

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

\_\_\_\_\_  
\_\_\_\_\_, 2024  
\_\_\_\_\_

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**Proceedings for Authorization  
of  
Economic Development Agreement  
(Magnolia Meat and Grocery)**

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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 January 2, 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 resolutions set forth in such excerpts are complete, verbatim and compared copies of such resolutions as introduced and adopted by the City Council on such date and are 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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
City Clerk of the City of Foley, Alabama

SEAL

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

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**Economic Development Agreement  
for  
Magnolia Meat and Grocery LLC**

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The City Council of the City of Foley, Alabama met in regular public session at City Hall in the City of Foley, Alabama, at 4:00 p.m. on January 2, 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

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 AN  
ECONOMIC DEVELOPMENT AGREEMENT  
BY THE CITY OF FOLEY, ALABAMA  
AND  
MAGNOLIA MEAT AND GROCERY LLC

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA:

ARTICLE 1

Definitions

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For purposes hereof:

**Agreement** means the Economic Development Agreement by the City and the Beneficiary attached to this Resolution as Exhibit B.

**Amendment No. 772** means Section 94.01 of the Constitution of Alabama of 2022 (formerly known as Amendment o. 772 to the Constitution of Alabama of 1901, as amended).

**Beneficiary** means Magnolia Meat and Grocery LLC.

**Bond Counsel** means Maynard Nexsen PC.

**City** means the City of Foley, Alabama.

**Council** means the City Council of the City.

**Development** shall have the meaning assigned in the Agreement.

**Public Notice** means the notice attached to this Resolution as Exhibit A.

## ARTICLE 2

### Representations

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The Council, upon evidence duly presented to and considered by it, has found and determined, and does hereby find, determine and declare as follows:

- (a) The delivery and performance of the Agreement by the City will provide for the economic growth and development of the City in furtherance of the public interest thereof.
- (b) The expenditure of public funds for the purposes specified in the Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.
- (c) The City caused the Public Notice to be published on December 20, 2023 in *The Onlooker*, which newspaper is of circulation in the City.
- (d) The aggregate indebtedness of the City (including without limitation the Total City Commitment under the Agreement) which will be outstanding under, and chargeable against the limitation upon indebtedness prescribed by, Amendment No. 772 on the Effective Date of the Agreement will not exceed fifty percent (50%) of the assessed valuation of the taxable property of the City as assessed for state taxation for the tax year ending September 30, 2023.
- (e) The representations of the City on Section 3.01 of the Agreement are true and correct.

## ARTICLE 3

### Authorization

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(a) The Council approves and authorizes the terms and provisions of, the representations and warranties of the City set forth in, and the obligations and transactions to be undertaken by the City pursuant to, the Agreement, with such changes thereto (by addition or deletion) which (i) do not (individually or in the aggregate) create any additional obligation, or extend or increase any stated obligation, of the City under the Agreement and (ii) the officers of the City conclusively approve by execution and delivery of the Agreement as provided by this Resolution.

(b) The Council authorizes and directs the Mayor, Finance Director, and City Clerk of the City to do and effect all of the following :

- (i) execute under seal, register, and attest the Agreement,
- (ii) execute, deliver, file and record such certificates, documents and notices with respect to such matters of fact as Bond Counsel determines to be necessary in connection with the Agreement,
- (iii) deliver the Agreement when advised by Bond Counsel and
- (iv) effect the performance of the Agreement.

## **ARTICLE 4**

### **Ratification**

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The Council ratifies and confirms all prior action taken, and all certificates, documents, petitions, proceedings and public notices delivered, by or on behalf of the City in furtherance of the transactions herein authorized.

## **ARTICLE 5**

### **Effect of Resolution**

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The Council authorizes this Resolution to take effect immediately and repeals any provision of any resolution, order, ordinance, or proceeding of the City to the extent of any conflict or inconsistency thereof with the provisions of this Resolution.

**EXHIBIT A**

**Legal Notice**

**LEGAL NOTICE  
OF  
PROPOSED ECONOMIC DEVELOPMENT ACTION  
AND RELATED PUBLIC EXPENDITURES  
OF  
CITY OF FOLEY, ALABAMA**

The City of Foley, Alabama (the "City") gives notice that the City Council of the City will meet in regular public session at 4:00 p.m. on Tuesday, January 2, 2024 at City Hall in the City to consider, among other matters, the authorization, pursuant to the authority of Section 94.01 of the Constitution of Alabama of 2022, by the City of the payment, pursuant to separate written economic development agreements, from special public funds of the City of certain economic incentive payments for the period 2024 through 2045 to each of the following domestic, for profit, business entities (collectively the "Beneficiaries") in consideration, and in support, of the establishment, in the general area of the facilities of OWA Parks and Resorts in the City, by the Beneficiaries of business facilities and operations which the City considers in the public interest to be located in such area: (i) Magnolia Meat and Grocery LLC (food service), (ii) IRH Foley LLC (international residence hall), and (iii) Select Site Ventures LLC, d/b/a Cobblestone Hotel and Suites (hotel and lodging). The City expects to pay such economic incentive payments from the net proceeds of certain fees levied by the cultural and entertainment facilities cooperative district of the City on the users and customers of the business facilities of the Beneficiaries in respect of the costs incurred by the City for the construction, improvement, maintenance and operation of the public infrastructure that enables operation and use of the business facilities of the Beneficiaries. The total economic incentive payments will not exceed, in any period, the total amount received by the City from such fees in such period, therefore the City does not presently expect to pay any amount of such economic incentive payments from the proceeds of taxes levied by the City. The City seeks to achieve, by undertaking its obligation to provide such economic incentive payments, to promote the local economic and industrial development of the City by the increase of employment, tourism and visitation, the supply of persons available for skilled and unskilled labor, economic activity for local businesses, and the tax and revenue base of the City. The business entities to whom or for whose benefit the City proposes to lend its credit and grant public funds or thing of value will be the Beneficiaries and any affiliate of any thereof. All interested persons may examine and review the proposed economic development agreements, the proceedings for the levy of the user fees, and all related proceedings pertaining thereto, and make copies thereof at personal expense, and may obtain further public information with respect to the matters herein, at the offices of the City Administrator at City Hall in the City, during normal business hours, before and after the meeting of the City Council referenced herein.

**Exhibit B**

**Economic Development Agreement**

**MAGNOLIA MEAT AND GROCERY**

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**This Agreement, and any interest herein or obligation hereunder, is not negotiable and may be assigned or transferred (in whole or in part) only as provided herein.**

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**ECONOMIC DEVELOPMENT AGREEMENT**

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Effective Date: \_\_\_\_\_, 2024

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**CITY OF FOLEY, ALABAMA**

**and**

**MAGNOLIA MEAT AND GROCERY LLC**

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The within Project User Fees have been validated and confirmed by judgment of the Circuit Court of Baldwin County, Alabama entered on June 21, 2017 in 05-CV-2017-900473.00 and 05-CV-2017-900475.00.

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

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**ECONOMIC DEVELOPMENT AGREEMENT**  
**(Magnolia Meat and Grocery )**

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

**Beneficiary:**    **Magnolia Meat and Grocery LLC, and the successors and assigns thereof**

**City:**            **City of Foley, Alabama**

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**ARTICLE 1**

**Consideration and Purpose; Amendment No. 772**

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**Section 1.01    Consideration and Purpose**

The City and the Beneficiary have made and delivered this Agreement to provide for the within Beneficiary Grant Funds to the Beneficiary in consideration of the public benefits of increased employment and public revenues to accrue to the City from the establishment of the within Development by the Beneficiary within the jurisdiction of the City.

**Section 1.02    Issuance Pursuant to Amendment No. 772**

The City certifies, declares and recites that the City has delivered and issued this Agreement pursuant to the authority of the within Amendment No. 772 to provide funds to be used in furtherance of the power and authority therein authorized to enable the City to effect the governmental purposes of this Agreement, having found and determined precedent thereto that the delivery and performance by the City of this Agreement is within the authority of, and is in full compliance with, said Amendment No. 772.

## ARTICLE 2

### Definitions

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For purposes of this Agreement:

**Amendment No. 772** means Section 94.01 of the Constitution of Alabama of 2022 (formerly known as Amendment No. 772 to the Constitution of Alabama of 1901, as amended).

**Beneficiary Grant Funds** means an amount equal to one-half of the Development Project User Fees received by the City, after the payment therefrom of all City Advances, during the period beginning on the Effective Date and ending on March 31, 2045.

**Calendar Quarter** means each period of three consecutive calendar months ending on March 31, June 30, September 30, and December 31 in each year.

**City Administrator** means the City Administrator of the City and any successor office of the City with commensurate duties and functions.

**City Advances** means all costs and expenses (including without limitation legal fees) incurred by the City in connection with the authorization, delivery, administration and enforcement of this Agreement .

**Development** means the retail food service facilities to be established by the Beneficiary on the Development Site.

**Development Project User Fees** means the Project User Fees levied and collected by the Districts within the Development and provided to the City with respect to the maintenance, operation and repair of the public infrastructure which serves or benefits the Development.

**Development Site** means the real property described on Appendix B.

**Districts** mean collectively (i) The Public Athletic and Sports Facilities Cooperative District of the City of Foley, Alabama, and its successors and assigns; and (ii) The Public Cultural and Entertainment Facilities Cooperative District of the City of Foley, Alabama, and its successors and assigns.

**Effective Date** means \_\_\_\_\_, 2024.

**Finance Director** means the Finance Director of the City and any successor office of the City with commensurate duties and functions.

**Governmental Authority** means any agency, authority, board, bureau, commission, court, department, or instrumentality of the (i) United States of America, (ii) the State, or (iii) any county, municipality, political subdivision or public corporation established or organized under the Constitution and laws of the State.

**Magnolia Meat Development Account** shall have the meaning assigned in Section 4.01(a)(i).

**Person** means any natural person, corporation (for profit or nonprofit), general or limited partnership, limited liability company or partnership, joint venture, association, trust, unincorporated organization or juridical person, or Governmental Authority.

**Project** shall have the meaning assigned in the Project User Fee Resolutions.

**Project Facility** shall have the meaning assigned in the Project User Fee Resolutions.

**Project User Fee Area** means the real property described on Appendix A.

**Project User Fee Payers** shall have the meaning assigned in the Project User Fee Resolutions.

**Project User Fee Resolutions** means collectively the respective resolutions of the Districts adopted on December 19, 2016, providing for the levy, collection and application of the Project User Fees within the Project User Fee Area.

**Project User Fees** means collectively the Project User Fee for Transactions levied by the Districts pursuant to the Project User Fee Resolutions.

**Quarterly Payment Date** means:

(i) the tenth (10th) day of the second (2nd) month of a Calendar Quarter until and including February 10, 2045; and

(ii) May 10, 2045.

**State** means the State of Alabama.

**Termination Date** shall have the meaning assigned in Article 8.

**Total City Commitment** means the amount of \$\_\_\_\_\_.

**Transaction Participants** means collectively the City and the Beneficiary.

## ARTICLE 3

### Representations

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#### Section 3.01 The City

The City delivers this Agreement on the Effective Date pursuant to the authorization hereof by proceedings duly had and taken by the governing body thereof under the authority of Amendment No. 772 and the applicable laws of the State, and having found and determined precedent thereto:

- (i) The delivery and performance by the City of this Agreement will result in direct financial benefits to the City and will serve a valid and sufficient public purpose notwithstanding any incidental benefit accruing to any private entity or entities.
- (ii) The assessed value of the taxable property in the City for the fiscal year ending September 30, 2023 was \$\_\_\_\_\_.
- (iii) The indebtedness of the City incurred pursuant to, and chargeable against the limitation of Amendment No. 772 is not more than fifty percent of the assessed value of the City for the fiscal year ending September 30, 2023.
- (iv) The Beneficiary constitutes an "Applicable Business" within the meaning of the Project User Fee Resolutions.
- (v) The Development is located entirely within the Project User Fee Area.
- (vi) The Project User Fees have been validated and confirmed by the Circuit Court of Baldwin County, Alabama by judgements entered on June 21, 2017 in 05-CV-2017-900473.00 and 05-CV-2017-900475.00.
- (vii) The Beneficiary is subject to the Project User Fees pursuant to the Project User Fee Resolutions.
- (viii) There is no approval of, or filing with, any Governmental Authority is required for the validity, or performance by the City, of this Agreement.
- (ix) There is no litigation is pending, or threatened in writing, in which a result adverse to the City would have a material and adverse effect upon the validity, or performance by the City, of this Agreement.
- (x) The delivery and performance of this Agreement by the City will not cause or result in a default or violation under any contractual agreement, or order or ruling of any Governmental Authority, binding upon, or in effect with respect to, the City which would have a material and adverse effect upon the validity or performance by the City, of this Agreement.

### **Section 3.02 The Beneficiary**

The Beneficiary delivers this Agreement on the Effective Date pursuant to due authorization thereof in compliance with the applicable laws of the State and having found and determined precedent thereto:

- (i) The Beneficiary constitutes an "Applicable Business" within the meaning of the Project User Fee Resolutions.
- (ii) The Development is located entirely within the Project User Fee Area.
- (iii) The Development constitutes a "Project Facility" and is directly benefited by the Project.
- (iv) The Beneficiary is subject to the Project User Fees pursuant to the Project User Fee Resolutions.
- (v) The Beneficiary has made all filings and notices, and obtained all approvals or consents of, any Governmental Authority required for the business operations of the Beneficiary in the State and the validity, and performance by the Beneficiary, of this Agreement.
- (vi) There is no litigation is pending, or threatened in writing, in which a result adverse to the Beneficiary would have a material and adverse effect upon the validity, or performance by the Beneficiary of, this Agreement or the establishment of the Development.
- (vii) The delivery and performance of this Agreement by the Beneficiary will not cause or result in a default or violation under any contractual agreement or order or ruling of any Governmental Authority binding upon, or in effect with respect to, the Beneficiary which would have a material and adverse effect upon the validity, or performance by the Beneficiary of, this Agreement, or the establishment by the Beneficiary of the Development.

## ARTICLE 4

### Agreements of City and Beneficiary

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#### Section 4.01 Collection and Payment of Development Project User Fees by City

(a) The City agrees the City will:

(i) on the Effective Date, establish (by separate account or by specific recordation on the financial records of the City) a special account designated the "Magnolia Meat Development Account" to be held by the City for the credit thereto of the Development Project User Fees received by the City; and

(ii) cause the Districts to levy, collect and deliver to the City the Project User Fees pursuant to agreements by the City and the District with respect thereto; and

(iii) credit to the Magnolia Meat Development Account all Development Project User Fees when and as received by the City.

(b) The Development Project User Fees will not accrue or bear interest.

(c) The City authorizes and directs the City Administrator and the Finance Director to pay to the Beneficiary on each Quarterly Payment Date (or the then next succeeding business day) which occurs prior to, or on, the Termination Date, in lawful currency of the United States of America immediately available, an amount equal to the Development Project User Fees which shall have been received by the City for the then immediately preceding Calendar Quarter and are credited to the Magnolia Meat Development Account .

#### Section 4.02 Agreements of Beneficiary

The Beneficiary covenants and agrees:

(i) the City will apply all Development Project User Fees to the payment of City Advances prior to the payment of any thereof to the Beneficiary; and

(ii) the Beneficiary will provide all reasonable assistance to the City and the Districts to cause all Project User Fee Payers located on the Development Site to fully comply with the Project User Fee Resolutions; and

(iii) the obligation of the City for the payment of the Development Project User Fees on any Quarterly Payment Date: (A) is contingent and effective only upon receipt of a positive amount of Development Project User Fees for the then immediately preceding Calendar Quarter; (B) is a limited obligation payable solely from the amount of Development Project User Fees received by the City and credited to the Magnolia Meat Development Account on each Quarterly Payment Date, (C) will not exceed the Total City Commitment, (D) does not constitute a direct, indirect or contingent general obligation, or charge against the general credit, financial assets, or taxing power, of the City, and (E) is subject to the prior payment, to the extent provided by law, from the Development Project User Fees of the reasonable and necessary governmental expenses of operating the City; and

(iv) no covenant or agreement in this Agreement will operate or be construed as a covenant or agreement of any officer, agent, employee, or member of the governing body, of the City in the individual capacity thereof and none of such persons shall at any time be liable personally for observance or performance of any provision of the Agreement or be subject to any personal accountability or liability by reason of the delivery of this Agreement.

## **ARTICLE 5**

### **Amendment**

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The Transaction Participants agree and covenant the definitions, provisions and terms of this Agreement may be amended only by written agreement duly authorized, executed and delivered by each of the Transaction Participants.

## **ARTICLE 6**

### **Assignment and Transfer**

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The Transaction Participants agree and covenant that:

- (i) this Agreement is not negotiable, and the Beneficiary may not, in whole or in part, assign, encumber, pledge or transfer to any Person or for any purpose, any interest in this Agreement, or delegate to any Person any duty or obligation thereof pursuant to this Agreement, without the prior approval thereof by resolution of the governing body of the City; and
- (ii) any attempted assignment, encumbrance, pledge or transfer of an interest, or attempted delegation of a duty or obligation, without compliance with Article 6(i) shall be null and void and unenforceable against the City.

## ARTICLE 7

### Remedies

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The Transaction Participants agree and covenant that each Transaction Participant shall have and may exercise all rights and remedies available at law or in equity under the laws of the State for the conservation, enforcement and protection of the rights and interests thereof under this Agreement.

## ARTICLE 8

### Term and Termination of Agreement

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The Transaction Participants 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 first to occur of the following dates ( the "Termination Date") whereupon all agreements and obligations of the Transaction Participants shall be discharged and terminated without recourse:

- (i) the date on which the City shall have paid to the Beneficiary an amount equal to the Total City Commitment; or
- (ii) May 10, 2045 (the final Quarterly Payment Date); or
- (iii) the date on which the Beneficiary ceases operations at the Development; or
- (iv) the date on which the Transaction Participants terminate this Agreement by written instrument duly authorized, executed and delivered thereby.

## ARTICLE 9

### Provisions of General Application

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The Transaction Participants covenant and agree as follows:

- (a) **Governing Law:** This Agreement is governed by, and will be construed in accordance with, the laws of the State of Alabama without regard to principles of conflict of laws.
- (b) **Binding Effect:** This Agreement is enforceable by, and binding upon, the respective successors and assigns of each Transaction Participant.
- (c) **Counterparts:** This Agreement may be executed in several counterparts each of which shall constitute the same agreement.
- (d) **Enforceability:** If any provision herein shall be unenforceable, the remaining provisions hereof will not be affected thereby and will remain in full force and effect.
- (e) **Notices; Delivery:** Any notice given hereunder must be delivered as provided on Appendix C.
- (f) **No Jury Trial:** Each Transaction Participant (i) irrevocably 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 (ii) agrees that no Person has represented (by expression or implication) that a Transaction Participant would not seek to enforce such waiver in the event of litigation.
- (g) **No Joint Venture:** This Agreement does not operate, and cannot be construed, to create a joint venture or partnership by or among the Transaction Participants.
- (h) **No Other Beneficiaries:** This Agreement is solely for the benefit of the Transaction Participants, and the successors and assigns thereof, and no other Person has or may enforce any benefit, interest or rights under or by virtue of this Agreement.
- (i) **Final and Full Contract:** This Agreement constitutes the final and full contractual agreement of the Transaction Participants and replaces and supersedes all prior or other agreements (written or oral) relating to the subject matter hereof.

**EXECUTION BY CITY**

IN WITNESS WHEREOF, the City has caused this Agreement to be executed under seal and attested in the name of the City by officers thereof duly authorized thereunto on the Effective Date.

**CITY OF FOLEY, ALABAMA**

By \_\_\_\_\_  
Mayor

S E A L

ATTEST: \_\_\_\_\_  
City Clerk

**EXECUTION BY BENEFICIARY**

IN WITNESS WHEREOF, the Beneficiary has caused this Agreement to be executed under seal by an officer or legal representative thereof duly authorized thereunto on the Effective Date.

**MAGNOLIA MEAT AND GROCERY LLC**

By: \_\_\_\_\_, manager

By: \_\_\_\_\_

Its \_\_\_\_\_

**APPENDIX A**

**Project Fee Area**

**APPENDIX B**

**Development Site**

## APPENDIX C

### Notices

#### A. Addresses

1. The City

City of Foley, Alabama  
407 E. Laurel Avenue  
Foley, Alabama 36535  
Attn: City Administrator

2. The Beneficiary

Magnolia Meat and Grocery LLC

#### B. Manner of Delivery

1. United States Postal Service

Delivery may be made by United States certified or registered mail, return receipt requested, postage pre-paid.

2. Private Delivery Service

Delivery may be made by a private delivery service which is accepted by the Internal Revenue Service as set forth on [IRS.gov/PDS](https://www.irs.gov/PDS).

3. Electronic Means

Communication by electronic mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords or authentication keys, or another method or system.

Duly passed and adopted on this January 2, 2024.

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

SEAL

Attest: \_\_\_\_\_  
City Clerk

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Transmitted to and approved by the Mayor on this January 2, 2024

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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, Council President  
Vera J. Quaites  
Richard Dayton  
C. Rick Blackwell  
Charles J. Ebert

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.

\_\_\_\_\_  
Council President

\_\_\_\_\_  
Member of Council

\_\_\_\_\_  
Member of Council

\_\_\_\_\_  
Member of Council

\_\_\_\_\_  
Member of Council

SEAL

Attest: \_\_\_\_\_  
City Clerk