

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

**Economic Development Agreement
for
Blackwater Real Estate, LLC

(Foley Crossroads)**

The City Council of the City of Foley, Alabama met in special public session at City Hall in the City of Foley, Alabama, at 4:00 p.m. on August 7, 2023.

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
BLACKWATER REAL ESTATE, LLC

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

ARTICLE 1

Definitions

For purposes hereof:

Agreement means the Economic Development Agreement by the City, the District, and the Developer attached to this Resolution as Exhibit B.

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

Bond Counsel means Maynard Nexsen PC.

City means the City of Foley, Alabama.

Council means the City Council of the City.

Developer means Blackwater Real Estate, LLC.

District means The City of Foley Public Facilities Cooperative District.

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

ARTICLE 2

Representations

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 _____, 2023 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, 2022.

ARTICLE 3

The Agreement

(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 (i) execute under seal, register, and attest the Agreement, (ii) 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, (iii) deliver the Agreement when advised by Bond Counsel and (iv) effect the performance of the Agreement.

ARTICLE 4

Ratification

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

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**

Notice is hereby given that the City Council (the "Council") of the City of Foley, Alabama (the "City") will meet in regular public session at 4:00 p.m. on Monday, August 7, 2023 at City Hall in the City to consider, among other matters, the authorization, pursuant to the authority of Amendment No. 772 to the Constitution of Alabama of 2022, of an Economic Development Agreement (Foley Crossroads) (the "Agreement") by the City, The City of Foley Public Facilities Cooperative District (the "District") and Blackwater Real Estate, LLC (the "Developer"). The Agreement provides (i) the Developer will establish commercial and retail facilities to be located in the City on County Road 20 at the southwest corner of the intersection of Mifflin Road and Foley Beach Express (the "Foley Crossroads Development") and (ii) the City will pay and provide, from the public funds thereof, public roads and ways, and related improvements, to provide access to the Foley Crossroads Development and an amount of approximately \$5,700,000 for the acquisition of land and other costs for Foley Crossroads Development. The City expects the District will levy certain project user fees (generally equivalent to one percent of gross sales within Foley Crossroads Development) within the Foley Crossroads Development on the customers of the commercial and retail facilities therein, for a period of approximately twelve years in certain facilities and fifteen years in certain facilities, for the use of the public roads and ways constructed to benefit and support Foley Crossroads Development. The District will deliver the proceeds of the project user fees, when and as received, to the City for reimbursement of the costs of such roads and the ongoing maintenance, repair and operation thereof. 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 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 District and the Developer and any affiliate thereof. All interested persons may examine and review the Agreement, and all relevant 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 referenced herein.

Exhibit B

Economic Development Agreement

This Agreement, and any interest herein or obligation hereunder, is not negotiable and may not be assigned or transferred.

**ECONOMIC DEVELOPMENT AGREEMENT
(Foley Crossroads)**

Effective Date: _____, 2023

CITY OF FOLEY, ALABAMA

and

THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT

and

BLACKWATER REAL ESTATE, LLC

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

ECONOMIC DEVELOPMENT AGREEMENT
(Foley Crossroads)

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

City: **City of Foley, Alabama**

Developer: **Blackwater Real Estate, LLC**

District: **The City of Foley Public Facilities Cooperative District**

ARTICLE 1

Consideration and Purpose; Amendment No. 772

Section 1.01 Consideration and Purpose

The City, the District and the Developer have made and delivered this Agreement to provide for the within-referenced Public Funds Contributions to the District and the Developer, for their respective use in connection with the within-referenced Development, in consideration of the respective agreements and undertakings thereof in this Agreement and the public benefits of increased employment and public revenues to accrue from the establishment of such Development by the Developer within the jurisdiction of the City and the District.

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-referenced Amendment No. 772 to provide funds to be used in furtherance of the power and authority therein authorized to enable the City and the District 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

For purposes of this Agreement:

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

Development means the commercial and retail facilities to be established by the Developer on real property of approximately 10.39 acres located in the City on County Road 20 at the southwest corner of the intersection of Miflin Road and Foley Beach Express.

Development Public Roads means the public roads and ways, and related public improvements described on Appendix A.

Development Site means the real property described on Appendix B.

Effective Date means _____, 2023.

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.

Person means any individual, corporation, general or limited partnership, joint venture, limited liability company, limited liability partnership association, trust, unincorporated organization, or Governmental Authority.

Project User Fee Resolution means the Resolution of the District adopted on August 7, 2023 for the levy of the Project User Fees.

Project User Fees means the Project User Fees levied and collected by the District pursuant to the Project User Fee Resolution in the Development with respect to the use of the Development Public Roads.

Public Funds Contributions means collectively the contribution and expenditure of public funds by the City pursuant to Section 4.01.

Publix Entity means Publix Super Markets, Inc., and all affiliates, assigns and successors thereof.

Publix Entity Opening Day means that date on which the Publix Entity shall have first opened to the public for business a fully stocked commercial grocery store of _____ square feet within the Development.

State means the State of Alabama.

Transaction Participants means collectively the City, the District and the Developer.

ARTICLE 3

Representations

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: (i) no approval of, or filing with, any Governmental Authority is required for the validity, or performance by the City, of this Agreement; (ii) 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; and (iii) the delivery and performance of this Agreement by the City 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 City which would have a material and adverse effect upon the validity, or performance by the City, of this Agreement.

Section 3.02 The District

The District 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: (i) no approval of, or filing with, any Governmental Authority is required for the validity, or performance by the District, of this Agreement; (ii) no litigation is pending, or threatened in writing, in which a result adverse to the District would have a material and adverse effect upon the validity, or performance by the District, of this Agreement; and (iii) the delivery and performance of this Agreement by the District 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 District which would have a material and adverse effect upon the validity, or performance by the District, of this Agreement.

Section 3.03 The Developer

The Developer 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: (i) the Developer has made all filings and notices, and obtained all approvals or consents of, any Governmental Authority required for the business operations of the Developer in the State and the validity, and performance by the Developer, of this Agreement; (ii) no litigation is pending, or threatened in writing, in which a result adverse to the Developer would have a material and adverse effect upon the validity, or performance by the Developer of, this Agreement or the establishment of the Development; and (iii) the delivery and performance of this Agreement by the Developer 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 Developer which would have a material and adverse effect upon the validity, or performance by the Developer of, this Agreement, or the establishment by the Developer of the Development.

ARTICLE 4

Agreements of City, Developer and Developer

Section 4.01 Agreements of City

The City agrees the City will:

- (1) acquire and construct the Development Public Roads, in accordance with the specifications of the City for the construction of public roads, by _____, 20____; and
- (2) convey the Development Public Roads to the District by statutory warranty deed ; and
- (3) provide to the Developer in lawful currency of the United States of America:
 - (i) the amount of \$2,700,000 on any date on, or after, the date on which the Developer, or an affiliate thereof, acquires title to the Development Site and within 30 days of receipt of written request of the Developer therefor ;and
 - (ii) the amount of \$3,000,000 on any date after the Publix Entity Opening Date and within 30 days of receipt of written request of the Developer therefor.

Section 4.02 Agreements of District

The District agrees the District will own, and maintain with funds provided by the City, the Development Public Roads and cause the Development Public Roads to be used for the benefit and support of the Development.

Section 4.03 Agreements of the Developer

The Developer agrees the Developer will:

- (1) cause the Development to be placed in service by _____ ; and
- (2) during the period in which the Developer, or any affiliate thereof or Person related thereto, owns an interest in the Development or the Development Site, provide all assistance reasonably requested by the District to enable the District to levy and collect the Project User Fees in the Development as provided in the Project User Fee Resolution.

ARTICLE 5

Amendment

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 6

Assignment and Transfer

The Transaction Participants agree and covenant that this Agreement is not negotiable and the respective interests thereof in and to this Agreement may not, in whole or in part, be assigned, encumbered, pledged or transferred to any Person or for any purpose, and any attempted assignment, encumbrance, pledge or transfer by any Transaction Participant shall be null and void and unenforceable against the other Transaction Participants.

ARTICLE 7

Remedies

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

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 Transaction Participants terminate this Agreement by written instrument duly authorized, executed and delivered thereby.

ARTICLE 9

Provisions of General Application

The Transaction Participants covenant and agree as follows:

- (a) **Governing Law:** This Agreement is governed by, and will 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 C.
- (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 DISTRICT

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

**THE CITY OF FOLEY PUBLIC FACILITIES
COOPERATIVE DISTRICT**

By _____
Chair

SEAL

ATTEST: _____
Secretary

EXECUTION BY DEVELOPER

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

BLACKWATER REAL ESTATE, LLC

By: _____

Its _____

APPENDIX A

Development Public Roads

APPENDIX B

Development Site

APPENDIX C

Notices

A. Addresses

- | | |
|---|---|
| 1. The City

City of Foley, Alabama
407 E. Laurel Avenue
Foley, Alabama 36535
Attn: City Administrator | 2. The Developer

Blackwater Real Estate, LLC
700 Montgomery Highway #186
Vestavia Hills, Alabama 35216 |
|---|---|
3. The Beneficiary

To the address thereof on the Registration of Ownership and Address

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 August 7, 2023.

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

SEAL

Attest: _____
City Clerk

Transmitted to and approved by the Mayor on this August 7, 2023

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: 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.

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

S E A L

Attest: _____
City Clerk

STATE OF ALABAMA

BALDWIN COUNTY

CERTIFICATE OF CITY CLERK

_____, 2023

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 special meeting of the City Council of the City duly held on August 7, 2023, 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, on the above date.

City Clerk of the City of Foley, Alabama

S E A L