

AGREEMENT

This Agreement is made and entered into this ___ day of _____, 2018 by and between the City of Foley, Alabama ("City") and RS II, LLC ("RS II").

WHEREAS, the City has plans to extend the public road across from the Tanger Outlet Mall all as more particularly described and shown in the construction plans titled "Future Foley City Road GMC Project CMOB170062" prepared by Goodwyn Mills Caywood dated August 7, 2018 ("New Road");

WHEREAS, the City will receive \$250,000 in funding to partially pay for this new road through an agreement with the Alabama Department of Transportation ("ALDOT"); and

WHEREAS, RS II owns adjacent property nearby and is willing to contribute to the City funds needed to complete the construction of the New Road in accordance with this Agreement;

NOW THEREFORE, the parties hereto agree as follows:

1. Bidding of New Road. The City will advertise and then accept bids in January 2019 for the construction the New Road. The Engineer has estimated the cost of the New Road to be \$405,826. The plan is for the road construction to begin on or about February 11, 2018 and be substantially completed whereby the City can accept the road for maintenance by April 11, 2019, subject to force majeure.

2. Funding of New Road. Provided the City has signed the Agreement with ALDOT for their contribution of \$250,000 towards the construction costs ("ALDOT Contribution") of the New Road, RS II agrees to pay to the City, as provided herein, the difference in the bid amount less the ALDOT Contribution ("RS II Contribution"). Notwithstanding the foregoing, RS II's Contribution shall in no event be in excess of 1.15 times the engineer's cost estimate of \$405,826 (less the ALDOT Contribution), i.e. \$179,200, unless RS II consents in writing.

3. Payment Terms. The City will make all payments directly to the successful bidder in accordance with the City's contract. The City shall provide the successful bidder's monthly payment applications and lien waivers to RS II, whereupon RS II will confirm the work has been performed. Upon confirmation, RS II shall submit payment to the City for its proportionate share of the RS II Contribution within thirty (30) days of receipt of the invoice. The City will use its best efforts to submit the monthly payment applications to RS II by the 5th of the month. RS II's proportionate share shall be calculated by factoring the percentage the RS II Contribution is to the bid amount (Example: Bid Amount is \$400,000 less ALDOT contribution of \$250,000 equals RS II Contribution of \$150,000; $\$150,000/\$400,000 = 0.375\%$ of each pay application that RS II would pay).

4. City's Obligations. In addition to the payment obligations described above, the City will administer the construction of the New Road to ensure that the successful bidder is timely and properly performing its obligations under the contract so that the New Road can be completed and accepted by the City as a public road within the time frames set forth herein.

5. Authority. The Parties executing this Agreement hereby represent and warrant to each other that each has the full capacity to execute, deliver and perform this Agreement and all requisite actions and approvals therefor have been duly taken and obtained.

6. Notices. Any and all notices permitted or required under this Agreement must be in writing. Notices will be deemed given (i) when received, (ii) one day after have been sent by commercial overnight courier with written verification of receipt, or (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, whichever occurs, first, at the addresses set forth below the signatures hereto or at any new address, notice of which has been given under this Section 6.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

8. Counterparts. This instrument may be executed in counterpart, each of which constitutes an original, and all of which, taken together, constitute one and the same original, and facsimile/electronic PDF signatures on this instrument shall be deemed to constitute original signatures.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and the Owner has executed this Agreement under seal, 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

RS II, LLC

By: _____

Its: _____

Addresses for notice:

City
City Hall
407 East Laurel Avenue
Foley, Alabama 36536

RS II
41 W. I-65 Service Road N
Suite 310
Mobile, Alabama 36608