

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

Special Economic Development Grant Agreement

**by
City of Foley, Alabama
and
Foley Holdings LLC**

regarding

- 1. Fees of The Public Athletic and Sports Facilities Cooperative District of the City of Foley, Alabama**
 - 2. Fees of The Public Cultural and Entertainment Facilities Cooperative District of the City of Foley, Alabama**
-

The City Council of the City of Foley, Alabama met in special public session at City Hall in the City of Foley, Alabama, at 5:30 p.m. on April 17, 2017.

The meeting was called to order by the Council President, and the roll was called with the following results:

Present: J. Wayne Trawick
 Ralph G. Hellmich
 Rick Blackwell
 Charles J. Ebert III
 Vera J. Quaites

Absent:

The Mayor, Hon. John E. Koniar, 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 A SPECIAL ECONOMIC DEVELOPMENT GRANT
AGREEMENT BY THE CITY OF FOLEY, ALABAMA AND FOLEY HOLDINGS LLC**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOLEY, ALABAMA (THE "COUNCIL"), AS GOVERNING BODY OF THE CITY OF FOLEY, ALABAMA (the "City"), as follows:

ARTICLE 1

Definitions and Representations

Section 1.01 Definitions of Capitalized Terms

As used herein the following terms shall have the following meanings:

Agreement shall mean that certain Economic Development Grant Agreement dated the date of delivery, together with all Attachments and Exhibits thereto, by the City and the Company, as at any time amended, restated or supplemented.

Bond Counsel shall mean Maynard, Cooper & Gale, PC.

City shall mean the City of Foley, Alabama.

Company shall mean Foley Holdings LLC and its successors and assigns.

Enabling Law shall mean Amendment No. 772 of the Constitution of Alabama of 1901, as amended.

Transaction Documents shall have the meaning assigned in Section 2.01.

Warrant shall have the meaning assigned in Section 1.02(c).

Section 1.02 Representations of the City

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 City and Foley Holdings LLC (the “Beneficiary”) have prepared that certain Special Economic Development Grant Agreement to be dated the date of delivery (the “Special Economic Development Grant Agreement”), as set forth in Exhibit A hereto, for the purposes referenced therein.

(b) The City has the power and authority under Amendment No. 772 of the Constitution of Alabama of 1901, as amended (“Amendment No. 772”) to authorize, deliver and perform the Special Economic Development Grant Agreement.

(c) Pursuant to, and for the purposes of, Amendment No. 772, it is necessary, desirable, and in the public interest for the City to grant public funds for the economic development of the City and in evidence thereof to issue its Limited Obligation Economic Development Warrant (the “Warrant”) pursuant to the terms of the Agreement.

(d) The expenditure of public funds for the purposes specified in the Special Economic Development Grant Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(e) (1) On April 5, 2017, the City caused to be published in *The Onlooker*, which newspaper has the largest circulation in the City, the notice required by Amendment No. 772, a true and correct copy of which notice is attached to this Resolution as Exhibit B.

(2) The information set forth in said notice is true and correct.

(3) Publication of said notice is hereby ratified and confirmed.

(f) (1) The assessed valuation of the taxable property in the City for the preceding fiscal year was not less than \$286,656,160.

(2) The total indebtedness of the City chargeable against the limitation upon indebtedness for the City prescribed by Amendment No. 772(a)(4) (which indebtedness does not include the Warrant) is not more than fifty percent (50%) of said assessed valuation.

ARTICLE 2

Authorization of Execution, Delivery and Performance of Transaction Documents

Section 2.01. Authorization of Transaction Documents

(a) The City does hereby approve, adopt, authorize, direct, ratify and confirm the terms and provisions of, the representations and warranties of the City set forth in, the obligations and transactions to be undertaken by the City pursuant to, and the execution and delivery by the City of, the following (collectively, the "Transaction Documents"):

(1) The Agreement, in substantially the form presented;

(2) The Warrant;

(3) All agreements, assignments, documents, instruments and notices which may be desirable or necessary to be executed, delivered and performed to effect the purposes of and transactions under the Transaction Documents.

(b) The Transaction Documents are approved in substantially the form and of substantially the content as presented to and considered by the City, with such changes thereto (by addition or deletion) as the officer of the City executing the same shall approve and as shall not increase the amount or duration of the obligations of the City thereunder, which approval shall be conclusively evidenced by the execution of the Transaction Documents by such officer as provided in this Resolution.

(c) The Transaction Documents presented to, considered and adopted by the City shall be filed in the permanent records of the City.

Section 2.02 Authorization of Execution, Delivery and Performance of Transaction Documents

(a) The Mayor of the City is hereby authorized and directed to execute, deliver and effect the performance of, the Transaction Documents for and on behalf of and in the name of the City.

(b) The City Clerk is hereby authorized and directed to attest and seal the Transaction Documents to the extent required thereby.

ARTICLE 3

Limitation upon General Liability

Nothing contained in this Resolution, the Agreement, the Warrant, or in any other instrument shall be construed with respect to the City as incurring a pecuniary liability or charge upon the general credit of the City or against the taxing power of the City, nor shall the breach of any agreement contained in this Resolution, the Agreement, or any other instrument or document executed in connection therewith impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power.

ARTICLE 4

General Authorization and Ratification

Section 4.01 General Authorization

The Mayor and the City Clerk are hereby authorized and directed (i) to take all such actions, and execute, deliver, file and perform all such documents, agreements, instruments and notices, as may be necessary or desirable to carry out the purposes of this Resolution and effect the purposes of, and transactions to be undertaken pursuant to, the Transaction Documents, and (ii) to execute and deliver to the Company, counsel therefor, and Bond Counsel, such certified proceedings of the City and such closing papers, proofs and statements containing such representations of fact and law as may be necessary or desirable to demonstrate the validity of the Transaction Documents, and the absence of litigation (pending or threatened) with respect to any matter referred to herein.

Section 4.02 Ratification

Any prior action taken by or on behalf of the City or by any officer of the City, or any agreements, documents, petitions or proceedings executed by or on behalf of the City, in connection with the agreements, documents and transactions herein authorized, are hereby ratified and confirmed.

ARTICLE 5

Validation

(a) The City desires, before the issuance of the Warrant and the Agreement, to validate the legality of all proceedings had or taken in connection therewith, the validity of the Project User Fees as the means provided for the payment of the contingent and limited obligations of the City under the Agreement and the Warrant, and the validity of all covenants and provisions contained in this Resolution and the Agreement and the Warrant, by filing a petition against the taxpayers and citizens of the City in the Circuit Court of Baldwin County, Alabama. A complaint to validate the Agreement, Warrant, proceedings, and covenants shall be filed and validation proceedings shall be instituted in the name of the City and the members of the governing body of the City. Maynard, Cooper & Gale, P.C., Birmingham, Alabama, is hereby designated and appointed as the attorneys of the City to file such complaint, institute such proceedings, and to take all steps necessary to complete such validation proceedings in accordance with the provisions of Article 17 of Chapter 6 of Title 6 of the Code of Alabama 1975.

(b) Any actions heretofore taken by such attorneys in connection with the filing of such petition or such validation proceedings are hereby ratified and confirmed.

ARTICLE 6

Provisions of General Application

Section 5.01 Other Proceedings

(a) Any resolution, order, ordinance, or part thereof, in conflict or inconsistent with the provisions of this Resolution is hereby, to the extent of such conflict or inconsistency, repealed.

(b) The provisions of Section 5.01(a) shall not operate or be construed to revive any instrument, ordinance order or resolution, or part thereof, of the City.

Section 5.02. Effect of this Resolution

This Resolution shall take effect immediately.

Exhibit A

Special Economic Development Grant Agreement

SPECIAL ECONOMIC DEVELOPMENT GRANT AGREEMENT

Effective Date _____, 2017

by

CITY OF FOLEY, ALABAMA

and

FOLEY HOLDINGS LLC

Re: Foley Holdings LLC Project

This Special Economic Development Grant Agreement was prepared by Heyward C. Hosch of Maynard, Cooper & Gale, P.C., 1901 Sixth Avenue North, 2400 Regions/Harbert Plaza, Birmingham, Alabama 35203.

SPECIAL ECONOMIC DEVELOPMENT GRANT AGREEMENT

_____, 2017

The Special Economic Development Grant Agreement is made and entered as of the above date by the following persons pursuant to Amendment No. 772 to the Constitution of Alabama of 1901, as amended, and the laws of the State of Alabama, for the purposes referenced herein:

City: City of Foley, Alabama, a political subdivision of the State of Alabama;

Beneficiary: Foley Holdings, LLC, an Alabama limited liability company.

Recitals

The Beneficiary is the developer of facilities and properties within the geographic jurisdiction of the City which qualify as a "tourist destination attraction" under Section 40-9B-3(a)(10)(j) of the Code of Alabama 1975 (the "Foley Holdings Project").

The Foley Holdings Project shall be located within the area described on Exhibit A hereto.

The development and operation of the Foley Holdings Project is of direct financial benefit to the taxpayers and citizens of the City.

At the request of the Beneficiary, the City has agreed to provide the Beneficiary, as provided herein, the within referenced Beneficiary Grant Funds in consideration of the development, placement in service, and leasing of the Foley Holdings Project.

Pursuant to Amendment No. 772 of the Constitution of Alabama of 1901, as amended, and the applicable laws of the State of Alabama, for the purposes referenced herein, the City and the Beneficiary have delivered this Agreement.

Agreement

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants and agreements herein contained, the City and the Beneficiary hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement the following terms shall have the following meanings:

Beneficiary shall mean Foley Holdings LLC, and the successors and assigns thereof.

Beneficiary Grant Funds shall mean an amount equal to fifty percent (50%) of the Project User Fees remaining after payment from the Project User Fees of all City Agreement Advances, subject to amendment of such allocation pursuant to Section 7.07, plus investment income on such Beneficiary Grant Funds.

Beneficiary Grant Funds Account shall mean an account or fund established by the City, on behalf of the District, for the sole purpose of holding the Beneficiary Grant Funds.

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

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

District shall 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 shall mean the date of delivery hereof as set forth on the cover page hereof.

Enabling Law shall mean Amendment No. 772 of the Constitution of Alabama of 1901, as amended.

Foley Holdings Project shall mean the commercial facilities and properties of real and personal property located within the Project Area in the City.

Project Area shall mean the area described on Exhibit A hereto.

Project User Fees shall mean, collectively:

- (i) The Project User Fees levied and collected in the Project Area by The Public Athletic and Sports Facilities Cooperative District of the City of Foley, Alabama pursuant to resolution adopted thereby on December 16, 2016; and
- (ii) The Project User Fees levied and collected in the Project Area by The Public Cultural and Entertainment Facilities Cooperative District of the City of Foley, Alabama pursuant to resolution adopted thereby on December 16, 2016.

Quarterly Accounting Date shall mean the tenth (10) day of the second month of a Calendar Quarter.

Termination Date shall mean the first to occur of (i) the date on which this Agreement shall be terminated by either party hereto pursuant to Section 6.02(a), or (ii) that date on which the City shall have transferred to the Beneficiary an amount equal to the Total Amount of Beneficiary Grant Funds, or (iii) the Quarterly Accounting Date which next succeeds the fifteenth (15th) anniversary of the Validation Date, subject to amendment pursuant to Section 7.07.

Total Amount of Beneficiary Grant Funds shall mean an aggregate amount of Beneficiary Grant Funds payable to the Beneficiary under this Agreement of \$175,000,000.

Validation Date shall mean _____, 2017, being that date on which the Validation Order shall have become forever conclusive in accordance with, and as provided in, Section 11-81-224 of the Code of Alabama 1975.

Validation Order shall mean the Findings of Fact, Conclusions of Law and Final Judgment dated _____, 2017, entered by the Circuit Court of Baldwin County, Alabama, with respect to this Agreement and the Warrant in CV _____.

Warrant shall have the meaning set forth in Section 5.02.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.01 The City

The City hereby represents as follows:

(a) The City has corporate power and authority to enter into this Agreement, pursuant to the Enabling Law, and to carry out its obligations hereunder and by proper corporate action the City has duly authorized the execution, delivery and performance of this Agreement.

(b) The delivery and performance of this Agreement and the Warrant by the City (i) will result in direct financial benefits to the City, and (ii) will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(c) (1) The assessed valuation of the taxable property in the City for the preceding fiscal year was not less than \$286,656,160.

(2) The indebtedness of the City incurred pursuant to the Enabling Law and chargeable against the limitation thereupon in the Enabling Law, which indebtedness does not, pursuant to the Validation Order, include this Agreement and the Warrant, is not more than fifty percent of the assessed value of the taxable property in the City as determined for state taxation for the fiscal year immediately preceding the Effective Date.

SECTION 2.02 The Beneficiary

The Beneficiary hereby represents as follows:

(a) The Beneficiary is duly organized and validly existing as a limited liability company under the laws of the State of Alabama and is duly qualified to do business in the State of Alabama.

(b) The Beneficiary has corporate power and authority to enter into this Agreement and to carry out its obligations hereunder and by proper corporate action the Beneficiary has duly authorized the execution, delivery and performance of this Agreement.

(c) The delivery of this Agreement will result in direct financial benefits to the Beneficiary.

(d) No consent or approval by, or filing with, any governmental authority in the State of Alabama is required for the execution or delivery of this Agreement by the Beneficiary or for the full effectiveness or enforceability thereof under the laws of the State of Alabama.

(e) There is no action, suit, proceeding, inquiry or investigation pending before any court or governmental authority, or threatened in writing against or affecting the Beneficiary, which involves the consummation of the transactions contemplated by, or the validity of, this Agreement.

ARTICLE 3

DURATION OF AGREEMENT

This Agreement and the obligations of the City and the Beneficiary herein shall become effective on the Validation Date and shall remain in effect until the Termination Date, except with respect to any provision or term herein which expressly survives termination of this Agreement and remains in effect from and after the Termination Date.

ARTICLE 4

AGREEMENTS AND OBLIGATIONS OF THE BENEFICIARY

SECTION 4.01 Agreements of the Beneficiary Regarding Beneficiary Grant Funds

The Beneficiary covenants and agrees with the City:

(a) The City shall have no obligation to make available any amount of Project User Fees for the Beneficiary under this Agreement from and after the Termination Date, regardless of whether the Total Amount of Beneficiary Grant Funds shall have been provided to the Beneficiary on or before such date.

(b) The City shall apply all Project User Fees to the payment of all City Agreement Advances prior to the transfer of any Beneficiary Grant Funds to the Beneficiary pursuant to Section 5.01.

(c) The Beneficiary shall have no recourse, either directly or indirectly, against the City, whether by virtue of any constitutional or statutory provision, any rule of law, or any contract, for the payment of any amounts under this Agreement or the Warrant other than payment of the Beneficiary Grant Funds on deposit in the Beneficiary Grant Funds Account as provided in this Agreement.

(d) The obligation of the City for the transfer of any amount of Beneficiary Grant Funds to the Beneficiary under this Agreement:

(1) shall be contingent, and shall only become effective, upon the deposit of Beneficiary Grant Funds in the Beneficiary Grant Funds Account;

(2) is a limited obligation payable solely from, and limited to an amount not more than, that amount of Beneficiary Grant Funds which are held in the Beneficiary Grant Funds Account on each Quarterly Accounting Date during the term hereof;

(3) shall never constitute, directly or indirectly, a personal or pecuniary liability, or a general obligation, or a charge against the general assets, credit, funds, revenues or taxing power, of the City within the meaning of any constitutional or statutory or contractual provision, or rule of law, whatsoever;

(4) shall commence after the Validation Date.

(e) The maximum aggregate amount of Beneficiary Grant Funds the City shall provide under this Agreement shall be limited to and shall not exceed the Total Amount of Beneficiary Grant Funds.

SECTION 4.02 Special Agreements of Beneficiary

The Beneficiary covenants and agrees to defend, protect, indemnify, and hold harmless the City, its agents, employees, and members of its governing body, from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any of the following, provided, however, that the foregoing indemnity will not extend to the negligent misconduct of the City, its agents, employees, and members of its governing body: (i) any construction activity performed by Beneficiary, or anyone claiming by through, or under Beneficiary; and (ii) any loss of life, personal injury, or damage to property arising from or in relation to the entry upon, construction, use, operation or occupancy of the Foley Holdings Project, including, without limitation, tenants, customers and invitees of the Foley Holdings Project and/or Beneficiary. The agreements and covenants in this Section 4.02 shall survive the termination of this Agreement with respect to events or occurrences happening prior to or upon the termination of this Agreement and shall remain in full force and effect until commencement of an action with respect to any thereof shall be prohibited by law.

ARTICLE 5

AGREEMENTS AND OBLIGATIONS OF THE CITY

SECTION 5.01 Agreements of the City

The City covenants and agrees with the Beneficiary:

(a) Establishment of Beneficiary Grant Funds Account. The City shall establish and maintain the Beneficiary Grant Funds Account as a separate and distinct account or fund of the City for the sole purpose of the deposit and holding of Beneficiary Grant Funds pending application thereof in accordance with this Agreement. The City shall not commingle or combine any other funds or revenues of the City with the Beneficiary Grant Funds, whether by deposit of such other funds or revenues of the City in the Beneficiary Grant Funds Account or by deposit of any amount of the Beneficiary Grant Funds in any other fund or account of the City.

(b) Collection, Determination, and Deposit of Project User Fees. The City shall collect the Project User Fees from the District pursuant to agreements by the City and the District with respect thereto and shall deposit in the Beneficiary Grant Funds Account that amount of Project User Fees determined by the City to be Beneficiary Grant Funds when and as the same are received from the District.

(c) Beneficiary Grant Funds Account. The City shall cause the Beneficiary Grant Funds to be held in the Beneficiary Grant Funds Account, invested in accordance with law, and applied, together with investment earnings thereon, in accordance with this Agreement. The City shall, upon written request by the Beneficiary, notify the Beneficiary of the amount on deposit in, or credited to, the Beneficiary Grant Funds Account.

(d) Pledge of Beneficiary Grant Funds Account; Restriction of Use of Beneficiary Grant Funds Under Enabling Law. The City does hereby pledge the Beneficiary Grant Funds Account, and all Beneficiary Grant Funds (and investment income thereon) on deposit in the Beneficiary Grant Funds Account, for the payment of the Warrant and the amounts due to the Beneficiary under Section 5.01(e) of this Agreement. The City agrees that, in accordance with the Enabling Law, the Beneficiary Grant Funds on deposit in the Beneficiary Grant Funds Account shall not be available, and shall not be used, for any governmental purpose of the City other than the transfer to the Beneficiary, as provided in this Agreement, for the purpose of promoting the economic development of the City pursuant to Section (a)(3) of the Enabling Law.

(e) Transfer of Beneficiary Grant Funds. On _____, 2017 and on each Quarterly Accounting Date thereafter, during the term of this Agreement, the City shall transfer to the Beneficiary, solely from amounts on deposit in the Beneficiary Grant Funds Account, subject to and in accordance with the provisions of this Agreement with respect thereto, an amount equal to the Beneficiary Grant Funds on deposit in the Beneficiary Grant Funds Account on each such date.

SECTION 5.02 The Warrant

(1) The agreement of the City to transfer the Beneficiary Grant Funds to the Beneficiary hereunder shall be evidenced by a limited obligation special fund warrant, payable solely from, and secured by a pledge of, the Beneficiary Grant Funds on deposit in the Beneficiary Grant Funds Account, in form and of content as the form of warrant attached to this Agreement as Exhibit C (the "Warrant").

(2) The Warrant shall not bear interest, shall be issued in an amount not exceeding the Total Amount of Beneficiary Grant Funds, shall be dated the date of delivery, shall be payable as provided therein, and shall mature on the Termination Date.

(3) The Warrant shall be registered and transferred as provided therein.

(4) The Beneficiary shall present and surrender the Warrant to the City on the Termination Date, regardless of whether the Total Amount of Beneficiary Grant Funds shall have been provided to the Beneficiary on or before such date.

ARTICLE 6

EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01 Events of Default

Any one or more of the following shall constitute an event of default (an “Event of Default”) under this Agreement:

(a) default in the performance, or breach, by the City of any covenant or warranty of the City in this Agreement, and the continuance of such default or breach for a period of ninety (90) days after there has been given, by registered or certified mail, to the City by the Beneficiary a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “notice of default” hereunder, provided that if such default is of a kind which cannot reasonably be cured within such ninety-day period, the City shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default; or

(b) default in the performance, or breach, by the Beneficiary of any covenant or warranty of the Beneficiary in this Agreement, and the continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the Beneficiary by the City a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “notice of default” hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the Beneficiary shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default.

SECTION 6.02 Remedies

(a) Each party may, upon the occurrence of an Event of Default and the expiration of any cure or grace period therefor, by written notice to the other party, terminate this Agreement and the obligations thereof without recourse except with respect to such rights or obligations as shall have theretofore vested or which shall be set forth in agreements or provisions which by the express terms thereof survive such termination of this Agreement.

(b) Each party hereto may proceed to protect its rights and interests by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of any other party herein contained or in aid of the exercise of any power or remedy available at law or in equity.

SECTION 6.03 Remedies Subject to Applicable Law

All rights, remedies and powers provided by this Agreement may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE 7

PROVISIONS OF GENERAL APPLICATION

SECTION 7.01 Enforceability

The provisions of this Agreement shall be severable. In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof.

SECTION 7.02 Prior Agreements Cancelled

This Agreement shall completely and fully supersede all other prior agreements, both written and oral, by the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein.

SECTION 7.03 Counterparts

This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

SECTION 7.04 Binding Effect; Governing Law

(a) This Agreement shall inure to the benefit of, and shall be binding upon, the City and the Beneficiary and their respective successors and assigns except as otherwise provided herein.

(b) This Agreement shall be governed exclusively by the laws of the State of Alabama.

SECTION 7.05 Notices

(a) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

- | | | | |
|-----|------------------------|-----|--------------------------------------|
| (1) | if to the City: | (2) | if to the Beneficiary: |
| | City Hall | | Foley Holdings LLC |
| | 407 East Laurel Avenue | | c/o James T. Martin, President/CEO |
| | Foley, Alabama | | Creek Indian Enterprises Development |
| | | | Authority |
| | | | 100 Brookwood Road |
| | | | Atmore, Alabama 36502 |

(b) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

SECTION 7.06 Delegation and Assignment of this Agreement

(a) The Beneficiary shall not have the authority or power to, and shall not, assign, pledge, or transfer any interest or right of the Beneficiary in or to this Agreement or the Warrant, or assign, delegate or transfer any duty or obligation of the Beneficiary to observe or perform any agreement, covenant or obligation of the Beneficiary under this Agreement, to any person or entity except upon the prior written consent of the City as set forth in a resolution of the governing body of the City with respect thereto.

(b) The City shall not have the authority or power to, and shall not, assign, delegate or transfer any duty or obligation of the City to observe or perform any agreement, covenant or obligation of the City under this Agreement except upon the prior written consent of the Beneficiary, or any successor or assign thereof approved by the City under Section 7.06(a).

SECTION 7.07 Amendments

(a) This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.

(b) Anything herein to the contrary notwithstanding, the City and the Beneficiary may amend this Agreement as provided in Section 7.07(a) to (i) increase or decrease the percentage of Beneficiary Grant Funds to be provided by the City to the Beneficiary or (ii) provide that the Termination Date shall occur upon such contingency or on such date as the City and the Beneficiary may then determine.

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

CITY OF FOLEY, ALABAMA

SEAL

By _____
Mayor

ATTEST: _____
City Clerk

FOLEY HOLDINGS LLC

By: _____

Its: _____

EXHIBIT A

Project Area

BEGINNING AT THE SW CORNER OF 'PARCEL B' MARTIN SUBDIVISION (SLIDE 1863-A BALDWIN COUNTY RECORDS) THENCE RUN EASTWARDLY ALONG THE NORTHERN R.O.W. LINE OF CR 20 TO THE WESTERN R.O.W. LINE OF THE FOLEY BEACH EXPRESS, THENCE RUN NORTHWARDLY ALONG THE WESTERN R.O.W. LINE OF THE FOLEY BEACH EXPRESS TO THE NE CORNER OF THE PARCEL DESCRIBED AT INSTRUMENT 1390607 (BALDWIN COUNTY RECORDS) THENCE RUN WESTWARDLY ALONG THE IRREGULAR NORTHERN BOUNDARY OF SAID PARCEL TO THE NE CORNER OF LOT 151 PARISH LAKES SUBDIVISION (SLIDE 2301-C-F BALDWIN COUNTY RECORDS) THENCE SOUTHWARDLY ALONG THE EASTERN BOUNDARY OF PARISH LAKES SUBDIVISION TO THE SW CORNER OF LOT 47 PARISH LAKES SUBDIVISION (SLIDE 2301-C-F BALDWIN COUNTY RECORDS) THENCE WESTWARDLY ALONG THE SOUTHERN BOUNDARY OF PARISH LAKES SUBDIVISION TO THE NORTHERN R.O.W. LINE OF PRIDE DRIVE; THENCE RUN WESTWARDLY ALONG THE NORTHERN R.O.W. LINE OF PRIDE DRIVE TO THE SW CORNER OF LOT 5 PARISH LAKES SUBDIVISION (SLIDE 2301-C-F BALDWIN COUNTY RECORDS) THENCE RUN SOUTHERLY ALONG THE EASTERN R.O.W. LINE OF JUNIPER STREET TO THE POINT OF BEGINNING.

EXHIBIT B

Legal Notice

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

Notice is hereby given that the City Council (the “Council”) of the City of Foley, Alabama (the “City”) will meet in regular public session at 5:30 p.m. on Monday, April 17, 2017 at the City Hall in the City of Foley, Alabama for the purpose of considering the transaction of business that may properly come before the Council such business to include, but not be limited to, the authorization by the Council, pursuant to Amendment No. 772 of the Constitution of Alabama of 1901, as amended, of a resolution approving the execution and delivery of a Special Economic Development Grant Agreement (the “Agreement”) by the City and Foley Holdings LLC (the “Developer”).

Pursuant to said Amendment No. 772 and the Agreement, for the purpose of economic development of the City, the City shall provide to the Developer certain funds of the City (the “Beneficiary Grant Funds”), in consideration, and for the purpose, of the development of facilities and properties which constitute and qualify as a “tourist destination attraction” under the laws of the State of Alabama, to be located within the geographic jurisdiction of the City (the “Foley Holdings Project”).

The City shall pay the Beneficiary Grant Funds to the Developer in an amount approximately equal to \$175,000,000 in quarterly payments solely from the amounts, if any, the City shall have received from Project User Fees which shall be levied and collected within the Foley Holdings Project and transferred to the City, pursuant to agreements therefor, by The Public Athletic and Sports Facilities Cooperative District of the City of Foley, Alabama and The Public Cultural and Entertainment Facilities Cooperative District of the City of Foley, Alabama (collectively, the “Districts”). Pursuant to Chapter 99B of Title 11 of the Code of Alabama 1975, and resolutions adopted by the Districts (the “Project Fee Resolutions”), the Districts shall levy on the users of certain public capital infrastructure improvements made and to be made by the City, on behalf of the Districts, which benefit the Foley Holdings Project, certain Project User Fees (generally equivalent to two percent of gross sales within the Foley Holdings Project) for a period of approximately twenty-seven (27) years as set forth in said resolutions. The proceeds of the Project User Fees shall be delivered by the Districts, when and as received, to the City in respect of reimbursement to the City for a portion of the costs of public capital infrastructure improvements.

The City seeks to achieve, by undertaking its obligations pursuant to the Agreement, to promote the local economic and industrial development of the City, to increase employment in the City, and to increase the tax and revenue base of the City.

The business entity to whom or for whose benefit the City proposes to lend its credit and grant public funds or thing of value will be Foley Holdings LLC and the successors and assigns thereof.

All interested persons may examine and review the Agreement and the Project Fee Resolutions, and all relevant proceedings pertaining thereto, and make copies thereof at personal expense, at the offices of the City Administrator, referenced below, during normal business hours, before and after the meeting referenced herein.

Further information concerning the information in this notice can be obtained from the City Administrator at the offices thereof at City Hall, 407 East Laurel Avenue, in the City of Foley, Alabama during normal business hours.

EXHIBIT C

Form of Warrant

This Warrant has not been registered under the Securities Act of 1933, as amended, or under any state securities law, in reliance upon applicable exemptions, and this Warrant, or any interest herein, may only be transferred in compliance with federal and state securities laws and as provided in this Warrant as referenced herein.

THIS WARRANT DOES NOT BEAR INTEREST

**UNITED STATES OF AMERICA
STATE OF ALABAMA
CITY OF FOLEY
LIMITED OBLIGATION ECONOMIC DEVELOPMENT SPECIAL FUND WARRANT
(FOLEY HOLDINGS LLC)**

No. R-1

DATED DATE:

_____, 2017

MATURITY DATE:

Termination Date

The CITY OF FOLEY, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (the “City”), for value received, hereby acknowledges itself obligated, on the contingent and limited basis set forth in the within referenced Agreement, to

FOLEY HOLDINGS LLC

or registered assigns (collectively, the “Beneficiary”) in an amount not exceeding the Total Amount of Beneficiary Grant Funds as determined by the City pursuant to the within-referenced Agreement, and hereby orders and directs the Treasurer of the City to transfer to the Beneficiary, on each Quarterly Accounting Date, until and including the above Termination Date, an amount equal to the Beneficiary Grant Funds then on deposit in the Beneficiary Grant Funds Account on each such date, without interest, for credit against and reduction of the Total Amount of Beneficiary Grant Funds.

Authority for Issuance; Definition of Capitalized Terms

This Warrant is issued pursuant to the authority of the Constitution and laws of the State of Alabama, including particularly and without limitation Amendment No. 772 of the Constitution of Alabama of 1901, as amended (collectively the "Enabling Law"), and that certain Special Economic Development Grant Agreement dated the above Dated Date (the "Agreement") by the City and Foley Holdings LLC.

Capitalized terms used hereinbefore and hereinafter without definition shall have the respective meanings assigned thereto in the Agreement.

Reference is made to the provisions of the Agreement, to and by which all of which provisions the Beneficiary, by acceptance of this Warrant, assents and agrees to be bound.

Payment

The City shall provide the Beneficiary Grant Funds to the Beneficiary on each Quarterly Accounting Date in the manner and at the address provided by the Beneficiary.

The Beneficiary shall present and surrender this Warrant to the City on the Termination Date regardless of whether the Total Amount of Beneficiary Grant Funds shall have been provided to the Beneficiary on or before such date.

Each payment made on this Warrant shall be reflected by the notations made by the City on its internal records (which may be kept by computer or by other means determined by the City) and the City is hereby authorized so to record thereon all such payments. All payments of amounts due on this Warrant and the unpaid amount of this Warrant reflected on the internal records of the City (whether by computer or otherwise) shall be rebuttably presumptive evidence of the amount of this Warrant outstanding and unpaid.

All payments of amounts due by the City under the Agreement shall be made at par in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the obligation of the City to the extent of the amounts so paid.

The person in whose name this Warrant is registered shall be deemed and regarded as the absolute owner hereof for all purposes and payment of amounts due under the Agreement and this Warrant shall be made only to or upon the order of the Beneficiary hereof or its legal representative, and neither the City nor any agent of the City shall be affected by any notice to the contrary.

Security

This Warrant is a contingent and limited obligation of the City payable solely from, and secured by a pledge of, the Beneficiary Grant Funds in the Beneficiary Grant Funds Account, as provided in the Agreement.

This Warrant shall never constitute, directly or indirectly, a personal or pecuniary liability, or a general obligation, or a charge against the general assets, credit, funds, or revenues, of the City

within the meaning of any constitutional or statutory or contractual provision, or rule of law, whatsoever.

The City has established a special fund in the Agreement designated "Beneficiary Grant Funds Account" for the payment of this Warrant, and the Beneficiary Grant Funds are payable solely from amounts in such Account.

Registration and Transfer

This Warrant is registered in the name of the Beneficiary on the book of registration maintained for that purpose by the City.

This Warrant may be transferred only upon (i) written direction of the registered owner or its legal representative, addressed to the City, (ii) presentation of this Warrant to the City accompanied by a written instrument of transfer, satisfactory to the City, duly executed by the registered owner or its attorney duly authorized in writing, and (iii) compliance with Section 7.06 of the Agreement. Upon presentation of this Warrant to the City for transfer, and upon satisfaction of the conditions of Section 7.06 of the Agreement precedent to such transfer, the City shall record such transfer on the said book of registration and execute and deliver, in exchange for this Warrant, a new warrant or warrants of like tenor hereof, registered in the name of the transferee in an amount equal to the unpaid or unredeemed portion of this Warrant. No charge shall be made for the privilege of transfer, but the registered owner of this Warrant requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

General

No covenant or agreement contained in this Warrant or in the Agreement shall be deemed to be 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 parties or persons nor any officer executing this Warrant shall be liable personally on this Warrant or be subject to any personal liability or accountability by reason of the issuance of this Warrant.

It is hereby recited, certified and declared that the amounts evidenced and ordered paid by this Warrant are lawfully due without condition, abatement or offset of any description, that this Warrant has been registered in the manner provided by law, that this Warrant represents a valid claim against the Beneficiary Grant Funds Account to the extent of the Beneficiary Grant Funds at any time on deposit therein, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Warrant, the adoption of the resolution approving the Agreement, and the execution and delivery of the Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the amount of this Warrant, together with all other indebtedness of the City, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

IN WITNESS WHEREOF, the City, acting by and through the City Council of the City, as the governing body thereof, has caused this Warrant to be executed in its name and on its behalf by the Mayor of the City, has caused its corporate seal to be affixed hereto and the same attested by the City Clerk of the City, and has caused this Warrant to be dated the date and year first above written.

CITY OF FOLEY, ALABAMA

By _____
Mayor

SEAL

Attest: _____
City Clerk

REGISTRATION CERTIFICATE

The undersigned hereby certifies that this Warrant has been duly registered as a claim against the within-referenced Beneficiary Grant Funds Account to the extent of the Beneficiary Grant Funds at any time on deposit therein.

Treasurer of the City of Foley, Alabama

VALIDATION CERTIFICATE

Validated and confirmed by judgment of the Circuit Court of Baldwin County, State of Alabama entered on the _____ day of _____, 2017.

/s/ _____

Clerk of Circuit Court of Baldwin County,
State of Alabama

REGISTRATION OF BENEFICIARYSHIP

This Warrant is recorded and registered on the warrant register of the City of Foley in the name of the last Beneficiary named below.

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Signature of Authorized Officer of City</u>
Dated Date	Foley Holdings LLC	

Assignment

For value received, _ hereby sell(s), assign(s) and transfer(s) unto this warrant and hereby irrevocably constitute(s) and appoint(s) _ attorney to transfer this warrant on the books of the within named City with full power of substitution in the premises.

Dated: _____

NOTE: The name signed to this assignment must correspond with the name of the payee written on the face of the within warrant in all respects, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

(Bank or Trust Company)

By

(Authorized Officer)

Duly passed and adopted this 17th day of April, 2017.

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

SEAL

Attest: _____
City Clerk

Transmitted to and approved by the Mayor on this 17th day of April, 2017.

Mayor of the City of Foley, Alabama

It was moved by Councilmember _____ that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of the said resolution be suspended and that unanimous consent to the immediate consideration and adoption of the said resolution be given. The motion was seconded by Councilmember _____ and on roll call was unanimously adopted, those answering aye being:

Ayes: J. Wayne Trawick
Ralph G. Hellmich
Rick Blackwell
Charles J. Ebert III
Vera J. Quaite

Nays:

The Council President declared the motion unanimously carried.

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
Ralph G. Hellmich
Rick Blackwell
Charles J. Ebert III
Vera J. Quaite

Nays: None

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

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 April 17, 2017, 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 _____, 2017.

Clerk of the City of Foley, Alabama

S E A L