 1162-11.

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

(a) the terms and provisions of, and the transactions to be undertaken pursuant to, Ordinance 1162-11; and

(b) the terms and provisions of, and the transactions to be undertaken pursuant to, the Statutory Warranty Deed with respect to the Proposed Armory Site set forth in Exhibit A hereto.

3. The documents described in Section 2 of this Ordinance (herein collectively the "Armory Documents") are approved in substantially the form and of substantially the content as the Armory Documents presented to and considered by the City Council, with such changes or additions thereto or deletions therefrom as the officer of the City executing those of the Armory Documents to which the City is a party signatory thereto shall approve, which approval shall be conclusively evidenced by execution of the Armory Documents by such officer as hereinafter provided.

4. The Armory Documents presented to, considered and adopted by the City Council shall be filed in the permanent records of the City.

5. The Mayor of the City is hereby authorized and directed to execute, acknowledge and deliver the Armory Documents for and on behalf of and in the name of the City. The City Clerk/Administrator of the City is hereby authorized and directed to attest the same.

6. The officers of the City, or any one or more of them, are hereby authorized and directed to do and perform or cause to be done or performed in the name and on behalf of the City such other acts, and execute, deliver, file and record such other instruments, documents, certificates, notifications and related Armory Documents, all as shall be required by law or necessary or desirable to carry out the provisions and purposes of this Ordinance and the Armory Documents.

7. Any prior actions taken or agreements made or documents executed by any officers of the City in connection with the Armory Documents and the transactions herein authorized and approved are hereby hereby ratified, confirmed and approved.

8. This Ordinance shall take effect immediately and all resolutions, ordinances, orders, or parts thereof in conflict or inconsistent with any provision herein hereby are, to the extent of such conflict or inconsistency, repealed.

Attest: Vickey Southern
Vickey Southern, CMC
City Clerk

"I certify that the foregoing Ordinance was published in the Foley Onlooker, a newspaper of general circulation in the City of Foley, in its issue of Tuesday, June 26, 2012."

Vickey Southern
Vickey Southern, CMC
City Clerk

Exhibit A

Legal Description of Subject Property

Lot 4, Foley Beach Express Industrial Park, Unit 7, as recorded on Slide 2445-B, in the office of the Probate Judge, Baldwin County, Alabama.

STATE OF ALABAMA)
BALDWIN COUNTY)

STATUTORY WARRANTY DEED

THIS STATUTORY WARRANTY DEED was executed and delivered as of March 21, 2013 (herein the "Effective Date") by the **CITY OF FOLEY, ALABAMA**, a municipal corporation organized under the laws of the State of Alabama (herein the "Grantor"), to and in favor of **THE ARMORY COMMISSION OF ALABAMA**, a public corporation organized under the laws of the State of Alabama (herein the "Grantee"), for the purposes hereinafter described.

RECITALS:

- A. The Grantor holds fee title in and to that certain tract of property located in Baldwin County, Alabama, more particularly described on Exhibit A attached hereto and incorporated by reference (the "Subject Property")
- B. The Grantor agrees to convey and donate the Subject Property to the Grantee in fee simple so long as the Subject Property is used for the location and construction of an Alabama National Guard Armory, and such armory is designed and constructed within the respective periods of time set forth herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in consideration of the premises recited above, which are incorporated herein by reference thereto, and as a free and voluntary gift with donative intent, but subject to the conditions and the possibility of reverter described hereinbelow, the Grantor does hereby GRANT, BARGAIN, SELL and CONVEY the Subject Property to the Grantee, together with all of the rights, tenements, hereditaments, and appurtenances thereto belonging or in any way appertaining;

SUBJECT AND SUBORDINATE TO THE FOLLOWING (the "Permitted Encumbrances"):

- 1. All taxes and assessments heretofore or hereafter assessed;
- 2. Mineral and mining rights no owned by the Grantor;
- 3. Easements, restrictions, covenants, rights-of-way and all other matters of record;
- 4. The condition that the Grantee, its successors and assigns, (i) shall use the Subject Property for the location, construction and operation by the Grantee of an Alabama National Guard Armory (ii) shall commence the design of the armory within three (3) years from the Effective Date, (iii) shall commence construction of such armory at the Subject Property within six (6) years from the Effective Date, and (iv) shall diligently pursue such construction to completion and cause such armory to be placed in service within a reasonable period of time from commencement of construction; and

5. A right of reversion is hereby reserved and retained by the Grantor as follows: The Subject Property may revert to the Grantor without the necessity of re-entry and repossession or any other action on the part of the Grantor, other than notification in writing to the Grantee of proposed action not less than thirty (30) days prior to the filing of a written notice of such reversion by the Grantor in the Office of the Judge of Probate of Baldwin County, Alabama, upon violation by the Grantee, its successors or assigns, of the conditions set forth in Paragraph 4 above. Grantor shall not be required to pay, and Grantee shall not be entitled to receive, any compensation or reimbursement for any improvements made to the Subject Property before or upon the occurrence of the right of reversion herein reserved to the Grantor. In the event that no notice of reversion is filed in the Office of the Judge of Probate of Baldwin County, Alabama, within six (6) years from the Effective Date of the execution of this conveyance, this right of reversion and any covenant or restriction on the use of this property by the grantee shall terminate immediately.

TO HAVE AND TO HOLD the Subject Property, together with all and singular the rights, members and appurtenances thereof to the same being, belonging or in any way appertaining, to the use and benefit of the Grantee and its successors and assigns, forever, but subject to the Permitted Encumbrances and the right of reversion herein reserved to the Grantor. Except for the Permitted Encumbrances, which are accepted and acknowledged by the Grantee through its execution of this Statutory Warranty Deed, the Grantor shall warrant and forever defend title to the Subject Property from and against the claims of all persons claiming by, through or under Grantor, but not further or otherwise.

[Signature page follows]

IN WITNESS WHEREOF, the Grantor has caused this Statutory Warranty Deed to be executed in its name under seal and the same attested by an officer thereof duly authorized as of the Effective Date.

CITY OF FOLEY, ALABAMA

By: _____

Mayor



Attest _____

Victoria Southern

City Clerk

ACCEPTANCE BY GRANTEE

The Grantee hereby accepts the conveyances made by the foregoing Statutory Warranty Deed and in consideration thereof hereby (1) consents and agrees to the right of reversion reserved by the Grantor, and (2) assumes and agrees to be bound by, and duly and punctually comply with, observe and perform, all conditions, covenants, provisions, restrictions, and terms referenced or set forth in said Statutory Warranty Deed or otherwise now or hereafter applicable to the Subject Property.

IN WITNESS WHEREOF, the Grantee has caused this Statutory Warranty Deed to be executed in its name under seal and the same attested by an officer thereof duly authorized as of the Effective Date.

THE ARMORY COMMISSION OF ALABAMA

By: _____

Name: PERRY G. SMITH

Its: VICE-CHAIRMAN

[SEAL]

Attest _____

M. Davis

Secretary

ATTEST:

Beth Chapman

BETH CHAPMAN
Secretary of State of Alabama

APPROVED:

Robert Bentley

ROBERT BENTLEY
Governor of Alabama

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John E. Koniar, whose name as Mayor of the City of Foley, Alabama, an Alabama municipal 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 the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this 4th day of March, 2013.



Brenda W Shambo
Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Dec 19, 2015
BONDED THRU NOTARY PUBLIC UNDERWRITERS

My Commission Expires: _____

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that PERRY G. SMITH, whose name as VICE-CHAIRMAN of The Armory Commission of Alabama, an Alabama public 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 the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

Given under my hand and official seal this 21st day of MARCH, 2013.

[SEAL]

Donna K. Smith
Notary Public

My Commission Expires: 04/13/2013

This instrument was prepared by:

Heyward C. Hosch
C. Bradley Cherry
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
Suite 2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2618
(205) 254-1000

Exhibit A

Legal Description of Subject Property

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Legal Description of Subject Property

Lot 4, Foley Beach Express Industrial Park, Unit 7, as recorded on Slide 2445-B, in the office of the Probate Judge, Baldwin County, Alabama.

MEMORANDUM OF UNDERSTANDING

Between

The Armory Commission of Alabama
P.O. Box 3711
Montgomery, Alabama 36109-0711
Mr. Mark A. Weeks, Secretary

And

City of Foley
P.O. Box 1750
Foley, Alabama 36536
Honorable John E. Koniar, Mayor

We, The Armory Commission of Alabama and the City of Foley, have come together to collaborate and to make an agreement for Memorandum of Understanding (MOU). The partners entering the MOU have agreed to the form of collaboration and so agree to the following articles and clauses:

Article I) Purpose and Scope: To establish the process by which the City of Foley may receive credit for the acquisition cost of a new site for an Alabama National Guard Armory towards the purchase price of the old Alabama National Guard Armory facility and property when the unit moves out and the old facility is vacated.

Article II) Background: The current Alabama National Guard Armory in Foley is land locked and has no room to grow. The current facility is located directly behind the City of Foley Municipal Complex. The City of Foley is interested in gaining this old facility if it is no longer to be used by the Alabama National Guard. There is a growth potential in the Foley area and The Armory Commission of Alabama has long range plans to build and develop a large National Guard Armory in the Foley area. The Armory Commission is therefore in need of a 30-acre site that is relatively flat with good soil conditions and is highly accessible with multiple avenues of ingress/egress. The City of Foley is willing to provide a suitable 30-acre site. There is an existing policy of The Armory Commission to allow a municipality donating a new site to receive credit for the acquisition cost of the new site to offset the purchase price of the old facility and property.

Article III) Roles and Responsibilities of The Armory Commission of Alabama: The Armory Commission will receive the fee simple title and Certificate of Title from the City of Foley on the agreed upon 30-acre site and work to expeditiously receive design and construction funds from National Guard Bureau (NGB) to begin the new Armory facility on the new 30-acre site. The Armory Commission will obtain an appraisal of the old facility and property and will provide a copy to the City of Foley. The Armory Commission will work to develop a median appraised value from the appraisal required by each party to provide. The Armory Commission will transfer the old facility and property to the City of Foley when the new facility is built and the National Guard Unit moves into the new facility and when the old facility is vacated with no further use by The Armory Commission and if the City of Foley complies with their respective requirements of this MOU.

Article IV) Roles and Responsibilities of the City of Foley: The City of Foley will provide The Armory Commission with fee simple title to the agreed upon 30-acre site. The City of Foley will pay for and provide for the recording of the deed for this property to The Armory Commission. The City of Foley will provide a Certificate of Title (in the required format) to The Armory Commission for this 30-acre site in order for the Armory Commission to receive approval to begin design and construction from NGB. The City of Foley will obtain an appraisal of the old facility and property and will provide a copy to The Armory Commission. The City of Foley will work to develop a median appraised value from the appraisal required by each party to provide. The City of Foley will produce and provide a copy of the acquisition cost of the new site to The Armory Commission.

Article V) Issues of Mutual Understanding: The Armory Commission and the City of Foley both desire to maintain an Alabama National Guard presence in this area. The Armory Commission is in need of a new site to construct a larger National Guard armory in order to continue and grow the National Guard presence in this area. The City of Foley is willing to provide a 30 acre site with the understanding that the Armory Commission will allow sale or procurement of the old facility by the City of Foley as consideration in accordance with the terms of this MOU.

Article VI) Compensation Details: The City of Foley will be responsible for paying all costs associated with providing the new 30-acre site, with required utility services on site, to The Armory Commission. The City of Foley will be responsible for paying all costs associated with providing and recording and delivering the fee simple deed on the new 30-acre site to The Armory Commission. The City of Foley will be responsible for paying all costs associated with providing and recording and delivering the Certificate of Title (in the required format) to The Armory Commission. Each party will be responsible paying all costs associated with obtaining and providing a copy (to the other party) of their required appraisal of the old facility and property. The City of Foley will be allowed to obtain the old facility by paying the difference between the established median appraised value of the old facility/property and the value of the new site as long as the price of the old facility/property is greater. If the value of the new site is greater than the established median appraised value of the old facility/property then the City of Foley may obtain the old facility and property for no additional costs. The Armory Commission will not pay any excess amount even if the value of the new site is greater than the established median appraised value of the old facility. The City of Foley will pay for the recording of the deed of old property when executed and provide a copy of the recorded deed to Armory Commission to close out their files.

Article VII) Effective Date: This Agreement shall become effective upon the last date of final execution of both parties below and will remain in effect in accordance with the terms and provisions of this MOU.

Article VIII) Signatures:



MARK A. WEEKS
Secretary
The Armory Commission of Alabama

3/5/13
(date)



JOHN E. KONIAR
Mayor
City of Foley

3/4/13
(date)