

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

**Approval of Foley Crossroads Project User Fee Agreement
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 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 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:

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE FOLEY CROSSROADS PROJECT USER FEE
AGREEMENT**

by

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 Foley Crossroads Project User Fee Agreement 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.

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

Exhibit A

Foley Crossroads Project User Fee Agreement

FOLEY CROSSROADS PROJECT USER FEE AGREEMENT

Dated _____, 2023

between

THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT

and

CITY OF FOLEY, ALABAMA

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

FOLEY CROSSROADS PROJECT USER FEE AGREEMENT

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**

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

Consideration and Purpose

The District and the City have executed and delivered this Agreement pursuant to Chapter 99B of Title 11 of the Code of Alabama 1975 to provide for the use of the Project User Fees levied by the District pursuant to the Authorizing Act and the Resolution thereof adopted on August 7, 2023 and in consideration of the respective agreements and undertakings thereof herein contained.

ARTICLE 1

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 August 7, 2023.

ARTICLE 2

The Project User Fees

Section 3.01 Pledge of Project User Fees

(a) 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.

(b) 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.

(c) 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.

(d) 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 Project User Fees

The District will apply all amounts in the Project User Fee Fund solely to the payment of the costs of the Project theretofore paid by the City. .

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 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 4

Termination

To provide for the continued collection of Project User Fees by the City under Section 3.02, this Agreement will continue in force and effect until the District discontinues the levy and collection of the Project User Fees pursuant to the Project User Fee Resolution.

ARTICLE 5

Provisions of General Application

Section 5.01 Execution Counterparts

This Agreement may be executed in several counterparts, each of which will be an original and all of which constitute but one and the same instrument.

Section 5.02 Binding Effect; Governing Law

(a) This Agreement will inure to the benefit of, and shall be binding upon, the District, the City and their respective successors and assigns.

(b) This Agreement will be governed exclusively by the applicable laws of the State of Alabama without regard to conflict of law principles.

Section 5.03 Enforceability

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision 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

S E A L

Attest: _____
Its Secretary

CITY OF FOLEY, ALABAMA

By _____
Its Mayor

S E A L

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 _____, 2023.

/s/

Clerk of Circuit Court of Baldwin County,
State of Alabama

Duly passed and adopted 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 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
 Vera J. Quaites
 Richard Dayton
 C. Rick Blackwell
 Charles J. Ebert III

Absent:

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

S E A L

Attest: _____
City Clerk

STATE OF ALABAMA

BALDWIN COUNTY

CERTIFICATE OF CITY CLERK

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, this _____ day of _____, 2023.

Clerk of the City of Foley, Alabama

SEAL