

**A RESOLUTION APPROVING FINANCING DOCUMENTS BY THE CITY OF FOLEY,
ALABAMA AND THE CITY OF FOLEY'S PUBLIC FACILITIES COOPERATIVE DISTRICT**

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

Section 1. The City has heretofore, upon evidence duly presented to and considered by it, found and determined, and does hereby find, determine and declare that:

(a) Pursuant to Chapter 99B of Title 11 of the Code of Alabama 1975 (the "Enabling Law"), the City, has authorized the incorporation of The City of Foley's Public Facilities Cooperative District (the "District"), and the certificate of incorporation of the District is recorded as instrument No. _____ in the Office of the Judge of Probate of Baldwin County, Alabama.

(b) The District proposes to incur a Short-term Loan (as defined in the Notice, as Notice is defined herein), as may be deemed necessary in conjunction with the NMTC Program (as defined in the Notice) and to enter into the Guarantees (as defined in the Notice) for the purposes of financing a portion of the costs of "projects" (as described in the certificate of incorporation thereof and as permitted by the Enabling Law; herein collectively the "Project") to be located within the City.

(c) The City proposes to convey certain properties to the District and to enter into a Funding Agreement or a Pledge Agreement pursuant to which it may be required to repay the Loan (as defined in the Notice) and to pay certain obligations pursuant to the Guarantees (as defined in the Notice).

(d) Pursuant to Amendment No. 772 to the Constitution of Alabama of 1901, as amended ("Amendment No. 772"), the City has caused the Notice attached hereto as Exhibit A (the "Notice") to be published on February 10, 2014 in *The Foley Onlooker* with respect to certain actions proposed to be taken, and certain agreements proposed to be made and delivered, by the City, to provide for the financing of a portion of the costs of the Project and the economic development of the City thereby.

(e) There has been prepared for and delivered to the City, and made available for public inspection, the following agreements, contracts, documents and instruments with respect to the transactions described in the Notice and the undertakings by the City in connection therewith (collectively the "Financing Documents"):

(i) Promissory notes for the Short-term Loan and the CAFFM Loan (as defined in the Notice), to be dated the first day of the month of or the date of delivery thereof;

(ii) Funding Agreement (as defined in the Notice), to be dated the first day of the month of or the date of delivery thereof, by the City and the District; and

(iii) Guarantees (as defined in the Notice), to be dated the first day of the month of or the date of delivery thereof.

(f) The expenditure of public funds for the purposes specified in the Notice and the Financing Documents will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(g) It is necessary, desirable, and in the best interests of the taxpayers and citizens of the City for the City to deliver and perform the agreements and undertakings of the City set forth in the Financing Documents.

Section 2. The City does hereby approve, ratify and confirm (i) the form and content of, and the statements set forth in, the Notice and (ii) the publication of the Notice as set forth in Section 1 of this resolution.

Section 3. The City does hereby approve, adopt, authorize, direct, ratify and confirm the representations, warranties, agreements and covenants of the City set forth in, and the transactions to be undertaken by the City pursuant to, the Funding Agreement.

Section 4. The Financing Agreement Documents are approved in substantially the form and of substantially the content as presented to and considered by the City Council, with such changes or additions thereto or deletions therefrom as the officer of the City executing those of the Financing Documents to which the City is a party signatory thereto (herein collectively the "City Documents") shall approve, which approval shall be conclusively evidenced by execution of the City Documents by such officer as hereinafter provided.

Section 5. The Financing Agreement Documents presented to, considered and adopted by the City Council shall be filed in the permanent records of the City.

Section 6.

(a) The Mayor of the City is hereby authorized and directed to execute, acknowledge and deliver the City Documents for and on behalf of and in the name of the City. The City Clerk and Assistant City Clerk of the City are each hereby authorized and directed to attest the same.

(b) For purposes of the Financing Agreement Documents, the Finance Director is authorized and directed to act as an Authorized City Representative under and as defined therein.

Section 7. The officers of the City, or any one or more of them, are hereby authorized and directed to do and perform or cause to be done or performed in the name and on behalf of the City such other acts, and execute, deliver, file and record such other instruments, documents, certificates, notifications and related documents, all as shall be required by law or necessary or desirable to carry out the provisions and purposes of this Resolution and the Financing Agreement Documents.

Section 8. Any prior actions taken or agreements made or documents executed by any officers of the City in connection with the Financing Agreement Documents and the transactions therein authorized and approved are hereby ratified and confirmed.

Section 9.

(a) All ordinances, resolutions, orders, or parts thereof in conflict or inconsistent with any provision herein hereby are, to the extent of such conflict or inconsistency, repealed.

(b) This resolution shall take effect immediately.

Exhibit A

**LEGAL NOTICE
OF
PUBLIC MEETING OF FOLEY CITY COUNCIL**

Regarding Economic Development Action Under Alabama Constitutional Amendment No. 772
for
the Coastal Alabama Farmers' and Fishermen's Market

Notice is hereby given that the City Council (the "City Council") of the City of Foley, Alabama (the "City") will meet in public session at 5:30 p.m. on Monday, February 17, 2014, in City Hall in the City for the purpose of consideration of the transaction of any business that may properly come before the City Council; such business to include, but not be limited to, the authorization by the City Council of a resolution (the "Resolution") authorizing the conveyance of certain properties to the District (as defined below) with such properties to then be conveyed by the District to the CAFFM (as defined below) and the execution and delivery of a Funding Agreement or Pledge Agreement by the City (the "Funding Agreement") with respect to the unconditional obligation of the City, in the event of nonpayment by the District (as defined below) or the CAFFM (as defined below), to pay (i) the principal of, premium, if any, and interest on, the \$6,000,000 maximum principal amount of a short term from JP Morgan Chase Bank N.A., or its designee, (the "Short-term Loan") to be entered into by The City of Foley's Public Facilities Cooperative District, Alabama (the "District") under Chapter 99B of Title 11 of the Code of Alabama 1975 (the "Enabling Law"), if deemed necessary by the District in conjunction with the NMTC Program (as defined below), and the \$8,000,000 maximum principal amount of loans from Pacesetter Sub-CDE X L.L.C. to the CAFFM (as defined below) (the "CAFFM Loan") and together with the Short-term Loan, collectively the "Loan") and (ii) the obligations pursuant to an environmental indemnity, a payment and completion guaranty and a new markets tax credit recapture indemnity to be entered by the District and the CAFFM in conjunction

with Loan (the “Guarantees”), to finance a portion of the costs of the Project hereinafter referenced, as more particularly described hereinbelow.

The Funding Agreement will be executed and delivered by the City to the District. The beneficiary of the Loan is the Coastal Alabama Farmers’ and Fishermen’s Market, Inc., an Alabama nonprofit corporation of which the District is the sole member.

The District is a public corporation created by the City of Foley, Alabama under the Enabling Law, and the certificate of incorporation thereof is recorded in the office of the Judge of Probate of Baldwin County, Alabama.

The Loan proceeds shall be issued to finance a portion of the costs of acquisition, construction and installation of “projects” (within the meaning of the Enabling Law; herein collectively the “Project”) to be located in the City of Foley and to include some or all of the following, as to be determined by the City and the District:

- (i) a farmers’ and fishermen’s market and related buildings for community activities of every kind and nature;

- (ii) buildings, facilities and improvements in conjunction with the facilities described in (i) and for the accommodation of visitors and users to the facilities described in (i), including without limitation retail buildings, restaurants and wholesale distribution facilities; and

- (iii) roads, streets, public ways, sidewalks, lighting, facilities for the provision of water, sewer, gas and electric power service, facilities for waste disposal, facilities for public safety and security, drainage and flood control facilities and improvements, and other infrastructure improvements related to the facilities described in (i) and (ii).

The Short-term Loan, if any, is an obligation of the District where the proceeds of the Short-term Loan are loaned by the District to Chase NMTC CAFFM Investment Fund L.L.C., then from the Chase NMTC CAFFM Investment Fund L.L.C. to Pacesetter Sub-CDE X L.L.C., and then from Pacesetter Sub-CDE X L.L.C. to the CAFFM. Once repayment is received, the District then pays off

the Short-term Loan. In conjunction with the NMTC Program (as defined below) the District, as leveraged lender, will loan a maximum of \$6,000,000 and Chase Community Equity, LLC, or its designee, as a qualified investor under the NMTC Program will loan additional funds to the Chase NMTC CAFFM Investment Fund L.L.C. Then the Chase NMTC CAFFM Investment Fund L.L.C. will loan certain funds to the Pacesetter Sub-CDE X L.L.C which will then loan a maximum of \$8,000,000 to the CAFFM. The City's involvement arises solely from moneys that may be required to be provided by the City pursuant to the Funding Agreement to the District to pay the Loan or the obligations pursuant to the Guarantees.

The Funding Agreement will be issued and delivered by the City simultaneously with the funding of the Loan and pursuant to Amendment No. 772 to the Constitution of Alabama of 1901, as amended, as a full faith and credit general obligation of the City. The amounts payable by the City under the Funding Agreement are payable from all general revenues of the City lawfully available for such purpose. The Funding Agreement will be effective on the date of delivery of the Loan and shall continue in effect until the date on which the Loan is paid in full and retired.

The Short-term Loan, if any, shall be payable in one lump sum amount in 10 days or less and the CAFFM loan will require interest only payments for seven years and then be amortized over a 30 year period.

The Loan shall never constitute or give rise to an indebtedness or pecuniary liability payable from, or a charge against, the revenues, assets, credit, or taxing powers of the State of Alabama, or any political subdivision thereof (except as specifically undertaken by the City under the Funding Agreement) within the meaning of any constitutional provision or statutory limitation whatsoever.

The City seeks to achieve, by undertaking its obligations pursuant to the Funding Agreement, to promote the local economic, commercial and industrial development of the City and to increase employment in the City and to promote and develop for the public good and welfare trade, commerce, industry, and employment opportunities in the City. The public and private corporations to whom and for whose benefit the City proposes to lend its credit and grant public funds or thing of value is the

District and the CAFFM. The following business entities are involved in the financing of the Project and may incidentally benefit as a result: JP Morgan Chase Bank N.A., Chase Community Equity L.L.C., Chase NMTC CAFFM Investment Fund L.L.C., Pacesetter CDE L.L.C., Pacesetter Sub-CDE L.L.C.

As noted, the proceeds of the Loan will finance only a portion of the costs of the Project. The balance of the costs of the Project will be paid by funds to be made available therefor under the New Market Tax Credit Program established under Section 45D of the Internal Revenue Code of 1986, as amended, with respect to federal income tax, and under applicable Alabama law with respect to state income tax (the “NMTC Program”). The NMTC Program requires that the Project be partially financed, and owned for the first seven years of the Project, by a private corporation or partnership designated as a “qualified active low-income community business” under said Section 45D (the “Qualified Business”). Under the NMTC Program, the Qualified Business will receive funds from private investors and will in turn apply such funds to the payment of the costs of the Project in accordance with the requirements of the NMTC Program. The combination of proceeds of the Loan and the funds to be made available by the Qualified Business under the NMTC Program will be determined in such amounts as shall be sufficient to pay in full the costs of the Project. The private investors who provide such funds to the Qualified Business for the Project will receive credits against federal and state income taxes, as applicable, to the direct financial benefit of such investors. The use of the funds made available by the Qualified Business under the NMTC Program to pay a portion of the costs of the Project directly reduces the costs of the Project which the City and the District would otherwise have to pay, by an amount equal to the amount of the funds so made available under the NMTC Program, and is therefore of direct financial benefit to the City and the taxpayers and citizens thereof.

As a result of the above financing program and the requirements of the NMTC Program, the private business entity to whom and for whose benefit the City proposes to lend its credit and grant public funds or thing of value is the Qualified Business as well as the District for the benefit of the

Qualified Business. Except as described herein, no funds or revenues of the City shall be provided to the Qualified Business, or any other person or entity, for any use or purpose.

All interested persons may examine and review the Loan, the Funding Agreement, the Guarantees and all relevant documents pursuant to which the Loan is to be issued, and make copies thereof at personal expense, at the offices of the City Manager of the City in City Hall, Foley, Alabama, during normal business hours, before and after the meeting of the City Council referenced herein.

Further information concerning the information in this Notice may be obtained from the City Manager of the City at the offices thereof in City Hall during normal business hours.