

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

**Approval of Certain Actions Respecting
Proposed Cultural and Entertainment Facilities**

The City Council of the City of Foley, Alabama met in regular public session at City Hall in the City of Foley, Alabama, at 5:30 p.m. on November 2, 2015.

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

Present: J. Wayne Trawick, President
 Vera J. Quaite
 Ralph G. Hellmich
 Rick Blackwell
 Charles J. Ebert III

Absent: None

* * *

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:

**A RESOLUTION APPROVING FINANCING DOCUMENTS BY THE CITY OF FOLEY,
ALABAMA, THE PUBLIC CULTURAL AND ENTERTAINMENT FACILITIES BOARD
OF THE CITY OF FOLEY, ALABAMA AND REGIONS BANK, AS TRUSTEE**

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

Section 1. Representations and Definitions of Capitalized Terms.

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, and The Public Park and Recreation Board of the City of Foley, Alabama, have authorized the incorporation of The Public Cultural and Entertainment Facilities Cooperative District of the City of Foley, Alabama (the "District"), and the certificate of incorporation of the District is recorded as instrument No. 1428916 in the Office of the Judge of Probate of Baldwin County, Alabama.

(b) The District proposes to issue Cultural and Entertainment Facilities Revenue Bonds (Federally Taxable), Series 2015, in a maximum principal amount not exceeding \$17,500,000 (the "Bonds") 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 and to be issued and operated by the City.

(c) The Bonds shall be regular, limited obligations of the District payable solely from moneys provided by the City pursuant to a Funding Agreement with respect to the Bonds by the City, the District, and Regions Bank, as trustee for the registered owners of the Bonds, to be delivered by the City simultaneously with the issuance of the Bonds.

(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 October 21, 2015 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) Trust Indenture, to be dated December 1, 2015, by the District and Regions Bank, as trustee (the "Trustee") with respect to the Bonds;

(ii) Funding Agreement, to be dated December 1, 2015, by the City and the District and the Trustee with respect to the Bonds.

(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 to which the City is a party.

Section 2. Approval of Notice.

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. Approval of Financing Documents.

(a) 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 Financing Documents.

(b) The Financing 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.

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

Section 4. Authorizations.

(a) The Mayor of the City is hereby authorized and directed to execute, acknowledge and deliver the City Documents (as defined in Section 3(b)) 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) Prior to delivery of the Funding Agreement referenced in Section 1(e)(ii), the Council shall approve the final principal amounts, interest rates, sale prices, redemption prices and terms, and costs of issuance of the Bonds.

(c) The City hereby approves the engagement by the District of Stifel, Nicolaus & Company, Incorporated (the "Underwriter") to provide all investment banking services and underwriting services with respect to the issuance and sale of the Bonds and Maynard, Cooper & Gale, P.C. to act as bond counsel to the District in connection with the issuance of the Bonds.

(d) For purposes of the Financing Documents, the Mayor and City Administrator are each authorized and directed to act as an Authorized City Representative under and as defined therein.

(e) 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 Documents.

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

(g) If requested by the Underwriter defined in Section 4(c) and subject to Section 4(b), the Mayor is hereby authorized and directed to execute and deliver, in the name of the City, a bond purchase agreement with respect to the purchase of the Bonds by the Underwriter.

Section 5. Approval of Official Statement.

The Official Statement with respect to the Bonds (the "Official Statement") in substantially the form and of substantially the content as the form of Official Statement presented to and considered by the City is hereby approved and adopted. The City does hereby find and determine that the Official Statement, with respect to the City, is correct and does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Mayor of the City is hereby authorized to execute and deliver the Official Statement for and on behalf of and in the name of the City, with such changes or additions thereto or deletions therefrom with respect to the City as the Mayor and the Finance Director of the City may deem necessary or desirable in order to state fully and correctly the pertinent facts concerning the City and the documents delivered thereby. Any prior execution and/or delivery of the Official Statement or any preliminary Official Statement is hereby ratified and confirmed.

Section 6. Reimbursement.

In the event it becomes necessary for the District or the City to expend any funds for the Project prior to the issuance of the Bonds as tax-exempt obligations therefor, as described above, the City hereby declares its official intent that (i) proceeds of such tax-exempt obligations be used to reimburse the District and the City, as the case may be, for capital expenditures made by the District or the City for the Project in amounts not exceeding the lesser of the amounts spent therefor which are eligible for reimbursement under Treas. Reg. 1.150-2 or the total cost of the Project, and (ii) any such reimbursement be made in accordance with Treas. Reg. 1.150-2.

Section 7. Approval of Validation.

(a) The City hereby approves and authorizes the validation of the legality of all the Financing Documents, and all proceedings had or taken in connection therewith, and the validity of the means of payment provided for any financings incurred by the District or the City in connection therewith, in the Circuit Court of Baldwin County, Alabama, in accordance with the applicable laws of the State of Alabama (including without limitation Article 17 of Chapter 6 of Title 6, and Article 7 of Chapter 81 of Title 11, of the Code of Alabama 1975).

(b) To enable the commencement of such validation proceedings, the City hereby approves the form and content of the Funding Agreement attached hereto as Exhibit B, which shall set forth the general obligation of the City to pay the principal of and interest on the Bonds to finance the Project, upon final approval by the City of the principal amounts, terms to maturity, offering prices, net interest cost, redemption terms, and use of proceeds of such obligations, and the City hereby approves the filing of this Resolution and such Funding Agreement in such validation proceedings.

(c) The attorneys for the City, and Bond Counsel for the District and the City, are authorized to take such actions as shall be necessary to complete such validation proceedings.

Section 8. General.

(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
REGULAR PUBLIC MEETING OF FOLEY CITY COUNCIL**

Regarding Economic Development Action
Under Amendment No. 772 of Alabama Constitution
For Cultural and Entertainment Facilities

Notice is hereby given that the City Council (the “City Council”) of the City of Foley, Alabama (the “City”) will meet in regular public session at 5:30 p.m. on Monday, November 2, 2015, 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 execution and delivery of a Funding Agreement by the City (the “Funding Agreement”) with respect to the unconditional obligation of the City to pay the principal of, premium, if any, and interest on, approximately \$15,000,000 to \$17,000,000 maximum principal amount Cultural and Entertainment Facilities Revenue Bonds (Federally Taxable), Series 2015 (the “Bonds”) to be issued by The Cultural and Entertainment Facilities Cooperative District of the City of Foley, Alabama (the “District”) under Chapter 99B of Title 11 of the Code of Alabama 1975 (the “Enabling Law”) 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, as issuer of the Bonds, and to Regions Bank, as trustee for the registered owners of the Bonds.

The District is a public corporation created by the City of Foley, Alabama and The Public Park and Recreation Board of 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 Bonds 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) public meeting, entertainment, event, and recreational facilities, including without limitation facilities or facility to serve as an auditorium, music hall, art center, athletic fields and sportsplex, and related municipal buildings for community activities of every kind and nature;

(ii) buildings, facilities and improvements for the accommodation of visitors and users to the facilities described in (i), including without limitation hotel and motel facilities and food service facilities;

(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 related infrastructure improvements.

The Bonds are regular, limited, obligations of the District payable solely from moneys provided by the City pursuant to the Funding Agreement with respect to the Bonds.

The Funding Agreement will be issued and delivered by the City simultaneously with the issuance of the Bonds 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, and will provide for payments by the City on dates and in amounts sufficient to provide for the payment of the principal of and interest on the Bonds when due and payable in each fiscal year. The principal of and interest on the Bonds payable from amounts provided by the City under the Funding Agreement shall be determined upon sale of the Bonds and shall be set forth in the Funding Agreement. The City presently expects, based on market conditions as of the date of publication of this Notice, the aggregate amount to be paid in any single fiscal year by the City pursuant to the Funding Agreement for the Bonds to be approximately \$1,100,000. 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 Bonds and shall continue in effect until the date on which the Bonds are paid in full and retired.

The Bonds shall be payable in annual stated principal amounts during a period of approximately 30 years.

The Bonds 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 corporation to whom and for whose benefit the City proposes to lend its credit and grant public funds or thing of value is the District.

As noted, the proceeds of the Bonds (issued by the District and paid by the City) 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 Bonds 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 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.

During the first seven years of the Project, the Qualified Business will own the Project and lease the Project to the City. After such seven year period, title to the Project shall transfer to the City. At all times, the City shall have the right of use and possession of the Project, shall control and direct the management and operation of the Project, and shall receive all revenues from the Project.

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. 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 Bonds, the Funding Agreement, and all relevant documents pursuant to which the Bonds are to be issued, and make copies thereof at personal expense, at the offices of the City Administrator 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 Administrator of the City at the offices thereof in City Hall during normal business hours.

Exhibit B

FUNDING AGREEMENT

Duly passed and adopted this 2nd day of November, 2015.

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

SEAL

Attest: _____
City Clerk/Administrator

Transmitted to and approved by the Mayor this ____ day of November, 2015.

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 ordinance be suspended and that unanimous consent to the immediate consideration and adoption of the said ordinance be given. The motion was seconded by Councilmember _____ and on roll call was unanimously adopted, those answering aye being:

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

Nays: None

The Council President declared the motion unanimously carried.

After said ordinance had been discussed and considered in full by the Council, it was moved by Councilmember _____ that said ordinance 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 ordinance, the roll was called with the following results:

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

Nays: None

The Council President thereupon declared said motion carried and the ordinance 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 and Waiver of Notice

Each of the undersigned does hereby approve, and waive notice of, the date, time, place and purposes of the meeting of the City Council of the City of Foley, Alabama recorded in the above and foregoing minutes thereof and does hereby approve the form and content of the above and foregoing minutes.

Mayor

President of Council

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 "Municipality"); (2) as Clerk of the Municipality I have access to all original records of the Municipality 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 regular meeting of the City Council of the Municipality duly held on November 2, 2015, 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; (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 Municipality and have affixed the official seal of the Municipality, this _____ day of November, 2015.

Clerk of the City of Foley, Alabama

SEAL