

STATE OF ALABAMA)

COUNTY OF BALDWIN)

PERFORMANCE CONTRACT

I. Parties:

THIS PERFORMANCE CONTRACT (this “Agreement”) is made and entered into by and between the CITY OF FOLEY, a municipal corporation of the State of Alabama (the “City”), and the COASTAL ALABAMA FARMERS’ AND FISHERMEN’S MARKET, INC., a not-for-profit corporation organized and existing under the laws of the State of Alabama (the “Contractor” or “CAFFM”) (collectively, the City and Contractor are sometimes referred to as the “Parties”).

II. Recitals:

WHEREAS, the Contractor’s purpose is to educate the public, reduce the burdens of government, lessen neighborhood tensions, and combat community deterioration in Baldwin County;

WHEREAS, the City has determined that the services provided by the Contractor serve a public purpose that not only benefits the City economically, but also promotes the agricultural resources, culture, education, morals, prosperity, contentment, and general welfare of the community;

WHEREAS, the City desires to engage Contractor to provide the services described in this Agreement; and

WHEREAS, as of the Effective Date and upon execution hereof by the Parties, the commitments contained in this Agreement shall be legally binding obligations of the Parties, which commitments are made in consideration of Contractor’s agreement to perform the services set forth in this Agreement.

NOW, THEREFORE, upon and in consideration of the respective promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

III. Duration of Agreement:

The term of this Agreement is for fiscal years 2017 and 2018, commencing on the date executed by all Parties following approval by the City Council and terminating September 30, 2018, and may be renewed for up to three (3) additional fiscal years in the event that the City Council approves such renewal by resolution.

IV. Affirmative Covenants:

4.01 CAFFM

4.01.01 Contractor agrees to permit the City, at no cost to the City, to use the CAFFM market building and designated park areas for public events when not reserved for use by CAFFM or leased by a third party.

4.01.02 Contractor agrees to promote a regular forum for members of the community, especially minors, to learn about sustainable farming and fishing practices, organic food growth and preparation, healthy eating habits, and other projects for education of the community.

4.01.03 Contractor agrees to continue its operations in the City and to continue its efforts to expand and enhance those operations in the City during the term of this Agreement.

4.02 City of Foley

4.02.01 Subject to the provisions set forth herein and in lieu of cash payments by the City, the City hereby agrees to assign City personnel to assist the Contractor as follows:

- a) Perform general maintenance to CAFFM market property, including but not limited to the changing of light bulbs at heights greater than eight (8) feet, maintenance of the wall-mounted units and misters, and maintenance of the unmanicured grounds/open space areas around the CAFFM market property; and
- b) Basic bookkeeping (in addition to what is required by auditing standards for inclusion in the City's Comprehensive Annual Financial Report).

Any and all materials required for the performance by City personnel of the duties enumerated above shall be purchased by the Contractor.

V. Remedies:

5.01 Contractor agrees that upon violation of any of the covenants and agreements herein contained, on account of any act or omission or commission of Contractor, the City may, at its option, terminate and cancel this Agreement.

5.02 In the event of any breach or apparent breach by Contractor of any of its obligations under the terms of this Agreement, and in the further event that the City shall engage the services of an attorney to protect or to enforce its rights with respect to said breach or apparent breach, then and in those events, Contractor agrees to pay and to reimburse any and all reasonable attorneys' fees and expenses which the City may incur with respect to the City's enforcement of this Agreement; regardless of whether said attorneys' fees and costs shall be

incurred in connection with any litigation or in connection merely with advice and representation provided without litigation.

VI. Insurance:

6.01 For the term of this Agreement, the Contractor shall acquire and maintain in full force and effect the following liability and comprehensive insurance issued by a company licensed and qualified to do business in the State of Alabama, which such insurance shall name the City of Foley as an additional insured, and shall attach to this contract, as proof thereof, a certificate of insurance issued by an agent licensed and qualified to do business in the State of Alabama:

a) General Liability Insurance - public liability including premises, products, and complete operations:

(1) Bodily injury liability:
\$250,000 each person
\$500,000 each occurrence

(2) Property damage liability - \$100,000 each occurrence

Or, in lieu of (1) and (2) above:

(3) Bodily injury and property damage combined - \$500,000 per occurrence

b) Comprehensive - Automobile Liability Insurance including owned, non-owned, and hired vehicles:

(1) Bodily injury liability:
\$250,000 each person
\$500,000 each occurrence

(2) Property damage liability - \$100,000 each occurrence

Or, in lieu of (1) and (2) above:

(3) Bodily injury and property damage combined - \$500,000 per occurrence

6.02 If the certificate of insurance referenced in this agreement does not evidence insurance of owned vehicles, said certificate and this sentence shall evidence the Contractor's covenant that it will not purchase or obtain any vehicles during the term of this Agreement.

6.03 Said certificate shall require that said insurance coverage will not be altered or terminated unless City shall be given written notice of such alteration or termination delivered to the City not less than thirty (30) days before the effective date of such alteration or termination.

VII. Indemnification:

7.01 Contractor agrees to indemnify and hold the City, its elected officials, officers, agents, and employees whole and harmless from all costs, liabilities, and claims for damages of any kind (including interest and attorneys' fees) arising in any way out of the performance of this Agreement and/or the activities of Contractor, its principals, directors, agents, servants, and employees in the performance of this Agreement, for which the City is alleged to be liable. In the event that the City is made a party to any lawsuit or legal proceeding arising in any way from this Agreement or any activities conducted pursuant thereto, Contractor hereby agrees to pay all of the City's costs of defense, including but not limited to all attorneys' fees, court costs, expert witness fees, and other expenses through trial and, if necessary, appeal. This section is not as to third parties or to anyone a waiver of any defense of immunity or statutory damages cap otherwise available to Contractor or City, and these defenses and matters may be raised on the City's behalf in any action or proceeding arising from this Agreement.

VIII. Notice:

8.01 All notices of cancellation, requests, demands, or other communications shall be in writing and duly delivered to the following address:

To the City:

**City of Foley
Office of the Mayor
Post Office Box 1750
Foley, AL 36536**

And to Contractor:

**Coastal Alabama Farmers' and Fishermen's Market
20733 Mifflin Road
Foley, AL 36535**

IX. Miscellaneous:

9.01 Contractor, in the performance of its operations and obligations herein, shall not be deemed to be the agent of the City but shall be deemed to be an independent

contractor in every respect and shall take all steps at its own expense, as the City may from time to time request, to indicate that it is an independent contractor. City does not and will not assume any responsibility for the means by which or manner in which services by Contractor, provided for herein, are performed, but on the contrary, Contractor shall be wholly responsible therefor.

9.02 Contractor acknowledges that its identity and peculiar capacity to provide the services and fulfill its obligations described hereinabove constitute a material consideration for the City's having entered into this Agreement. Therefore, Contractor shall not transfer or assign this Agreement or any of the rights or privileges granted herein without the prior written consent of the City; which such consent shall be granted or denied solely at the City's discretion.

9.03 Contractor hereby agrees to comply strictly with all applicable ordinances of the City and laws of the State of Alabama and of the United States while performing its obligations under the terms of this Agreement.

9.04 Contractor agrees that it will comply with Title 6 of the Civil Rights Act of 1964 assuring that no person will be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination on the grounds of race, sex, national origin, disability, or sexual orientation, in connection with federally funded programs.

9.05 This Agreement is the final expression of the agreement between the parties, and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings, or agreements. There are no representations, warranties, or stipulations, either oral or written, not contained herein.

9.06 Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing and signed by authorized representatives of the party against whom enforcement is sought.

9.07 The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, it shall not affect the enforceability of the remainder of this Agreement unless the part or parts which are void, invalid, or otherwise unenforceable shall substantially impair the value of the entire agreement with respect to any party.

9.08 This Agreement shall be governed by the laws of the State of Alabama, and the appropriate venue for any actions arising out of this Agreement shall be Baldwin County, Alabama.

9.09 Contractor shall obtain, at its own expense, all necessary licenses, permits, insurance, authorizations, and assurances necessary in order to abide by the terms of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the day and year first written.

CITY OF FOLEY, A Municipal Corporation

Date: _____

BY _____
Its Mayor

ATTEST:

BY _____
Its City Clerk

**COASTAL ALABAMA FARMERS'
AND FISHERMEN'S MARKET, INC.**

Date: _____

BY _____
Its Authorized Agent