

## **CITY OF FOLEY, ALABAMA**

### **CONTRACT—RIGHT OF WAY USE AGREEMENT**

THIS AGREEMENT, made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Foley, Alabama (hereinafter “City”), and COLT Foley, LLC (hereinafter “Colt Foley” or “Permittee”) doing business at 118 West Laurel Avenue, Foley, Alabama.

#### **WITNESSETH:**

WHEREAS, COLT Foley desires to encroach on the right-of-way of the public roads designated as West Laurel Avenue, North Alston Street and West Jessamine Avenue for the purposes of constructing or erecting dining and picnic tables, covered outdoor kitchen area containing smokers, and a dumpster, with dumpster pad, within the said right-of-way as more particularly shown on the diagrams, attached hereto as Exhibit A, and incorporated herein.

WHEREAS, it is to the material advantage of COLT Foley to effect this encroachment, and the City, in the exercise of authority conferred upon it by statute, is willing to permit the encroachment within the limits of the right-of-way as indicated, subject to the conditions of this agreement.

NOW, THEREFORE, IT IS AGREED, in consideration of the mutual promises and covenants contained herein, that the City hereby grants to Permittee the right and privilege to make this encroachment, upon the following conditions, to wit:

1. Permittee binds and obligates itself, its successors and assigns to erect and maintain the encroaching structure in such reasonably safe and proper condition including aesthetic appearance, that it will not interfere with, or endanger, travel upon said highway, nor obstruct nor interfere with the proper maintenance thereof, and if at any time the City shall require the removal of or changes in the location of the said items, that the said Permittee binds itself, its successors and assigns, to promptly remove or alter the said items, in order to conform to the said requirement, without any cost to the City;
2. Permittee agrees to comply with the City of Foley municipal ordinances and regulations should any roadway or walkway, or portion thereof, need to be blocked or closed during construction. Further, the Permittee agrees to provide advance notification to, and obtain a Right of Way Use Permit from the City, for any such roadway or walkway closure, as necessary. Construction, installation, and maintenance activities are further restricted from blocking or closing a roadway or walkway at certain times of the day. These activities cannot occur during the following times:

7 – 9 a.m., Monday – Friday  
4 – 6 p.m., Monday – Friday

3. Permittee agrees to obtain a ROW Permit from the Engineering Department prior to performing any construction that involves the cutting or breaking of any roadway or walkway pavement.
4. The City retains the right and privilege to remove or alter the said items whenever an emergency or other situation requires prompt action and the City may recover the cost associated with removing or altering said encroachment.
5. Permittee agrees to indemnify and hold harmless the City, its officers and employees, from and against all damage, including injury to persons or damages to property, expenses or other liability which may result from, arise out of, or be brought by reason of the encroachment.
6. Permittee further agrees to defend any lawsuits which may be brought against the City, its officers and employees by reason of the operation of the above-mentioned encroachment and pay any claims or judgments resulting from or preceding such lawsuits. Such agreement as to indemnification and defense shall be construed to the end that the City, its officers and employees, will suffer no liability or expense because of such claims or legal actions.
7. Permittee, at its own expense, shall purchase and maintain for the duration of this agreement Comprehensive General Liability Insurance and contractual liability assumed under this agreement. Such policy or policies of insurance shall be for limits of not less than \$2,000,000 bodily injury and property damage liability and will be subject to future review and adjustment at the request of the City. Certificates of Insurance shall be furnished to the City Engineer, with a copy to the City Clerk, containing the provision that 30 days written notice will be given to the City prior to cancellation or change in the required coverage. The provision of such insurance shall in no way replace or otherwise limit the obligation to defend and pay claims described previously. Notwithstanding any other section herein, failure to maintain insurance as provided herein constitutes a material breach of this Agreement and the City would have the right to immediately terminate this Agreement and revoke the Permittee's rights and privileges hereunder.
8. Permittee understands that public utilities, power companies, cable television franchise holders, fiber optic and telecommunications franchise holders, and other holders of easements in City right-of-way have or may have rights paramount to those of Permittee to use of lands under the City right-of-way at the location specified in this Agreement.

9. Permittee waives any and all claims for damages or other relief which it may now or hereafter have against the City for interference with or damage to its facilities located within the City rights-of-way way arising out of negligent act or omission.
10. Permittee agrees this Agreement may be terminated, and any privileges created hereunder revoked, by the City in the event the Permittee fails to comply with any of the above-stated provisions, procure a business license or timely remit sales and business license taxes.
11. Permittee and City agree the initial term of this Agreement (“Initial Term”) is five years. This Agreement may be renewed under the same provisions for additional five (5) year renewal terms by the Permittee after giving notice to the City no more than 90 and no less than 60 days prior to the expiration date of the Initial Term, subject to City’s agreement. Permittee understands and agrees that this Agreement confers no vested rights to any ongoing or continued activities, and any and all activities authorized by this Agreement are temporary in nature.
12. This Agreement is non-transferable. Only the Permittee with whom this Agreement was entered shall be permitted to engage in the activities authorized herein.
13. This Agreement approved herein contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations of modifications concerning this Agreement shall be of no force and effect excepting a subsequent modification authorized in writing, and duly signed by the parties of this Agreement.

**IN WITNESS WHEREOF**, the Parties, by and through their duly authorized representatives, have set their hands and seals this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE CITY OF FOLEY, ALABAMA

\_\_\_\_\_  
Ralph G. Hellmich  
Mayor

PERMITTEE:  
COLT Foley, LLC

\_\_\_\_\_  
[\_\_\_\_\_name]  
Its: \_\_\_\_\_

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that RALPH G. HELLMICH, who holds the position of Mayor with the CITY OF FOLEY, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, they executed the same voluntarily on the day the same bears date with the authority and intent to bind the City of Foley.

GIVEN under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_  
(NOTARIAL SEAL)

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_ whose name is signed to the foregoing instrument as the \_\_\_\_\_ of COLT Foley, LLC and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date with the full authority and intent to bind said business.

GIVEN under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_  
(NOTARIAL SEAL)

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
(seal)

APPROVED AS TO INSURANCE:

Attest:

\_\_\_\_\_

\_\_\_\_\_