

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

_____, 2024

**Proceedings for Authorization
of
Project User Fee Agreement
(Magnolia Walk Development)**

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 March 18, 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 is a complete, verbatim and compared copy of such resolution as introduced and adopted by the City Council on such date and is 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 SPECIAL MEETING
OF THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA**

**Approval of Project User Fee Agreement (Magnolia Walk Development)
by
City of Foley, Alabama
and
The City of Foley Public Facilities Cooperative District**

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 March 18, 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 III

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:

**A RESOLUTION AUTHORIZING THE PROJECT USER FEE AGREEMENT
(MAGNOLIA WALK DEVELOPMENT) BY THE CITY OF FOLEY, ALABAMA
And THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**

BE IT RESOLVED by the City Council of the City of Foley, Alabama, as governing body of the City of Foley, Alabama, that the Council, having reviewed the Project User Fee Agreement (Magnolia Walk Development) attached hereto as Exhibit A (the "Agreement") proposed to be delivered by the City of Foley, Alabama (the "City") and The City of Foley Public Facilities Cooperative District for the purposes therein, does hereby (a) approve, authorize and confirm the representations of fact, agreements, and obligations of the City in, and the terms and provisions of, the Agreement; (b) authorize and direct the officers of the City to (i) execute and deliver the Agreement in form and of content as set forth on Exhibit A hereto with such changes (by addition or deletion) as will not create, extend or increase any existing obligation of the City under the Agreement and as such officers shall conclusively approve by execution and delivery thereof and (ii) take such action, and execute and deliver such certificates and documents, at such times and in such form and manner as shall be required by applicable law, legal counsel to the City, or otherwise necessary to establish the validity, or effect the purposes, of the Agreement; (c) repeal the provisions of any resolution, order or ordinance of the City to the extent any thereof are inconsistent or in conflict with the terms and purposes of this Resolution; and (d) provide this Resolution is effective immediately.

Exhibit A

Project User Fee Agreement (Magnolia Walk Development)

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

PROJECT USER FEE AGREEMENT (MAGNOLIA WALK DEVELOPMENT)

Effective Date: _____, 2024

between

THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT

and

CITY OF FOLEY, ALABAMA

This Agreement has been validated and confirmed by judgment of the Circuit Court of Baldwin County, Alabama, entered on _____, 2024.

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

PROJECT USER FEE AGREEMENT (MAGNOLIA WALK DEVELOPMENT)

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

City: **City of Foley, Alabama**

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

Article 1

Consideration and Purpose

The District and the City have agreed, pursuant to Chapter 99B of Title 11 of the Code of Alabama 1975 (the "Authorizing Act"), that (i) the City will expend public funds on behalf of the District, with such funds to constitute a constructive loan from the City to the District, to pay for capital improvements of public infrastructure and streetscape (the "Project") in the central and primary business and commercial areas of the City, (ii) the City will convey the Project to the District without valuable consideration in furtherance of the public purposes of the District, (iii) the Project constitutes a "project" under, and for purposes of, the Authorizing Act and is within the geographic and corporate jurisdiction of the District, and (iv) the City has further agreed to provide financial contributions to the District to provide for the maintenance and operation of the Project.

The District has thereupon agreed and determined to levy and collect certain Project User Fees for the use of, and within the area served by, the Project pursuant to Resolution thereof adopted on March 18, 2024 and to provide the net proceeds of the Project User Fees to the City, pursuant to the Project Fee User Agreement (Magnolia Walk Development) for the payment (in whole or in part) of the public funds advanced by the City for the benefit of the District.

The District and the City have executed and delivered this Agreement pursuant to the Authorizing Act to provide for the delivery of the net proceeds of the Project User Fees by the District to the City in payment of the public funds advanced by the City for the Project and in consideration of the acquisition and conveyance of the Project to the District and the continuing financial contributions of the City for the benefit of the District with respect to the maintenance and operation of the Project,

ARTICLE 2

Definitions

For all purposes of this Agreement capitalized terms used herein without definition have the respective meanings assigned thereto in the Project User Fee Resolution of the District adopted on March 18, 2024 and entitled "A Resolution Imposing Project User Fees for the Magnolia Walk Development in the City of Foley, Alabama."

ARTICLE 3

Term and Termination of Agreement

The City and the District 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 date on which the District discontinues the levy and collection of the Project User Fees pursuant to the Project User Fee Resolution, whereupon all agreements and obligations of the Transaction Participants shall be discharged and terminated without recourse:

ARTICLE 4

The Project User Fees

Section 3.01 Payment and Pledge of Project User Fees

(a) For Value Received, the District promises to pay to the City the net proceeds of the Project User Fees received by the District during the period beginning on the date of levy of the Project User Fees and ending on the Additional Fee Termination Date on the following terms:

(1) the maximum amount of the Project User Fees to be paid to the City pursuant to this Agreement shall not exceed \$_____; and

(2) the Project User Fees shall not bear interest; and

(3) the levy of the Project User Fees shall continue until the Termination Date.

(4) the Project User Fees shall become due and payable to the City on the first day of each month during the term of the levy of the Project User Fees and shall be paid to the City at City Hall in the City

(b) The District does hereby grant, bargain, sell, convey, assign and transfer to the City, without warranty or recourse, all right, title and interest of the District in and to the Project User Fees.

(c) The District agrees to cause all of the proceeds of the Project User Fees to be delivered and transferred to the City when and as received by the District, for use thereby in respect of reimbursement to the City for the costs of the Project paid thereby.

(d) The District agrees the District will not, without the prior written consent of the City, sell, transfer or convey the Project User Fees or any portion thereof or create or incur, or permit or suffer to be created or incurred, any mortgage, lien, or encumbrance upon the Project User Fees or the Project User Fee Fund or any part thereof.

(e) The District makes no warranty or representation, and gives no assurance, that the Project User Fees shall be collected in any amount or that the amounts thereof collected shall be sufficient for any purpose or use of the City with respect thereto.

Section 3.02 Collection of Project User Fees

(a) Pursuant to the Project User Fee Resolution, the District hereby appoints and engages the City to collect the Project User Fees for and on behalf of the District and agrees the City may charge a collection fee in the amount of one percent (1.00%) of the gross amount of Project User Fees collected for each calendar month, which collection fee will be payable solely from the Project User Fees.

(b) The City hereby agrees to collect, hold, invest and apply the Project User Fees for the as provided in the Project User Fee Resolution

Section 3.03 Use of Magnolia Walk Project User Fees

The City may use the Project User Fees: (a) to reimburse the City for the Project costs it paid; (b) to pay for the City's obligations under the Lease Agreement as long as the same is in effect; or (c) for any other lawful purpose.

Section 3.04 Contractual Agreement of District under Authorizing Act

The District covenants and agrees the conveyance by the District of the Project User Fees to the City, as provided herein and in the Magnolia Walk Project User Fee Resolution, constitutes a contractual agreement of the District for purposes of Section 11-99B-11(4) of the Code of Alabama 1975.

ARTICLE

Provisions of General Application

The City and the District (individually a “party” and collectively the “parties”) agree:

- (a) **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without regard to principles of conflict of laws.
- (b) **Binding Effect:** This Agreement shall inure to the benefit and be binding upon the respective successors and assigns of the parties.
- (c) **Counterparts:** This Agreement may be executed in several counterparts each of which shall constitute one and the same agreement.
- (d) **Amendment:** This Agreement may be amended only in writing duly authorized, executed and delivered by each party to this Agreement.
- (e) **Enforceability:** If any provision herein shall be unenforceable, the parties agree the remaining provisions hereof shall not be affected thereby and shall remain in full force and effect.
- (f) **Notices:** Any notice given hereunder by any party shall be delivered simultaneously to all parties hereto at the respective addresses thereof as provided in writing.
- (g) **No Jury Trial:** Each party hereby (1) 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 (2) agrees that no person has represented (by expression or implication) that a party hereto would not seek to enforce such waiver in the event of litigation.
- (h) **No Joint Venture:** Each party agrees that (1) this Agreement shall not operate or be construed to create a joint venture or partnership among the parties and (2) it shall be solely responsible for the administration of its respective agreements and relationships with the other parties.
- (i) **No Other Beneficiaries:** Each party agrees that the Agreement is solely for the benefit of the parties and the successors and assigns thereof and no other person shall have any benefit, interest or rights under or by virtue of this Agreement.
- (j) **Final and Full Contract:** This Agreement shall constitute the final and full contractual agreement of the parties and shall supersede all prior or other agreements (written or oral) by the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the District and the City have each caused this Agreement to be executed, sealed and attested in its name by officers thereof duly authorized thereunto and to be dated the date and year first above written.

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

By _____
Its Chair

SEAL

Attest: _____
Its Secretary

CITY OF FOLEY, ALABAMA

By _____
Its Mayor

SEAL

Attest: _____
Its: Administrator/City Clerk

VALIDATION CERTIFICATE

Validated and confirmed by judgment of the Circuit Court of Baldwin County, State of Alabama entered on the _____ day of _____, 2024

/s/

Clerk of Circuit Court of Baldwin County,
State of Alabama

Duly passed and adopted this March 18, 2024..

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

SEAL

Attest: _____
City Clerk

Transmitted to and approved by the Mayor this March 18, 2024.

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
 Vera J. Quaites
 Richard Dayton
 C. Rick Blackwell
 Charles J. Ebert III

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.

President of Council

Member of Council

Member of Council

Member of Council

Member of Council

SEAL

Attest: _____
City Clerk