

**CERTIFICATE OF PROCEEDINGS  
OF  
THE CITY OF FOLEY, ALABAMA**

\_\_\_\_\_  
\_\_\_\_\_, 2024  
\_\_\_\_\_

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**Proceedings for Authorization  
of  
Economic Development Agreement  
(Octave Foley, LLC)**

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I, the undersigned, do hereby certify that (1) I am the duly elected, qualified and acting City Clerk of the City of Foley, Alabama (the "City"); (2) as such 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 attached pages constitute a complete, verbatim and compared copy of excerpts from all those parts of the minutes of a meeting of the City Council of the City duly held on April 1, 2024, pertaining to the matters referenced therein, 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 are complete, verbatim and compared copies of such Resolution as introduced and adopted by the City Council on such date and are in full force and effect without amendment or repeal in whole or in part.

IN WITNESS WHEREOF, I have hereunto set my hand as City Clerk of the City and have affixed the official seal of the City on the above date.

\_\_\_\_\_  
City Clerk of the City of Foley, Alabama

SEAL

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

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**Economic Development Agreement**

**for**

**Octave Foley, LLC**

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The City Council of the City of Foley, Alabama met in regular public session at City Hall in the City of Foley, Alabama, at 4:00 p.m. on April 1, 2024.

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

Present:       J. Wayne Trawick, Council President  
                  Vera J. Quaites  
                  Richard Dayton  
                  C. Rick Blackwell  
                  Charles J. Ebert

Absent:

The Mayor, Hon. Ralph Hellmich, 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 NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING AN  
ECONOMIC DEVELOPMENT AGREEMENT  
BY THE CITY OF FOLEY, ALABAMA  
AND  
OCTAVE FOLEY, LLC

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA:

ARTICLE 1

Definitions

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For purposes hereof:

**Agreement** means the Economic Development Agreement by the City and the Beneficiary attached to this Resolution as Exhibit B.

**Amendment No. 772** means Section 94.01 of the Constitution of Alabama of 2022 (formerly known as Amendment No. 772 to the Constitution of Alabama of 1901, as amended).

**Beneficiary** means Octave Foley, LLC .

**Bond Counsel** means Maynard Nexsen PC.

**City** means the City of Foley, Alabama.

**Council** means the City Council of the City.

**Octave Foley Development** shall have the meaning assigned in the Agreement.

**Public Notice** means the notice attached to this Resolution as Exhibit A.

## ARTICLE 2

### Representations

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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 delivery and performance of the Agreement by the City will provide for the economic growth and development of the City in furtherance of the public interest thereof.
- (b) The expenditure of public funds for the purposes specified in the Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.
- (c) The City caused the Public Notice to be published on March 20, 2024 in *The Onlooker*, which newspaper is of circulation in the City.
- (d) The aggregate indebtedness of the City (including without limitation the Total City Commitment under the Agreement) which will be outstanding under, and chargeable against the limitation upon indebtedness prescribed by, Amendment No. 772 on the Effective Date of the Agreement will not exceed fifty percent (50%) of the assessed valuation of the taxable property of the City as assessed for state taxation for the tax year ending September 30, 2023.
- (e) The representations of the City on Section 3.01 of the Agreement are true and correct.

## ARTICLE 3

### Authorization

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(a) The Council approves and authorizes the terms and provisions of, the representations and warranties of the City set forth in, and the obligations and transactions to be undertaken by the City pursuant to, the Agreement, with such changes thereto (by addition or deletion) which (i) do not (individually or in the aggregate) create any additional obligation, or extend or increase any stated obligation, of the City under the Agreement and (ii) the officers of the City conclusively approve by execution and delivery of the Agreement as provided by this Resolution.

(b) The Council authorizes and directs the Mayor, Finance Director, and City Clerk of the City to do and effect all of the following:

- (1) execute under seal, register, and attest the Agreement,
- (2) execute deliver, file and record such certificates, documents and notices with respect to such matters of fact as Bond Counsel determines to be necessary in connection with the Agreement,
- (3) deliver the Agreement when advised by Bond Counsel and
- (4) effect the performance of the Agreement.

## **ARTICLE 4**

### **Ratification**

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The Council ratifies and confirms all prior action taken, and all certificates, documents, petitions, proceedings and public notices delivered, by or on behalf of the City in furtherance of the transactions herein authorized.

## **ARTICLE 5**

### **Effect of Resolution**

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The Council authorizes this Resolution to take effect immediately and repeals any provision of any resolution, order, ordinance, or proceeding of the City to the extent of any conflict or inconsistency thereof with the provisions of this Resolution.

**EXHIBIT A**

**Legal Notice**

**LEGAL NOTICE  
OF  
PROPOSED ECONOMIC DEVELOPMENT ACTION  
AND RELATED PUBLIC EXPENDITURES  
OF  
CITY OF FOLEY, ALABAMA**

The City of Foley, Alabama (the "City") gives notice that the City Council of the City will meet in regular public session at 4:00 p.m. on Monday April 1, 2024 at City Hall in the City to consider, among other matters, the authorization, pursuant to the authority of Section 94.01 of the Constitution of Alabama of 2022, by the City of the payment, pursuant to an Economic Development Agreement by the City and SCP/BPG Magnolia Holdings, LLC , and Octave Foley, LLC (collectively the "Beneficiaries") from special public funds of the City, of certain economic incentive payments for a period of 15 years in consideration, and in support, of the establishment by the Beneficiaries of commercial, hotel and restaurant facilities to be located generally at the intersection of Foley Beach Express and County Highway 20 in the City (the "Magnolia Walk Development"), which the City considers in the public interest to be located in such area. The City expects to pay such economic incentive payments from the net proceeds of certain fees levied by the public facilities cooperative district of the City on the users and customers of the Magnolia Walk Development in respect of the costs incurred by the City for the construction, improvement, maintenance and operation of the public infrastructure that enables operation and use of the business facilities of the Magnolia Walk Development. The total economic incentive payments will not exceed, in any period, the total amount received by the City from such fees in such period, therefore the City does not presently expect to pay any amount of such economic incentive payments from the proceeds of taxes levied by the City. The City seeks to achieve, by undertaking its obligation to provide such economic incentive payments, to promote the local economic and industrial development of the City by the increase of employment, tourism and visitation, the supply of persons available for skilled and unskilled labor, economic activity for local businesses, and the tax and revenue base of the City. The business entities to whom or for whose benefit the City proposes to lend its credit and grant public funds or thing of value will be the Beneficiaries and any affiliate of any thereof. All interested persons may examine and review the proposed Economic Development Agreement, the proceedings for the levy of the user fees, and all related proceedings pertaining thereto, and make copies thereof at personal expense, and may obtain further public information with respect to the matters herein, at the offices of the City Administrator at City Hall in the City, during normal business hours, before and after the meeting of the City Council referenced herein.

**Exhibit B**

**Economic Development Agreement**

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**This Agreement, and any interest herein or obligation hereunder, is not negotiable and may be assigned or transferred (in whole or in part) only as provided herein.**

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**ECONOMIC DEVELOPMENT AGREEMENT  
(Octave Foley, LLC)**

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**Effective Date: \_\_\_\_\_, 2024**

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**CITY OF FOLEY, ALABAMA**

**and**

**OCTAVE FOLEY, LLC**

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This Agreement was prepared by Heyward C. Hosch and Ann Watford Todd of Maynard Nexsen PC.

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**ECONOMIC DEVELOPMENT AGREEMENT**  
**(Octave Foley, LLC)**

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This Agreement is made and delivered on the Effective Date by the following persons each of whom is identified herein as:

**Beneficiary:** Octave Foley, LLC, and the successors and assigns thereof

**City:** City of Foley, Alabama

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**ARTICLE 1**

**Consideration and Purpose; Amendment No. 772**

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**Section 1.01 Consideration and Purpose**

The City and the Beneficiary have made and delivered this Agreement to provide for the within Beneficiary Grant Funds to the Beneficiary in consideration of the public benefits of increased employment and public revenues to accrue to the City from the establishment of the within Octave Foley Development by the Beneficiary within the jurisdiction of the City.

**Section 1.02 Issuance Pursuant to Amendment No. 772**

The City certifies, declares and recites that the City has delivered and issued this Agreement pursuant to the authority of the within Amendment No. 772 to provide funds to be used in furtherance of the power and authority therein authorized to enable the City to effect the governmental purposes of this Agreement, having found and determined precedent thereto that the delivery and performance by the City of this Agreement is within the authority of, and is in full compliance with, said Amendment No. 772.

## ARTICLE 2

### Definitions

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For purposes of this Agreement:

**Amendment No. 772** means Section 94.01 of the Constitution of Alabama of 2022 (formerly known as Amendment No. 772 to the Constitution of Alabama of 1901, as amended).

**Applicable Business** shall have the meaning assigned in the Project User Fee Resolution.

**Beneficiary** means, on any date of determination, the Person in whose name the ownership of the Beneficiary Grant Funds is then most recently registered on the Registration of Ownership attached hereto.

**Beneficiary Grant Funds** means an amount equal to seventy-five percent (75%) of the Project User Fees received by the City, after the payment therefrom of all City Advances.

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

**City Administrator** means the City Administrator of the City and any successor office of the City with commensurate duties and functions.

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

**Effective Date** means \_\_\_\_\_, 2024.

**Finance Director** means the Finance Director of the City and any successor office of the City with commensurate duties and functions.

**Governmental Authority** means any agency, authority, board, bureau, commission, court, department, or instrumentality of the (i) United States of America, (ii) the State, or (iii) any county, municipality, political subdivision or public corporation established or organized under the Constitution and laws of the State.

**Octave Foley Development** means the hotel lodging and retail facilities to be established by the Beneficiary on the Octave Foley Development Area.

**Octave Foley Development Account** shall have the meaning assigned in Section 4.01(a)(1).

**Octave Foley Development Area** means the real property described on Appendix A.

**Person** means any natural person, corporation (for profit or nonprofit), general or limited partnership, limited liability company or partnership, joint venture, association, trust, unincorporated organization or juridical person, or Governmental Authority.

**Project** shall have the meaning assigned in the Project User Fee Resolution.

**Project User Fee Resolution** means the resolution of the District adopted on March 18, 2024, entitled "A Resolution To Impose Project User Fees For Magnolia Walk Development in the City of Foley, Alabama."

**Project User Fees** means the Project User Fees levied and collected by the District within the Octave Foley Development, in respect of the use of the Project, and provided to the City for the maintenance, operation, repair and replacement of the public infrastructure, including without limitation the Project, which serves or benefits the Octave Foley Development.

**Quarterly Payment Date** means:

(i) the tenth (10th) day of the second (2nd) month of a Calendar Quarter until and including May 10, 2039; and

(ii) August 10, 2039.

**Registration of Ownership** means the Registration of Ownership attached hereto for the purpose of identification of the Beneficiary on any date of determination.

**State** means the State of Alabama.

**Termination Date** shall have the meaning assigned in Article 8.

**Total City Commitment** means an amount equal to \$\_\_\_\_\_;

**Transaction Participants** means collectively the City and the Beneficiary.

**ARTICLE 3**

**Representations**

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**Section 3.01 The City**

The City delivers this Agreement on the Effective Date pursuant to the authorization hereof by proceedings duly had and taken by the governing body thereof under the authority of Amendment No. 772 and the applicable laws of the State, and having found and determined precedent thereto:

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

(b) The assessed value of the taxable property in the City for the fiscal year ending September 30, 2023 was \$622,904,520.

(c) The indebtedness of the City incurred pursuant to, and chargeable against the limitation of Amendment No. 772 is not more than fifty percent of the assessed value of the City for the fiscal year ending September 30, 2023.

(e) The Project User Fees have been validated and confirmed by the Circuit Court of Baldwin County, Alabama by judgements entered on \_\_\_\_\_, 2024 in \_\_\_\_\_.

(f) There is no approval of, or filing with, any Governmental Authority is required for the validity, or performance by the City, of this Agreement.

(g) There is no litigation is pending, or threatened in writing, in which a result adverse to the City would have a material and adverse effect upon the validity, or performance by the City, of this Agreement.

### **Section 3.02 The Beneficiary**

The Beneficiary delivers this Agreement on the Effective Date pursuant to due authorization thereof in compliance with the applicable laws of the State and having found and determined precedent thereto:

(a) The Beneficiary has made all filings and notices, and obtained all approvals or consents of, any Governmental Authority required for the business operations of the Beneficiary in the State and the validity, and performance by the Beneficiary, of this Agreement.

(b) There is no litigation is pending, or threatened in writing, in which a result adverse to the Beneficiary would have a material and adverse effect upon the validity, or performance by the Beneficiary of, this Agreement or the establishment of the Octave Foley Development.

(c) The delivery and performance of this Agreement by the Beneficiary will not cause or result in a default or violation under any contractual agreement or order or ruling of any Governmental Authority binding upon, or in effect with respect to, the Beneficiary which would have a material and adverse effect upon the validity, or performance by the Beneficiary of, this Agreement, or the establishment by the Beneficiary of the Octave Foley Development.

## ARTICLE 4

### Agreements of Beneficiary and City

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#### Section 4.01 General Agreements of Beneficiary

The Beneficiary covenants and agrees:

- (1) The City will apply all Project User Fees to the payment of City Advances prior to the payment of any thereof to the Beneficiary.
- (2) The Beneficiary will provide all reasonable assistance to the City and the District to cause each Applicable Business located within the Project Fee Area to fully comply with the Project User Fee Resolution.
- (3) The obligation of the City for the payment of the Project User Fees on any Quarterly Payment Date: (i) is contingent and effective only upon receipt of a positive amount of Project User Fees for the then immediately preceding Calendar Quarter; (ii) is a limited obligation payable solely from the amount of Project User Fees received by the City and credited to the Octave Foley Development Account on each Quarterly Payment Date, (iii) will not exceed the Total City Commitment, (iv) does not constitute a direct, indirect or contingent general obligation, or charge against the general credit, financial assets, or taxing power, of the City, and (v) is subject to the prior payment, to the extent provided by law, from the Project User Fees of the reasonable and necessary governmental expenses of operating the City; and (v) no covenant or agreement in this Agreement will operate or be construed as a covenant or agreement of any officer, agent, employee, or member of the governing body, of the City in the individual capacity thereof and none of such persons shall at any time be liable personally for observance or performance of any provision of the Agreement or be subject to any personal accountability or liability by reason of the delivery of this Agreement.

**Section 4.02 Collection and Payment of Project User Fees by City**

- (a) The City agrees the City will:
- (1) on the Effective Date, establish (by separate account or by specific recordation on the financial records of the City) a special account designated the "Octave Foley Development Account" to be held by the City for the credit thereto of the Project User Fees received by the City; and
  - (2) cause the District to levy, collect and deliver to the City the Project User Fees pursuant to agreements by the City and the District with respect thereto; and
  - (3) credit to the Octave Foley Development Account all Project User Fees when and as received by the City.
- (b) The Project User Fees will not accrue or bear interest.
- (c) The City authorizes and directs the City Administrator and the Finance Director to pay to the Beneficiary on each Quarterly Payment Date (or the then next succeeding business day) which occurs prior to, or on, the Termination Date, in lawful currency of the United States of America immediately available, an amount equal to the Project User Fees which shall have been received by the City for the then immediately preceding Calendar Quarter and are credited to the Octave Foley Development Account.

## ARTICLE 5

### Assignment and Transfer

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The Transaction Participants agree and covenant that:

- (1) This Agreement is not negotiable, and the Beneficiary may not, in whole or in part, assign, encumber, pledge or transfer to any Person or for any purpose, any interest in this Agreement, or delegate to any Person any duty or obligation thereof pursuant to this Agreement, without:
  - (i) the prior approval thereof by resolution of the governing body of the City; and
  - (ii) presentation of this Agreement to the City Administrator for endorsement on the Registration of Ownership of the date of transfer and the name and address of the transferee.
- (2) Any attempted assignment, encumbrance, pledge or transfer of an interest, or attempted delegation of a duty or obligation, without compliance with Article 6(1) shall be null and void and unenforceable against the City.
- (3) Each Person who acquires, or succeeds to, ownership of the Beneficiary Grant Funds shall be subject to all defenses and rights of the City at law or in equity then applicable in the premises and to all payments of Beneficiary Grant Funds theretofore made by the City.
- (4) This Agreement does not constitute a "negotiable instrument" within the meaning, or for the purpose, of , and a transferee of this Agreement will not have the rights and remedies of a "holder in due course" provided by, Article 3 of the Alabama Uniform Commercial Code.
- (5) This Agreement does not constitute a "financial asset" or a "security" within the meaning, or for the purpose, of, and a transferee of this Agreement will not have the rights and remedies of a "bona fide purchaser" provided by, Article 8 of the Alabama Uniform Commercial Code.

## ARTICLE 6

### Amendment

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The Transaction Participants agree and covenant the definitions, provisions and terms of this Agreement may be amended only by written agreement duly authorized, executed and delivered by each of the Transaction Participants.

## ARTICLE 7

### Remedies

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The Transaction Participants agree and covenant that each Transaction Participant shall have and may exercise all rights and remedies available at law or in equity under the laws of the State for the conservation, enforcement and protection of the rights and interests thereof under this Agreement.

## ARTICLE 8

### Term and Termination of Agreement

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The Transaction Participants agree and covenant that this Agreement, and all agreements, obligations and undertakings herein, will become effective on the Effective Date and will continue in full force and effect thereafter until the first to occur of the following dates (the "Termination Date") whereupon all agreements and obligations of the Transaction Participants shall be discharged and terminated without recourse:

- (1) The date on which the City shall have paid to the Beneficiary an amount equal to the Total City Commitment.
- (2) August 10, 2039 (the final Quarterly Payment Date).
- (3) The date on which the Transaction Participants terminate this Agreement by written instrument duly authorized, executed and delivered thereby.

## ARTICLE 9

### Provisions of General Application

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The Transaction Participants covenant and agree as follows:

- (a) **Governing Law:** This Agreement is governed by, and will be construed in accordance with, the laws of the State of Alabama without regard to principles of conflict of laws.
- (b) **Binding Effect:** This Agreement is enforceable by, and binding upon, the respective successors and assigns of each Transaction Participant.
- (c) **Counterparts:** This Agreement may be executed in several counterparts each of which shall constitute the same agreement.
- (d) **Enforceability:** If any provision herein shall be unenforceable, the remaining provisions hereof will not be affected thereby and will remain in full force and effect.
- (e) **Notices; Delivery:** Any notice given hereunder must be delivered as provided on Appendix B.
- (f) **No Jury Trial:** Each Transaction Participant (i) irrevocably waives, to the extent permitted by law, any right to trial by jury in any action or proceeding under, or related to, this Agreement and (ii) agrees that no Person has represented (by expression or implication) that a Transaction Participant would not seek to enforce such waiver in the event of litigation.
- (g) **No Joint Venture:** This Agreement does not operate, and cannot be construed, to create a joint venture or partnership by or among the Transaction Participants.
- (h) **No Other Beneficiaries:** This Agreement is solely for the benefit of the Transaction Participants, and the successors and assigns thereof, and no other Person has or may enforce any benefit, interest or rights under or by virtue of this Agreement.
- (i) **Final and Full Contract:** This Agreement constitutes the final and full contractual agreement of the Transaction Participants and replaces and supersedes all prior or other agreements (written or oral) relating to the subject matter hereof.

**EXECUTION BY CITY**

IN WITNESS WHEREOF, the City has caused this Agreement to be executed under seal and attested in the name of the City by officers thereof duly authorized thereunto on the Effective Date.

**CITY OF FOLEY, ALABAMA**

By \_\_\_\_\_  
Mayor

S E A L

ATTEST: \_\_\_\_\_  
City Clerk

**EXECUTION BY BENEFICIARY**

IN WITNESS WHEREOF, the Beneficiary has caused this Agreement to be executed under seal by an officer or legal representative thereof duly authorized thereunto on the Effective Date.

**OCTAVE FOLEY, LLC**

By: \_\_\_\_\_, manager

By: \_\_\_\_\_

Its \_\_\_\_\_

**REGISTRATION OF OWNERSHIP**

The undersigned City Administrator hereby certifies that this Agreement has been registered in the financial records of the City as a claim upon the Octave Foley Account and the Beneficiary Grant Funds payable therefrom as provided in the Agreement.

<b>Date</b>	<b>Name and Address</b>	<b>City Administrator</b>

**APPENDIX A**

**Octave Foley Development Area**

## APPENDIX B

### Notices

#### A. Addresses

- |  |                    |
|--|--------------------|
| 1. The City  | 2. The Beneficiary |
| City of Foley, Alabama<br>407 E. Laurel Avenue<br>Foley, Alabama 36535<br>Attn: City Administrator | Octave Foley, LLC  |

#### B. Manner of Delivery

1. United States Postal Service

Delivery may be made by United States certified or registered mail, return receipt requested, postage pre-paid.

2. Private Delivery Service

Delivery may be made by a private delivery service which is accepted by the Internal Revenue Service as set forth on [IRS.gov/PDS](https://www.irs.gov/PDS).

3. Electronic Means

Communication by electronic mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords or authentication keys, or another method or system.

Duly passed and adopted on this April 1, 2024.

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

SEAL

Attest: \_\_\_\_\_  
City Clerk

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Transmitted to and approved by the Mayor on this April 1, 2024

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Mayor of the City of Foley, Alabama

After said resolution had been discussed and considered in full by the Council, it was moved by Councilmember \_\_\_\_\_ that said resolution be now placed upon its final passage and adopted. The motion was seconded by Councilmember \_\_\_\_\_. 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, Council President  
Vera J. Quaites  
Richard Dayton  
C. Rick Blackwell  
Charles J. Ebert

Nays:

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.

**Approval of Minutes:**

Each of the undersigned does hereby approve, and waive notice of, the date, time, place and purpose of the meeting of the Foley City Council recorded in the above and foregoing minutes thereof and does hereby approve the form and content of the above and foregoing minutes and resolution therein.

\_\_\_\_\_  
Council President

\_\_\_\_\_  
Member of Council

\_\_\_\_\_  
Member of Council

\_\_\_\_\_  
Member of Council

\_\_\_\_\_  
Member of Council

SEAL

Attest: \_\_\_\_\_  
City Clerk