

COUNTY OF BALDWIN
STATE OF ALABAMA

AGREEMENT
(Foley – Woerner Land, LLC)

THIS AGREEMENT is made and entered on the date the last party signs below as between the City of Foley, Alabama, a municipal corporation (the “City”) and Woerner Land, LLC, a Florida limited liability company (“Woerner”).

WITNESSETH:

WHEREAS, the City encourages the development and improvement of underutilized property in its corporate limits to increase the property, sales, and other tax bases of the City which, in turn, helps serve and promote the public welfare and general vitality of the City; and

WHEREAS, Woerner owns certain real property which is in excess of 75 acres in size, is undeveloped, is underutilized, and which is located adjacent to Highway 59 and Highway 20 in the corporate limits of Foley, which property is described on Exhibit “A” hereto (the “Owner’s Property”); and

WHEREAS, Woerner intends and desires to develop the Owner’s Property to its highest and best uses as commercial, residential and/or multi-use developments within the reasonably foreseeable future; and

WHEREAS, the City’s infrastructure is inadequate to serve or accommodate the Owner’s Property if it were developed to its highest and best use today; and

WHEREAS, Woerner is willing to donate to the City sufficient right of way to improve the City’s infrastructure to serve or accommodate the development of the Owner’s Property and the surrounding area; and

WHEREAS, it is in the best interests of the City and the public good for the City to encourage the development and improvement of the Owner’s Property to its highest and best use by the City committing to make required and reasonable on-site and off-site infrastructure improvements when requested by Woerner or a developer for an end-user of the Owner’s Property; and

WHEREAS, the City and Woerner desire to enter into this Agreement to document and memorialize their respective rights, duties, commitments, and obligations with regard to the development of the Owner’s Property;

NOW, THEREFORE, in consideration of the mutual rights, benefits, and obligations contained herein, the City and Woerner hereby agree, covenant and warrant as follows:

1. The City agrees to contribute, pay for, or otherwise incur up to a maximum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) in improvements to the infrastructure leading to and located on the Owner's Property in one or more of the manners described below:

The City, when requested by Woerner, will construct two (2) access road connection points from Highway 59 to the Owner's Property, including construction of related public water, sewer and storm water drainage facilities under or within the access roads pursuant to plans and specifications required for the access roads and the water, sewer and drainage facilities prepared by the City and approved by Woerner (the "Highway 59 Access Points"). Sufficient right of way for the Highway 59 Access Points will be provided by Woerner and dedicated by Woerner or the then owner of the Owner's Property to the City at no cost to the City, with such dedication and conveyance occurring no later than substantial completion of construction of the Highway 59 Access Points. The City agrees to commence the planning, engineering, and contract document drafting for the construction of the Highway 59 Access Points within thirty (30) days of written notice of the final location of the same, and the City will proceed with reasonable diligence to let the contract(s) for construction in compliance with applicable public works and competitive bid laws and proceed with reasonable diligence to award the contract(s) and pursue the construction project until its completion.

In the event that the construction of the Highway 59 Access Points are projected to cost more than \$1,500,000 once the bids are received, then Woerner can help the City redesign the scope of the construction projects or assist in paying the cost of construction so the City's costs and contributions to the Development do not exceed the grand total of \$1,500,000.

2. If after the completion of the City's construction of the Highway 59 Access Points the City has not fully exhausted the City's \$1,500,000 commitment, then the City, in addition to paying for those items in full, hereby agrees to further perform some or all of the following types of work until it fully exhausts its \$1,500,000 commitment:

A. The City, when requested by Woerner, will build or cause to be built an access road leading into the Owner's Property which will be along either one or both of the following routes: (i) over Parcel B of the Owner's Property running from Highway 20 adjacent to the existing Lowe's to the Owner's Property; or (ii) that portion of a proposed extension of Juniper Street from Highway 59 to the boundary of Owner's Property as generally depicted on Exhibit "B" (but excluding any portion of the proposed extension that is not located within Owner's Property), with either or both routes including construction of public sewer, water and storm water drainage facilities in or under the access road(s) in order to provide public water, sewer and drainage facilities to the Owner's Property, pursuant to plans and specifications prepared by the City and approved

by Woerner (the "Access Road(s)"). Sufficient right of way for the Access Road(s) over the Owner's Property will be provided by Woerner and dedicated by Woerner or the then owner of the Owner's Property to the City at no cost to the City, with such dedication and conveyance occurring no later than substantial completion of construction of the Access Road(s). The City agrees to commence the planning, engineering, and contract document drafting for the construction of one or both of the Access Road(s) within thirty (30) days after written notice from Woerner of the route or routes you have selected, and the City will proceed with reasonable diligence to let the contract(s) for construction in compliance with applicable public works and competitive bid laws and proceed with reasonable diligence to award the contract(s) and pursue the construction project until its completion.

B. Traffic signalization improvements for the Owner's Property on Highway 59 as approved by the Alabama Department of Transportation;

C. Site work, including but not limited to construction of other access roads, parking lots, striping, etc. as requested by Woerner;

D. Reimbursement for Woerner's professional fees directly associated with and incidental to the development of the Owner's Property; and/or

E. Such other improvements or work as Woerner may direct which are within the City's legal powers and authority to perform.

The timing of the City's performance of some or all of these above categories of work will be based on the development of the Owner's Property to the end-user's specifications and plans, and the City agrees to work with the developer to schedule the completion of the City's actions with the overall development of the Property so that the City's work will be completed in a timeframe that will not delay the developer's completion of the Development. In the event that all the above items cannot be performed by the City without the City exceeding its \$1,500,000 commitment, then Woerner will have the ability to select which items of work the City will perform or pay for.

3. The parties agree that the City is not hereby obligated, and that the City has not agreed, to pay or incur any costs that exceed the grand total of \$1,500,000 in connection with the Owner's Property.

4. No actual construction work counting towards the City's \$1,500,000 commitment shall be commenced by the City until Woerner has approved the plans and specifications, as well as the bids, where applicable, for such work. Any delays by Woerner in approving the plans, specifications, or bids will relieve the City of its obligations to proceed with the work for the reasonably period caused by the delay.

5. In addition to the City's \$1,500,000 commitment referenced above, , the City agrees that Woerner or the developer of the Owner's Property will receive a reduction in the City of Foley permit fees to 50% of their normal cost in connection with the development of Owner's Property.

6. The rights, commitments, and obligations of the parties are specific to the Owner's Property, and they shall run with the Owner's Property and to Woerner's successors in title to the Owner's Property or any portion thereof. The rights flowing to Woerner in this Agreement are

not personal to Woerner and cannot be used by Woerner or assigned by Woerner to be used in connection with any other real property or any other development other than the Owner's Property or a portion thereof. Each party shall have all rights and remedies available in law or equity to enforce the terms of this Agreement, including specific performance where available.

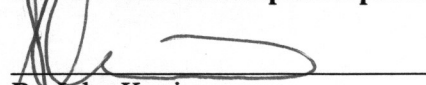
7. This Agreement constitutes the entire agreement, understanding, and representations of and between the parties with respect to the Owner's Property and to the matters addressed herein. Neither party is relying on any representation, promise, commitment or inducement that is not expressly recited herein. This Agreement accurately reflects the parties' mutual understanding.

8. This Agreement is entered into in Baldwin County, Alabama and it pertains to the development of real property that is wholly located in Baldwin County, Alabama; therefore it is the parties' intention, desire, and agreement to have this Agreement be construed and interpreted under the substantive laws of the State of Alabama without regard to its conflicts of laws rules or statutes. Further, the parties hereby agree that any action brought by either party against the other party (or successor in title to the Owner's Property) arising out of this Agreement or the Owner's Property shall be brought in a court of competent jurisdiction located in Baldwin County, Alabama.

9. This Agreement may be executed in counterparts, each of which (subject to the following sentence), when fully executed, shall be deemed an original, and all of which shall be but one agreement. If the signature of any party on this Agreement or any counterpart of this Agreement is not an original, but is a digital, mechanical, or electronic reproduction (such as, but not limited to, a photocopy, fax, email, PDF, Adobe image, jpeg, telegram, telex, or telecopy), then, such digital, mechanical, or electronic reproduction shall be as enforceable, valid, and binding as, and the legal equivalent to, an authentic and traditional ink-on-paper original wet signature penned manually by its signatory.

IN WITNESS WHEREOF, the City and Woerner have set their hands and seals on the dates indicated below.

**City of Foley, Alabama,
an Alabama municipal corporation**


By John Koniar

Its Mayor

Date: 3/29/2013

Attest:



By: Vickey Southern

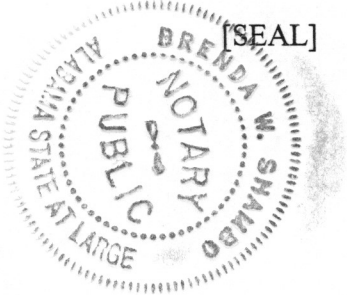
Its: City Clerk

STATE OF ALABAMA

COUNTY OF BALDWIN

The undersigned, a Notary Public in and for the above state and county, hereby certifies that before me personally appeared John Koniar and Vickey Southern, the Mayor and City Clerk, respectively, of the City of Foley, Alabama, an Alabama municipal corporation, who are known to me as the persons and officers described in and who executed the foregoing instrument on behalf of said municipal corporation, and who acknowledged that they held the position or title set forth in the instrument and that they signed the instrument on behalf of the municipal corporation by proper authority, and that the instrument was the act of the municipal corporation for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the 29th day of March, 2013.



[SEAL]
Notary Public

My Commission Expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Dec 19, 2015
BONDED THRU NOTARY PUBLIC UNDERWRITERS

**Woerner Land, LLC,
an Alabama limited liability company**

By: _____
Its: _____
Date: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The undersigned, a Notary Public in and for the above state and county, hereby certifies that before me personally appeared Lester J. Woerner who is the Manager of Woerner Land, LLC, a Florida limited liability company, who is known to me as the person and officer described in and who executed the foregoing instrument on behalf of said company, and who acknowledged that he held the position or title set forth in the instrument and that he signed the instrument on behalf of the company by proper authority, and that the instrument was the act of the company for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the _____ day of _____, 2013.

[SEAL]

Notary Public

My Commission Expires: _____

COUNTY OF BALDWIN

The undersigned, a Notary Public in and for the above state and county, hereby certifies that before me personally appeared John Koniar and Vickey Southern, the Mayor and City Clerk, respectively, of the City of Foley, Alabama, an Alabama municipal corporation, who are known to me as the persons and officers described in and who executed the foregoing instrument on behalf of said municipal corporation, and who acknowledged that they held the position or title set forth in the instrument and that they signed the instrument on behalf of the municipal corporation by proper authority, and that the instrument was the act of the municipal corporation for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the _____ day of _____, 2013.

[SEAL]

Notary Public
My Commission Expires: _____

Woerner Land, LLC,
an ~~Alabama~~ Florida limited liability company

By: *Lester J. Woerner*
Its: Manager
Date: 3-29-13

STATE OF FLORIDA
COUNTY OF PALM BEACH

The undersigned, a Notary Public in and for the above state and county, hereby certifies that before me personally appeared Lester J. Woerner who is the Manager of Woerner Land, LLC, a Florida limited liability company, who is known to me as the person and officer described in and who executed the foregoing instrument on behalf of said company, and who acknowledged that he held the position or title set forth in the instrument and that he signed the instrument on behalf of the company by proper authority, and that the instrument was the act of the company for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the 29 day of MARCH, 2013.

[SEAL]

[Signature]
Notary Public
My Commission Expires: _____



Exhibit "A" – Legal Description of the Owner's Property
Exhibit "B" – Option 2 for Access Road Route

Parcel A:

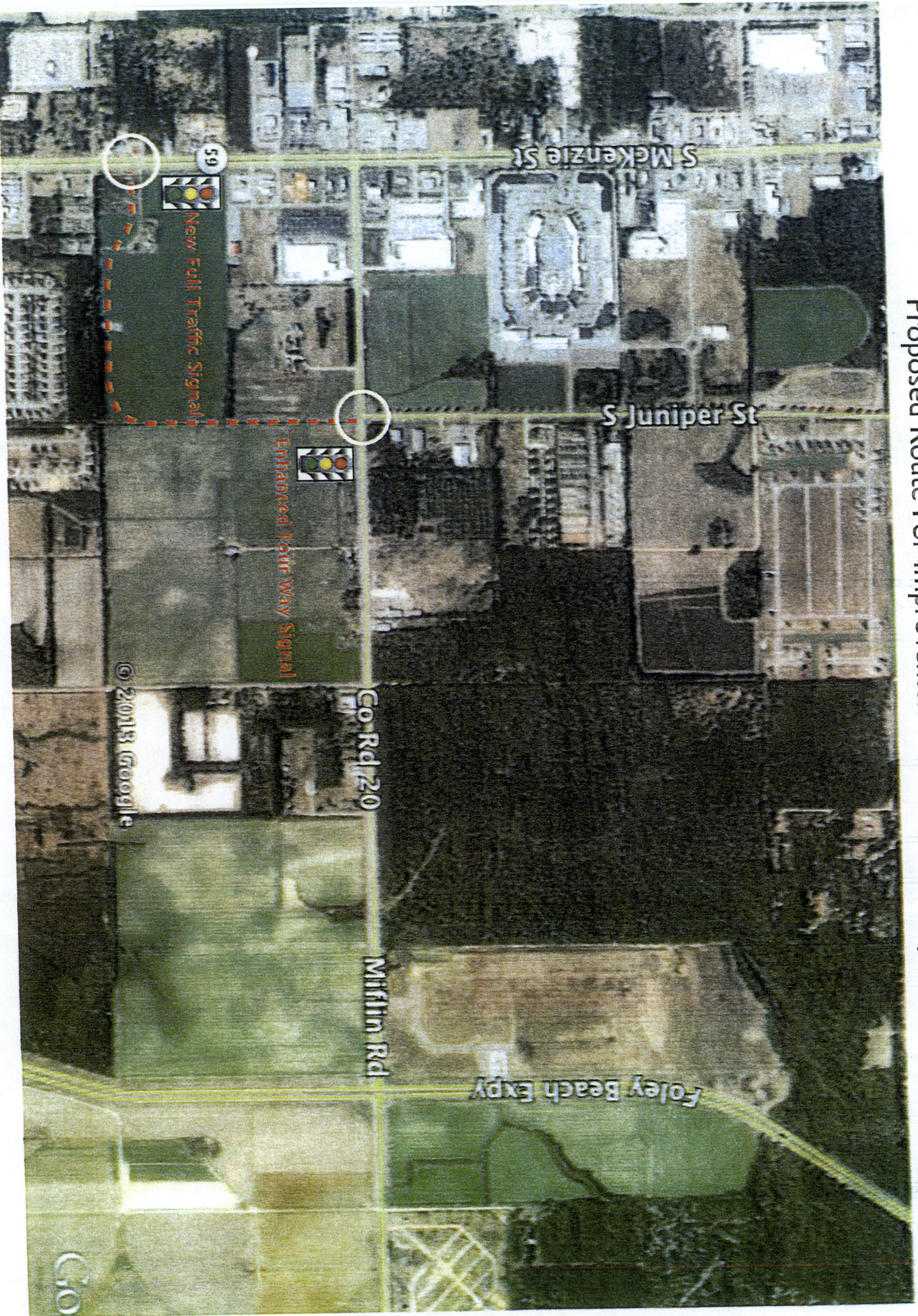
All that tract or parcel of land lying in Baldwin County, Alabama, Section 9, Township 8 South, Range 4 East, known as parcel no's. 61-02- 09- 2- 001- 007.000 & 61-02-09-2- 001- 007.001 being more particularly described as follows:

THE POINT OF BEGINNING being at the purported Southeast corner of the Northwest Quarter of Section 9, Township 8 South, Range 4 East, Baldwin County, Alabama; thence South; thence South 89 degrees 36 minutes 47 seconds West, a distance of 2504.02 feet to a point on the Eastern right-of-way line of State Highway 59 (215' right-of-way); thence North 00 degrees 23 minutes 10 seconds West, along said right-of-way line a distance of 1323.71 feet to a point; thence North 89 degrees 38 minutes 39 seconds East, leaving said right-of-way line a distance of 2493.81 feet to a point; thence South 00 degrees 49 minutes 42 seconds East, a distance of 1322.39 feet to the Point of Beginning. Containing 75.90 acres of land more or less.

Parcel B:

A portion of the Northwest Quarter of the Northwest Quarter of Section 9, T8S, R4E, Baldwin County, Alabama, described as follows: Commencing at the Northeast corner of the Northwest Quarter of the Northwest Quarter of Section 9, T8S, R4E, Baldwin County, Alabama, run S 00 degrees 23' 54" E along the East line of said Northwest Quarter of the Northwest Quarter of Section 9, T8S, R4E, a distance of 40 feet to a point on the South right of way line of Baldwin County Highway No. 20; said point being the point of beginning of the property herein described; thence continuing S 00 degrees 23' 54" E along said East line of the Northwest Quarter of the Northwest Quarter of Section 9, T8S, R4E, run 1283.4 feet to the Southeast corner of said Northwest Quarter of the Northwest Quarter of Section 9, T8S, R4E; thence along the South line of said Northwest Quarter of the Northwest Quarter of Section 9, T8S, R4E, run S 89 degrees 38' 39" W 60.0 feet to a point; thence 60 feet West of and a parallel with said East line of the Northwest Quarter of the Northwest Quarter of Section 9, T8S, R4E, run N 00 degrees 23' 54" W 1283.44 feet to a point on the aforementioned South right of way line of Baldwin County Highway No. 20; thence along said South right of way line of Baldwin County Highway No. 20 run N 89 degrees 41' 09" E 60.0 feet to the point of beginning.

Proposed Route For Improvements To Woerner Property





City of Foley, AL

407 E. Laurel Avenue
Foley, AL 36535

Signature Copy

Resolution: 13-0227-RES

File Number: 13-0581

Enactment Number: 13-0227-RES

A resolution authorizing the Mayor to Execute a Letter and negotiate a contract relating to Economic Development

(Infrastructure Improvements - Certain Property)

WHEREAS, the City encourages the development and improvement of underutilized property in its corporate limits to increase the property, sales, and other tax bases of the City which, in turn, helps serve and promote the public welfare and general vitality of the City; and

WHEREAS, the owner has certain real property which is approximately 75 acres in size, is undeveloped, is underutilized, and which is located adjacent to Highway 59 in the corporate limits of Foley, which property is described below:

All that tract or parcel of land lying in Baldwin County, Alabama, Section 9, Township 8 South, Range 4 East, known as parcel no's. 05-61-02-09-2-001-007.000 and 05-61-02-09-2-001-007.001 being more particularly described as follows:

THE POINT OF BEGINNING being at the purported Southeast corner of the Northwest Quarter of Section 9, Township 8 South, Range 4 East, Baldwin County, Alabama; thence South; thence South 89 degrees 36 minutes 47 seconds West, a distance of 2504.02 feet to a point on the Eastern right-of-way line of State Highway 59 (215' right-of-way); thence North 00 degrees 23 minutes 10 seconds West, along said right-of-way line a distance of 1323.71 feet to a point; thence North 89 degrees 38 minutes 39 seconds East, leaving said right-of way line a distance of 2493.81 feet to a point; thence South 00 degrees 49 minutes 42 seconds East, a distance of 1322.39 feet to the Point of Beginning. Containing 75.90 acres of land more or less.

(the "Owner's Property"); and

WHEREAS, the City's infrastructure is inadequate to serve or accommodate the Owner's Property if it were developed to its highest and best use today; and

WHEREAS, Owner is willing to donate to the City sufficient right of way to improve the City's infrastructure to serve or accommodate the development of the Owner's Property and the surrounding area; and

WHEREAS, it is in the best interests of the City and the public good for the City to encourage the development and improvement of the Owner's Property to its highest and best

use by the City committing to make required and reasonable on-site and off-site infrastructure improvements when requested by a developer for an end-user of the Owner's Property; and

WHEREAS, the City wants to provide the Owner, and its successors in title to the Owner's Property, with this Resolution stating the City's commitment concerning the City's infrastructure improvements in connection with the development and improvement of the Owner's Property;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Foley as follows:

1. That the Mayor is hereby authorized to execute and deliver the letter attached hereto and incorporated herein to the Owner and to enter into a contract with the Owner on the terms contained in the attached letter once approved by legal counsel.

PASSED, APPROVED AND ADOPTED this 25th day of March, 2013.

President's Signature _____

Date _____



Attest by City Clerk

Victoria Southern

Date 3-26-2013

Mayor's Signature _____

[Signature]

Date 3/26/2013