

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into as of _____, 2017, by and among THE PUBLIC CULTURAL AND ENTERTAINMENT FACILITIES COOPERATIVE DISTRICT OF THE CITY OF FOLEY, ALABAMA, an Alabama public corporation and its successors and assigns (the "Entertainment Cooperative District"), THE PUBLIC ATHLETIC AND SPORTS FACILITIES COOPERATIVE DISTRICT OF THE CITY OF FOLEY, ALABAMA, an Alabama public corporation and its successors and assigns (the "Sports Cooperative District"), THE CITY OF FOLEY, ALABAMA, a municipal corporation ("City"), and FOLEY HOLDINGS LLC, an Alabama limited liability company and its successors and assigns ("Provider"). The Entertainment Cooperative District and the Sports Cooperative District are sometimes individually referred to in this Agreement as "Owner", and collectively as "Owners".

A. The Sports Cooperative District owns real property more particularly described on EXHIBIT "A", attached and incorporated by this reference ("Sports Property"), and on which said Sports Property are currently sixteen multi-purpose sports fields;

B. The Entertainment Cooperative District owns real property more particularly described on EXHIBIT "B", attached and incorporated by this reference ("Entertainment Property"), and on which said Entertainment Property there is currently under construction an event facility;

C. The Sports Property and Entertainment Property are sometimes individually referred to in this Agreement as the "Property", and collectively as "Properties";

D. The Owners and City desire Provider to offer to the invitees and licensees of the Properties certain internet access services via a wireless connection between an access point and the relevant invitee's/licensee's wireless internet enabled device; and

E. Provider desires to provide certain internet access services via a wireless connection between an access point and the relevant invitee's/licensee's wireless internet enabled device.

In consideration of the mutual promises and conditions set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City, Owners, and Provider all agree as follows:

1. ADDITIONAL DEFINITIONS.

"Services" means internet access offered by Provider to invitees and licensees of the Properties via a wireless connection between an access point and the relevant invitee's/licensee's wireless internet enabled device.

"System" means all equipment, facilities, antennas, internal and external wiring, coaxial cable, fiber optic cable, lines, wireless delivery equipment, and all related equipment and molding that Provider (or Provider's contractors) installs on, under, over, or across any portion of the

Property that is used to deliver certain Services to the licensees and invitees of the Property. During the term of this Agreement, all parts of the System shall be the property of (and under the control of) the Provider.

“Fiber” means wiring, coaxial cable, fiber optic cable and lines (which constitute a portion of the System) installed on the Property of an Owner by the Provider or its contractors which is serviceable and in working order. Fiber does not include any cut or non-workable wiring, coaxial cable, fiber optic cable and lines.

“Fiber Purchase Price” means an amount of cash (or cash equivalent) calculated as follows: (a) the actual and reasonable out of pocket cost of the Fiber plus the actual and reasonable out-of-pocket cost of Fiber installation on the Property; less (b) the amount of straight line depreciation over an assumed useful life of twenty-five (25) years. Provider shall promptly provide reasonable documentation of the out-of-pocket costs of the Fiber and installation thereof.

“Non-Fiber Purchase Price” means an amount of cash (or cash equivalent) calculated as follows: (a) the actual and reasonable out-of-pocket cost of the relevant non-Fiber System component being purchased plus the actual and reasonable out-of-pocket cost of its installation on the Property; less (b) the amount of straight line depreciation over an assumed useful life of -ten (10) years. Provider shall promptly provide reasonable documentation of the out-of-pocket costs of the non-Fiber System components and installation thereof.

“Internet and Marketing Services” means the Internet access services, marketing, and related services provided over the System.

“Additional Services” means any services other than the Internet and Marketing Services that Provider elects from time to time in its discretion to offer over the System, including, without limitation, premium content and increased or dedicated bandwidth.

2. SPORTS PROPERTY EASEMENT

(a) Pursuant to the terms and conditions of this Agreement, the Sports Cooperative District hereby creates, grants, bargains, sells, and conveys to the Provider and its successors and assigns, a non-exclusive easement under, above, across, through and upon the Sports Property for the purpose of installing, constructing, upgrading and maintaining the System, and providing the Services and Additional Services to licensees and invitees of the Property to have and to hold unto the Provider and its successors and assigns during the term of this Agreement.

(b) Prior to Provider exercising any of its rights with regard to the installation of any lines, equipment or other physical components of the System within the Sports Property, Provider shall give the Sports Cooperative District written notice and such notice shall include (i) written plans (which shall identify the proposed location of the lines and equipment (the “Sports Plans”), and (ii) the anticipated commencement and completion dates for the work. The Sports Plans for any installation which requires disturbance of the Sports Property or improvements thereon, or the location of lines in, on, above, or under the Sports Property, shall be subject to the prior written approval of the Sports Cooperative District, which such approval shall not be unreasonably withheld, conditioned or delayed.

If work is commenced by Provider, the work shall include the repair or replacement of any affected landscaping, paving or other existing improvements on the Sports Property. Upon completion of the work which involves the burial of lines, the Sports Cooperative District may require Provider to provide an engineer's sketch with regard to the location, depth and other relevant information in connection with the installed lines within the Sports Property.

(c) During the term of this Agreement, from and after substantial completion of the initial System installation on the Sports Property, Provider shall maintain in good condition and repair as reasonably necessary, the System in accordance with all applicable laws.

3. ENTERTAINMENT PROPERTY EASEMENT

(a) Pursuant to the terms and conditions of this Agreement, the Entertainment Cooperative District hereby creates, grants, bargains, sells, and conveys to the Provider and its successors and assigns, a non-exclusive easement under, above, across, through and upon the Entertainment Property for the purpose of installing, constructing, upgrading and maintaining the System, and providing the Services and Additional Services to licensees and invitees of the Property to have and to hold unto the Provider and its successors and assigns during the term of this Agreement.

(b) Prior to Provider exercising any of its rights with regard to the installation of any lines, equipment or other physical components of the System within the Entertainment Property, Provider shall give Entertainment Cooperative District written notice and such notice shall include (i) written plans (which shall identify the proposed location of the lines and equipment (the "Entertainment Plans")), and (ii) the anticipated commencement and completion dates for the work. The Entertainment Plans for any installation which requires disturbance of the Entertainment Property or improvements thereon, or the location of lines in, on, above, or under the Entertainment Property, shall be subject to the prior written approval of the Entertainment Cooperative District, which such approval shall not be unreasonably withheld, conditioned or delayed. If work is commenced by Provider, the work shall include the repair or replacement of any affected landscaping, paving or other existing improvements on the Entertainment Property. Upon completion of the work which involves the burial of lines, the Entertainment Cooperative District may require Provider to provide an engineer's sketch with regard to the location, depth and other relevant information in connection with the installed lines within the Entertainment Property.

(c) During the term of this Agreement, from and after substantial completion of the initial System installation on the Entertainment Property, Provider shall maintain in good condition and repair as reasonably necessary, the System in accordance with all applicable laws.

4. PRELIMINARY PLANS AND RULES.

(a) EXHIBIT "C", attached and incorporated by this reference, are the preliminary Sports Plans and Entertainment Plans which are been agreed to by the Owners. Such attached plans are subject to change in accordance with Sections 2(b) and 3(b), above.

(b) Provider warrants to Owners that it shall conform to the rules set forth on EXHIBIT “D”, attached and incorporated by this reference.

(c) If at any time during the term of this Agreement, Owner shall alter its sports fields, lights, buildings or improvements, or otherwise require the relocation of any elements of the System, Provider, upon reasonable written notice from Owner, shall relocate relevant System equipment and Fiber at the sole reasonable expense of Owner.

5. **PROVISION OF SERVICES.**

(a) During the term of this Agreement, each Owner hereby grants Provider: (i) the non-exclusive right to provide the Services and Additional Services to licensees and invitees of the Property; and (ii) to reasonably market the Services and Additional Services on the Property.

(b) Owners may, for their own internal purposes, use any Internet or data service provider they may choose from time to time, and for their internal business purposes are not required to use the System for Internet or data.

(c) Owner, for the term of this Agreement, shall use reasonable efforts to discourage and not actively permit (i) parties to promote, or market any alternate provider of services at the Properties that compete with the Services (other than from time to time Internet or data providers that may be sponsoring a particular event or team on the Property); (ii) any action that is designed to encourage licensees and invitees of the Properties to choose another Internet or data provider’s services that compete with the Services (other than from time to time Internet or data providers that may be sponsoring a particular event or team on the Property); or (iii) allow a third party to install equipment or facilities on the Property to enable another provider to provide services that directly competes with the Services. Notwithstanding anything herein to the contrary, Provider acknowledges that Owner cannot and does not guarantee exclusivity to the extent that any competing Internet or data provider is capable of transmitting its signals directly to licensees or invitees via microwave or satellite or existing telephone or electrical lines without making any use of the Owner’s Property. Provider shall be entitled to enforce these covenants by action for injunction, in addition to its other remedies at law or in equity.

6. **NON-EXCLUSIVE RIGHT OF ENTRY.** Except as may be provided herein, each Owner hereby grants to Provider a non-exclusive right of entry upon, under, over, through and across the Property for ingress and egress for the purpose of constructing, installing, maintaining, operating, repairing, and upgrading the System. All construction or maintenance shall be performed in a workmanlike manner, lien free and without unreasonable interference with the operation of the Property. Provider shall have access to the Properties and reasonable access to the buildings and improvements thereon for purposes for providing the Services and Additional Services. This right of entry shall be binding upon all parties hereto, their successors and assigns. Upon the termination of this Agreement, any right of entry provided herein shall expire except with regard to the removal of parts of the System not purchased by Owners. Notwithstanding anything, provided herein to the contrary, no action by Provider hereunder shall materially interfere with Owner’s events and operations.

7. **PROVISION OF ADDITIONAL SERVICES.** Except as may be provided herein, each Owner further grants to Provider the right to offer and market Additional Services to invitees and licensees of the Property via the System on a non-exclusive basis.

8. **SERVICE STANDARDS**

(a) Subject to the terms of this Agreement, Provider will maintain, repair and operate the System and use commercially reasonable efforts to provide the Services in full compliance with industry standards and all applicable Federal, state and local laws, rules and regulations.

(b) Notwithstanding anything provided herein to the contrary, Provider makes no warranty as to the speed, availability or quality of the Services or Additional Services.

(c) If the Services fail to meet the standards set forth in Section 8(a), then Owners have the right to give Provider notice reasonably detailing how the Services fail to meet such standards. Provider will then have sixty (60) days to cure. If Provider does not so cure (which cure may include a proposal with an implementation schedule reasonably acceptable to Owners), then Owner will have the option to terminate this Agreement in its entirety. Owner agrees that the foregoing remedies shall be Owner's sole and exclusive remedy for Provider's breach of this Section 8.

(d) Except as otherwise provided herein, Provider shall be entitled, at its sole discretion, to charge users of the System for the Additional Services. Provider shall also be entitled to retain any or all revenue derived therefrom and otherwise generated by the System.

(e) During the term of this Agreement, during the working hours of the System and so long as the System is kept operational by Provider, Provider shall provide, at no charge, reasonable access to the Services to the City, Owners, and invitees of the Property.

9. **ASSISTANCE OF OWNER IN PROMOTION OF SERVICES.** Each Owner agrees that it shall, at no cost to Owner, permit the display of marketing information promoting the Provider's Services at a reasonable location on Owner's website and mobile application.

10. **OWNERSHIP OF THE SYSTEM; TERM OF AGREEMENT.**

(a) Except as may be provided in this Agreement, during the term of this Agreement, the System and all of its parts and components, shall at all times remain the property of Provider and Provider shall exercise the sole rights of access, operation, dominion and control over the System facilities, except with respect to any equipment, facilities, conduit or wiring provided by Owner, in which case, as between Owner and Provider, Owner shall own such items. Owner shall not, and Owner shall not permit any third party under Owner's control to, access, move, use or interfere with any part of the System without the prior written consent of the Provider which such consent maybe withheld in Provider's discretion. Owner shall promptly notify Provider of (a) any damage to, forced access of, or unauthorized use of, the System which is discovered by or reported to Owner, and (b) any condition or occurrence that Owner believes is likely to adversely affect the System or provision of Services.

(b) Unless earlier terminated in accordance with the other expressed terms of this Agreement, the term of this Agreement (sometimes referred to herein as the “Easement Term”) is ten (10) years from the date first written above.

11. **INSTALLATION AND MAINTENANCE OF SYSTEM; PROPERTY DAMAGE.** Except as otherwise provided in this Agreement, Provider, at its sole cost, shall be responsible for the installation, maintenance and operation of the System and shall install, maintain and operate the System in accordance with generally accepted engineering and construction practices and in accordance with all applicable laws. Except as otherwise provided in this Agreement, all installation, repairs, maintenance or modification of the System shall be performed only by Provider or its authorized agents or contractors. Upon the completion of any installation, maintenance or repair, Provider shall restore the Property to as good a condition as that which existed prior to such installation, maintenance or repair, normal wear and tear excepted.

12. **CURE.** In addition to all other remedies available at law or in equity, upon the failure of a breaching party to cure a breach of this Agreement within forty-five (45) days following written notice thereof by another party (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 45 day period, the breaching party commences such cure within such 45 day period and thereafter diligently prosecutes such cure to completion), every non-breaching party shall have the right to perform such obligation contained in this Agreement on behalf of such breaching party and be reimbursed by such breaching party upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Wells Fargo Bank (or its successors or assigns), plus one percent (1%) (not to exceed the maximum rate of interest allowed by applicable law).

13. **HOURS OF SERVICE.** Provider shall conduct all activities on the Properties during regular business hours, except in case of emergency or material interruption of service and shall make reasonable efforts to minimize any disturbance to Owner’s invitees and licensees. Provider shall not enter into any building of the Property unless authorized by Owner. Provider shall not undertake any work pursuant to this Agreement (except for emergency repairs) which would disturb the surface of the Property (including, without limitation, landscaping and pavement) or which would alter or add to any structure on the Property without first obtaining the written approval of such work by Owner, such approval which shall not be unreasonably withheld. Provider shall repair any damage caused by Provider or its authorized agents and shall restore any areas of damage to as nearly the condition that existed prior to the damage as practicable, normal wear and tear excepted.

14. **OBLIGATION TO PURCHASE; OPTION TO PURCHASE.**

(a) Upon the termination of this Agreement, each Owner shall promptly purchase from Provider the Fiber within its Property for the Fiber Purchase Price. Upon the consummation of the purchase of the Fiber, Provider shall execute a bill of sale warranting only title to the Fiber, but otherwise the sale and purchase of the Fiber shall be “as-is, where is” with no other warranties or representations whatsoever.

(b) Upon the termination of this Agreement, the Owners shall have a sixty (60) day option to purchase from Provider any non-Fiber portion of the System that is owned by the Provider. The Owners shall decide amongst themselves which Owner shall exercise the option, or whether to exercise the option jointly or collectively. The exercising Owner(s) shall pay the Non-Fiber Purchase Price within the thirty (30) days of electing to exercise the option to purchase a part or all of the non-Fiber System. Upon the consummation of the purchase of the non-Fiber System, Provider shall execute a bill of sale warranting only title to the non-Fiber System components purchased, but otherwise the sale and purchase of the non-Fiber System components shall be “as-is, where is” with no other warranties or representations whatsoever.

(c) With regard to any non-Fiber System components not purchased by an Owner within ninety (90) days of the termination of this Agreement, each Owner hereby gives the Provider the right to go onto its Property to remove the non-Fiber System components not purchased by an Owner. With regard to Provider’s removal of Non-Fiber System parts, Provider shall restore the Property to as good a condition as that which existed prior to such removal. Any non-Fiber System components not removed from the Properties within one hundred eighty days of the termination of this Agreement shall be deemed abandoned by the Provider.

15. **INSURANCE.** Provider shall keep in continuous force and effect at all times during this Agreement commercial general liability coverage in an amount not less than \$1,000,000.00 per occurrence and other reasonable insurance coverage requested by both Owners. Provider shall use commercially reasonable efforts to have such insurers waive subrogation rights against the Owners.

16. **ASSIGNMENT.** This Agreement may not be assigned by Provider without the prior written consent of Owner, except that Provider shall have the right to assign this Agreement in its entirety, to any entity that controls or is controlled by or is under common control with Provider or any other entity resulting from a merger with Provider. Owner shall assign this Agreement to any third party purchaser of the Property. Owner shall make the assumption of this Agreement a condition of any sale, transfer, assignment, or devise of the Property notwithstanding anything herein contained to the contrary. This Agreement shall run with the land and inure to the benefit of and be binding upon the undersigned and their respective personal representatives, heirs, successors and assigns.

17. **REPRESENTATIONS AND WARRANTIES.**

(a) Each Owner represents and warrants to Provider that (i) Owner is the owner in fee simple of the Property; (ii) Owner has the full power and authority to negotiate, execute and deliver this Agreement and that the signatory below has been authorized to so act; (iii) Owner’s execution and delivery of this Agreement does not conflict with any contractual right or any interest in the Property granted to any third party; and (iv) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction or similar proceeding.

(b) Provider represents and warrants to each Owner that it is duly organized and that it is qualified to do business in the State of Alabama, that it has full power and authority to enter into and perform this Agreement and that there are no agreements between Provider and any third party which conflict with the terms of this Agreement. Provider further represents and warrants that it has

obtained or will obtain, prior to the commencement of service on the Property, all necessary local, state and federal approvals, permits and licenses necessary to provide the Services as described herein.

(c) During the term of this Agreement, the City and the Owners, at their own cost, agree to supply reasonable amounts of electrical power to run the System.

(d) The City warrants to Provider that the conduits and pull boxes shown on the Drawings are whole, clean, with pull string, capped, and otherwise in good condition. For purposes of the preceding sentence, "Drawings" means the Infinity Architecture electrical drawings dated February 12, 2016 and which are entitled "Foley Sports Tourism Complex" and architectural, electrical drawings dated November 8, 2016 and which are entitled "Foley Event Center"

18. **COSTS AND ATTORNEY'S FEES; CHOICE OF LAW.** If it becomes necessary for any party to enforce, defend or seek an interpretation of its rights created herein in any arbitration, judicial or quasi-judicial proceeding, the prevailing party shall be entitled to reimbursement from the other relevant party(ies) of all costs of litigation through appeal, including but not limited to, court costs, reasonable attorney's fees, paralegal fees and other such costs and fees incident to enforcement or defense of its rights. This Agreement shall be construed and governed in accordance with the laws of the State of Alabama without regard to its choice of law rules. To the fullest extent allowed by law, all parties and any successors thereto, waive any jury trial right.

19. **DEFAULT AND REMEDIES.**

(a) If any party shall materially breach this Agreement and continue to be in material breach of this Agreement for forty-five (45) days after written notice thereof, then without further notice, the other party may terminate this Agreement and pursue all other legal or equitable rights and remedies available to it. All rights privileges and remedies of the parties are cumulative and the exercise of any one shall not be a waiver of any other. Any party may waive any provision, or breach, or default of this Agreement, however, any such waiver must be in writing and signed by the party giving the waiver. No such waiver shall be deemed a waiver of any other provision or of any subsequent breach or default of similar nature. The parties acknowledge that a non-breaching party would be irreparably harmed and would have no adequate remedy at law for a breach or violation of this Agreement. Therefore, each non-breaching party shall be entitled to the entry of a temporary restraining order or a preliminary injunction, in addition to specific performance and any other remedy available at law or in equity, to enforce this Agreement. Each party agrees to indemnify and hold the other parties harmless from and against any and all direct losses, causes, damages, expenses, injuries, claims and liabilities (including reasonable attorney's fees and costs at any pre-trial, trial or any appellate proceedings) which the other party(ies) may suffer or incur as the result of, arising out of, or attributable to, the party's breach of this Agreement; provided that, no party shall be entitled to (or be awarded) punitive damages, indirect damages, or lost profits. Without limiting the foregoing, any failure by an Owner to provide Provider its access rights to the Property as expressly provided by this Agreement, or any material interference with those rights, is a material breach of this Agreement by Owner. Owner agrees that Provider is entitled to seek

injunctive relief protecting its rights hereunder and other equitable relief to specifically enforce the access rights granted to Provider under this Agreement.

(b) **NO PARTY SHALL BE LIABLE TO ANOTHER PARTY OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WITH REGARD TO THIS AGREEMENT.**

20. **PERSONS AND ENTITIES BOUND BY AGREEMENT.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective officers, directors, shareholders, members, partners, agents, representatives, employees, servants, affiliates, attorneys, heirs, successors and assigns.

21. **FORCE MAJEURE.** Despite anything to the contrary in this Agreement, neither party will be liable or in default for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party, such as acts of God; acts of civil or military; strikes, lockouts, work stoppages, acts of public enemy; war; hurricanes; tornadoes, storms, earthquakes, or floods; fires or explosions; provided that such party takes all actions necessary to perform as soon as practically possible.

22. **NOTICES.** All notices or communications between the parties shall be in writing and be served by certified mail or personal delivery at the addresses set forth:

Provider: Foley Holdings LLC
Attention: CEO/President
100 Brookwod Road
Atmore, Alabama 36502

Copy to: Legal Department
5811 Jack Springs Road
Atmore, Alabama 36502

Owner: The Public Athletic and Sports Facilities Cooperative District
of the City of Foley, Alabama
407 East Laurel Avenue
Foley, AL 36535

Owner: The Public Cultural and Entertainment Facilities Cooperative District
of the City of Foley, Alabama
407 East Laurel Avenue
Foley, AL 36535

City: City of Foley, Alabama
PO Box 1750
Foley, AL 36536

23. **INDEMNIFICATION.** Provider shall indemnify and hold harmless each Owner, its directors, offices, employees, and affiliates against all claims, losses, costs, expenses or damages sustained by Owner, including reasonable attorneys' fees, as a result of or in any way arising (directly or indirectly) from Provider's exercise of (or failure to comply with) its rights and duties under this Agreement or from the construction, installation, operation, maintenance, repair of the System or the removal by Provider, or its contractors, of a part of the System from the Property. Owner shall indemnify and hold harmless Provider, its directors, officers, employees, and affiliates, of and against any and all loss or damage including reasonable attorneys' fees, including loss or damage to any portion of the System hereinafter suffered by Provider, which such loss or damage is caused by Owner.

24. **ENTIRE AGREEMENT.** This instrument and any exhibits appended to it constitute the entire agreement between the parties concerning this subject and supersedes all prior agreements and understandings on the same subject, whether written or oral. No modification of this Agreement shall be enforceable unless in writing and executed by the parties or their successors. If additional actions or the exchange of additional information and documents between the parties is necessary to carry out the intent of this Agreement, the parties agree to take such additional actions and to cooperate with each other in such exchange. The parties to this Agreement agree there are no third-party references to this Agreement, nor any intent to create any third party beneficiaries or rights.

25. **RECORDING.** Provider and Owner agree that this Agreement may be recorded in the real property records of the County wherein the Property is located.

26. **NATURE OF AGREEMENT.** This transaction is an independent contract between the parties and is not a partnership. Owner has not made Provider its agent for any purpose. Provider has not made Owner its agent for any purpose. Nothing within the Agreement, nor is it the intention of the parties to create or have this Agreement constructed to create any third party beneficiary rights for any third party.

27. **NO LIENS.** Provider shall not cause, suffer or permit any lien or claim of lien to attach to or encumber the Property or any portion of the Property as a result of or in connection with the construction, installation, maintenance, use or repair of the system installed on the Property hereunder or the exercise of any right or privilege of Provider hereunder.

28. **SUBORDINATION.** Provider agrees that the terms and provisions of this Agreement shall be subject and subordinate to any mortgage, deed to secure debt, deed of trust or other such instrument to secure indebtedness which currently encumbers title to the Property.

29. **RESTORATION.** Upon the completion of any rebuild, installation, maintenance, repair, or removal of the System or any part thereof, Provider shall restore the relevant portion of the Property to as good a condition as that which existed prior to such installation, maintenance, repair, or removal, normal wear and tear excepted. Failure by Provider to complete such restoration within thirty (30) days after receiving written notice from Owner of such failure shall, unless Provider has notified Owner in writing that it disputes in good faith that it has failed to so restore the Property as required, vest in Owner the right (but not the obligation) to restore or cause to be

restored such portion of the Property disturbed by such work, all at Provider's sole cost and expense, except for in emergency situations whereby Owner may restore or cause to be restored such disturbed portion of the Property immediately. All reasonable expenses incurred by Owner in connection with such restoration shall be paid by Provider, except for the emergency situation whereby the Owner restores or caused to be restored the disturbed portion of the Property immediately, in which case such expenses shall be paid within thirty (30) days of delivery to Provider of Owner's invoice therefor.

30. **CAPTIONS, NUMBER AND GENDER.** The captions and headings are for convenience only and are not intended to be used in construing any provision of this Agreement. The singular and plural will each include the other where appropriate. Words of any gender will include other genders when the context so permits.

31. **CONSTRUCTION OF AGREEMENT.** This Agreement has been fully reviewed and negotiated by the parties hereto and their respective counsel. Accordingly, in interpreting this Agreement, no weight will be placed upon which party hereto or its counsel drafted the provisions being interpreted. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement or any portion thereof, will not affect the remaining portions hereof and this Agreement will be construed as if such covenant, agreement, condition, or provision had not been included herein.

32. **COUNTERPARTS.** This Agreement, and any modifications, may be executed in any number of counterparts each of which when executed and delivered will be an original, but all counterparts will together constitute one and the same instrument.

33. **EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES--EXPRESS OR IMPLIED--REGARDING THE SYSTEM OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. NO PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WITH REGARD TO THIS AGREEMENT.**

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date previously set forth herein.

ENTERTAINMENT COOPERATIVE DISTRICT:
THE PUBLIC CULTURAL AND ENTERTAINMENT FACILITIES COOPERATIVE DISTRICT OF THE CITY OF FOLEY, ALABAMA, an Alabama public corporation

By: _____
Name: _____
Its: _____

SPORTS COOPERATIVE DISTRICT:
THE PUBLIC ATHLETIC AND SPORTS FACILITIES COOPERATIVE DISTRICT OF THE CITY OF FOLEY, ALABAMA, an Alabama public corporation

By: _____
Name: _____
Its: _____

CITY:
THE CITY OF FOLEY, ALABAMA, a municipal corporation

By: _____
Name: _____
Its: _____

PROVIDER:
FOLEY HOLDINGS LLC, an Alabama limited liability company

By: _____
Name: _____
Its: _____

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that _____ whose name as Mayor of THE CITY OF FOLEY, ALABAMA, a municipal corporation, is signed to the foregoing document, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, 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 _____ day of _____, 2017.

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that _____ whose name as _____ of THE PUBLIC ATHLETIC AND SPORTS FACILITIES COOPERATIVE DISTRICT OF THE CITY OF FOLEY, ALABAMA, an Alabama public corporation, is signed to the foregoing document, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, 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 _____ day of _____, 2017.

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that _____ whose name as _____ of THE PUBLIC CULTURAL AND ENTERTAINMENT FACILITIES COOPERATIVE DISTRICT OF THE CITY OF FOLEY, ALABAMA, an Alabama public corporation, is signed to the foregoing document, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, 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 _____ day of _____, 2017.

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
COUNTY OF _____)

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that _____ whose name as _____ of FOLEY HOLDINGS LLC, an Alabama limited liability company, is signed to the foregoing document, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this _____ day of _____, 2017.

Notary Public
My Commission Expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION –SPORTS PROPERTY

Lot 1, Blue Collar Country, Phase One, as recorded on Slide 2501-E, in the Office of the Judge of Probate, Baldwin County, Alabama.

and

Lot 1, Blue Collar Country Exempt Sub-Amended, as recorded on Slide 2522-F, in the Office of the Judge of Probate, Baldwin County, Alabama.

EXHIBIT "B"

LEGAL DESCRIPTION –ENTERTAINMENT PROPERTY

Lot 2, Blue Collar Country, Phase One, as recorded on Slide 2501-E, in the Office of the Judge of Probate, Baldwin County, Alabama.

EXHIBIT "C"

SYSTEM PLANS

Sports Field - Wifi

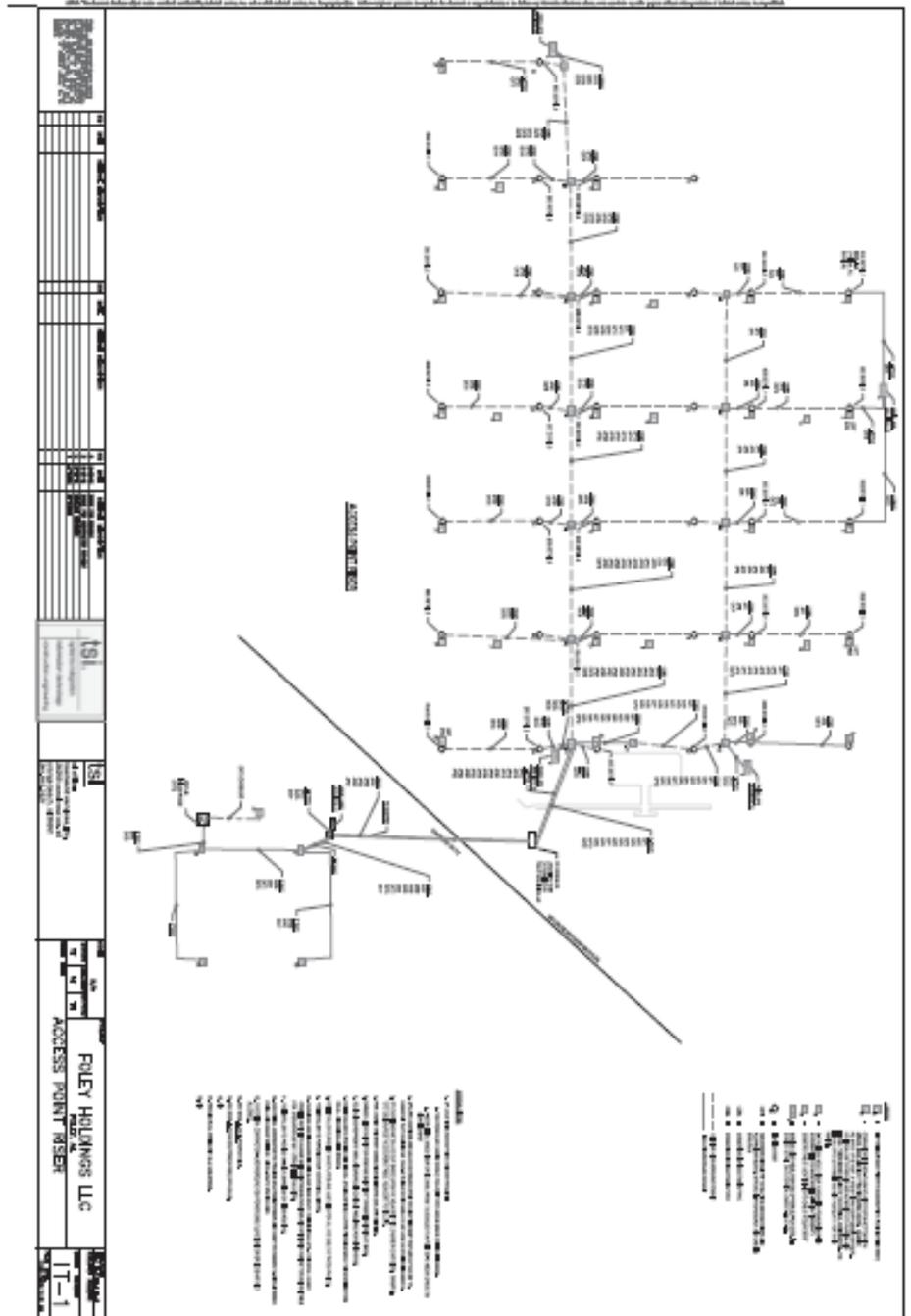


EXHIBIT “D”

RULES

Conduit and associated pull boxes needed for the System shall be installed by the City or the Owners.

The City or the Owners will provide Provider with access to the City’s or the Owner’s electrical power supply service in such locations where power is available. The City and the Owners shall not be required to install new or additional power service; provided that, the failure of the City or the Owner to provide adequate power supply service to power the Services and the System shall release Provider from any obligations under the Agreement.

Provider and its contractors will coordinate with the City’s Project Manager concerning where Provider wants to connect to the City’s power. As may be agreed to between the parties, Provider will be responsible for running any power lines from the City’s service area to where System power needs to be located.

Provider’s use of power is limited to what is reasonable and necessary to run the System.

At the Foley Sports Tourism Complex, the Owners shall allow Provider to attach to the light poles located on the Property such System equipment, lines, and facilities as is reasonable and necessary to provide Services. Equipment may be strapped but not drilled into poles.

Provider will provide Services, at no charge, to the City or to the Owners, including to the event or tournament organizers who are invitees of the Owner’s Property. Provider may provide a system to make certain non-authorized persons are utilizing the System without charge.

The Fiber is to remain in place and connected to the Southern Light Fiber in the Telecommunications Hut and from there to the Southern Light fiber in Pride Drive.

Provider shall require all users who access the Services from the Property to first log in to acknowledge their understanding and acceptance of certain terms and notices, which shall include, at a minimum, a notice that the Services are being provided by a private entity not affiliated with, managed by, or controlled by the City or the Owners. The landing page must also explain the privacy policy of the internet service provider, and the restrictions on permissive use and the costs for all such use, if any.

No sexually oriented businesses, pornography, or other explicit material or websites is permitted to be advertised on the landing page for the Services. Subject to applicable law, Provider shall use commercially reasonable efforts to ensure that content filtering is used to block access of Service users to pornographic websites and other like mature content.

Subject to applicable law, Provider will provide City with certain summary marketing data obtained from access points on the Properties. This information shall be provided in usable electronic format and in a reasonable manner as determined by the parties.