

**MINUTES OF A MEETING OF THE CITY COUNCIL
OF THE CITY OF FOLEY**

The City Council of The City of Foley met in public session at the office of the City at City Hall, in the City of Foley, Alabama, at 5:30 p.m. on December 21, 2015.

The meeting was called to order by J. Wayne Trawick, President of the City Council, and the roll was called with the following results:

Present:

Absent:

The Council President stated that a quorum was present.

The Council President stated that due notice of the date, time, place and purpose of this meeting had been (a) posted at the place of meeting, and (b) given to all existing members of the City Council.

The Council President stated that the meeting was open for the transaction of business.

* * *

**A RESOLUTION APPROVING FUNDING AGREEMENT
BY THE CITY OF FOLEY, ALABAMA**

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) The City proposes, to execute and deliver 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 Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation (the "CAFFM") to pay (i) the principal of, premium, if any, and interest on the \$1,400,000 maximum principal amount of loans from United Bank (the "Lender") to the CAFFM (the "Loan"), to finance the costs of the Project hereinafter referenced, as more particularly described hereinbelow.

(b) The Funding Agreement will be executed and delivered by the City to the CAFFM.

(c) 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 December 9, 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 the Project and the economic development of the City thereby.

(d) The Funding Agreement and United Bank's term sheet (collectively the "Financing Documents") has been prepared for and delivered to the City, and made available for public inspection.

(e) 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. 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.

(f) 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 Documents are approved in substantially the form and with substantially the content attached hereto as Exhibit "B" and 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 Documents presented to, considered and adopted by the City Council shall be filed in the permanent records of the City.

Section 6. 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.

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 Documents.

Section 8. 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.

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.

* * *

There being no further business to come before the meeting, it was moved and seconded that the meeting be adjourned. Motion carried.

Minutes approved:

Council President

SEAL

Attest: _____
Secretary

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, December 21, 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 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 Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation (the "CAFFM") to pay the principal of, premium, if any, and interest on the \$1,400,000 maximum principal amount of loans from a bank or lending institution to be determined by CAFFM ("Lender") to the CAFFM (the "Loan"), to finance 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 CAFFM. The beneficiary of the Loan is the CAFFM and Lessee (as defined herein).

The Loan proceeds shall be issued to finance the costs of acquisition, construction and installation of projects 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 CAFFM (collectively, the "Project"):

- (i) improvements to be made to the building and facilities located at 410 East Section Avenue, Foley, Alabama 36535, owned by CAFFM and more commonly known as the Peavey Building (the "Peavey Building"); and

(ii) loading docks, additional doors, parking, utility relocation and additions, roof penetrations, HVAC and sprinkler head adjustments, and other infrastructure improvements related to the building and the facilities described in (i).

The purpose of the Project is to induce Bon Secour Valley, Inc. ("Lessee") to enter into a lease agreement with the CAFFM for the lease of a portion of the Peavey Building. The costs of the Project will be added to the base rent under the lease agreement and paid by Lessee to the CAFFM over the term of the lease. Lessee intends to use the leased property to operate a manufacturing plant for the purpose of dehydrating of certain fruits and vegetables and manufacturing pet treats. The business will add jobs to the area and create growing opportunities and income for local farmers.

Lender will loan a maximum of \$1,400,000 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 CAFFM to pay the Loan.

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 Loan will be a 12 month construction line of credit which will be converted to a 15 year loan to be paid in 180 monthly installments.

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 private entities to whom and for whose benefit the City proposes to lend its credit and grant public funds or thing of value is the CAFFM and the Lessee. The following business entities or their affiliates are involved in the financing of the Project and may incidentally benefit as a result: Lender, Woerner AgriBusiness LLC, and Bon Secour Valley, Inc.

The City Council expects to determine at its public meeting that the loan of funds and things of value in connection with the transaction described above will serve a valid and sufficient purpose, notwithstanding any incidental benefit accruing to any other entity including any private entity or entities.

All interested persons may examine and review the Funding Agreement, and all relevant documents pursuant to which the Funding Agreement is 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"

FINANCING DOCUMENTS

FUNDING AGREEMENT

Dated _____, _____

between

CITY OF FOLEY, ALABAMA

AND

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

**This Funding Agreement was prepared by C. Britton Bonner of Adams and Reese LP,
11 North Water Street, Suite 23200, Mobile, AL 36602.**

FUNDING AGREEMENT

This FUNDING AGREEMENT is made and entered as of _____, _____ (the "Agreement") by and between the CITY OF FOLEY, ALABAMA, a political subdivision of the State of Alabama (the "City"), and COASTAL ALABAMA FARMERS' AND FISHERMEN'S MARKET, INC., an Alabama nonprofit corporation (the "CAFFM").

Recitals

Pursuant to Amendment No. 772 to the Constitution of Alabama of 1901, as amended, ("Amendment No. 772") for the purposes expressed therein and herein and for the benefit of the CAFFM, the City and the CAFFM have delivered this Agreement simultaneously with execution and delivery of the loan in the maximum principal amount of \$1,400,000 from United Bank to CAFFM (the "Loan"). The proceeds of the Loan will be used by the CAFFM for certain improvements to the CAFFM's building located at 410 East Section Avenue, Foley, Alabama (the "CAFFM Wholesale Distribution Building") pursuant to that certain Agreement to Lease dated _____ between CAFFM and Bon Secour Valley, Inc. (the "Project").

Agreement

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

ARTICLE 1

REPRESENTATIONS AND WARRANTIES

SECTION 1.01 Representations and Warranties of the CAFFM.

The CAFFM makes the following representations and warranties:

(a) The CAFFM is an Alabama nonprofit corporation and has corporate power and authority to enter into this Agreement. The CAFFM is not in default under any of the provisions contained in its certificate of incorporation, its by-laws or in the laws of the State of Alabama. By proper corporate action the CAFFM has duly authorized the execution, delivery and performance of this Agreement.

(b) The CAFFM will execute and deliver the Loan Documents in conjunction with the Loan and the Loan Documents will be in substantially the form set forth in Exhibit A hereto (the "Loan Documents").

(c) The Loan will be funded and delivered upon the condition, and in reliance, that simultaneously therewith the City would execute and deliver this Agreement.

SECTION 1.02 Representations and Warranties of the City.

The City hereby represents and warrants as follows:

- (a) This Agreement is made and delivered by the City pursuant to Amendment No. 772.
- (b) The City has the power and authority to enter into this Agreement and to carry out its obligations hereunder and by proper action the City has duly authorized the execution, delivery and performance of this Agreement.
- (c) The Loan will be funded and delivered upon the condition, and in reliance, that simultaneously therewith the City would execute and deliver this Agreement.
- (d) The Project is being undertaken and operated by the Event Center Entity upon the condition, and in reliance by the Event Center Entity, that simultaneously herewith the City would execute and deliver this Agreement.
- (e) The issuance of the Loan and the application of the proceeds thereof for the purposes set forth in the closing documents for the Loan and in this Agreement and the construction and operation of the Project within the city limits of the City will promote the local economic, commercial and industrial development of the City, increase employment in the City and promote and develop for the public good and welfare trade, commerce, industry, and employment opportunities in the City, as well as result in direct financial benefits to the City all in furtherance of the purposes of Amendment No. 772.

ARTICLE 2

DURATION OF AGREEMENT

The obligations of the City hereunder shall arise on the date of delivery of this Agreement and shall continue in effect until the Loan has expired or been terminated pursuant to its terms.

ARTICLE 3

PAYMENT OF LOAN

SECTION 3.01 Payments of Loan Amounts by the City.

(a) For the payment of the Loan, the City hereby authorizes, orders and directs the Finance Director of the City of Foley to pay to the CAFFM in immediately available funds, upon presentation to the City by the CAFFM of a payment request and certificate substantially in the form of Exhibit B hereto and solely from the Funding Agreement Fund hereinafter created, payments (collectively the "Funding Agreement Payments") at such time or times as shall be necessary to provide for the due and punctual payment of the CAFFM's obligations under the Loan.

(b) The CAFFM shall apply all amounts received from the City under Section 3.01(a) of this Agreement in accordance with Section 4.01 hereof.

(c) The City agrees that the principal of and interest on the Loan shall become due and payable in each year as set forth on Exhibit A hereto.

(d) The City and the CAFFM agree:

(1) the obligations of and recourse against the City for payment of any amounts pursuant to this Agreement shall be limited to and shall not exceed the amounts determined from time to time as provided in Section 3.01(a); and

(2) all payments hereunder by the City shall be valid and effectual to satisfy and discharge the liability of the City to the extent of the amounts paid and the City shall not be responsible or liable for payment to any third party with respect to such amounts so paid by the City.

SECTION 3.02 Funding Agreement.

(a) There is hereby established a special fund designated the "Funding Agreement Fund" which shall be held by the Finance Director of the City until this Agreement shall be terminated in accordance with its terms. Money in the Funding Agreement Fund shall be used solely for the payment of the obligations of the City under Section 3.01(a) hereof.

(b) The City shall pay or cause to be paid, and the City hereby authorizes, orders and directs the Finance Director of the City to pay, into the Funding Agreement Fund from the taxes, revenues, or funds of the City amounts sufficient to provide for the due and punctual payment of the obligations of the City set forth under Section 3.01(a) hereof.

SECTION 3.03 Nature of Obligations of the City.

(a) The full faith and credit of the City are hereby irrevocably pledged to the obligations of the City to make the payments required under Section 3.01(a) of this Agreement and the obligations shall be absolute and unconditional under any and all circumstances and in no way conditioned or contingent upon any attempt to collect any of such amounts from the CAFFM or any other person or entity or to realize upon any property pledged as collateral for the Loan or upon any other direct or indirect security for the Loan or resort to any other remedies.

(b) The City agrees the City may pay all amounts due under Section 3.01(a) of this Agreement from any funds or revenues of the City which are legally available for such purpose. The CAFFM shall apply all amounts received from the City under this Section 3.03(b) in accordance with Section 4.01 hereof.

ARTICLE 4

OBLIGATIONS OF THE CAFFM

SECTION 4.01 Obligations of the CAFFM.

The CAFFM hereby agrees to comply with the provisions of the Loan and to cause all amounts received from the City in accordance with Section 3.01(a) to be applied to the payment of the Loan.

SECTION 4.02 Remedies of the City.

The City hereby agrees that any failure of the CAFFM to comply with the provisions of Section 4.01 of this Agreement shall not relieve or discharge the City from any obligation to the CAFFM hereunder. The City may, notwithstanding the foregoing, proceed to enforce the agreements of the CAFFM set forth in Section 4.01 of this Agreement by suit in equity, action at law, or other appropriate proceedings.

ARTICLE 5

EVENTS OF DEFAULT AND REMEDIES

SECTION 5.01 Events of Default.

Any one or more of the following shall constitute an event of default by the City hereunder (an "Event of Default") under this Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the City shall fail to make any payment required by Section 3.01(a) hereof when and as the same shall become due and payable; or

(b) the appointment of a receiver, liquidator or trustee of the City or any of its properties or assets; or a general assignment by the City for the benefit of the creditors thereof; or the commencement of proceedings by or against the City under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, now or hereafter in effect.

SECTION 5.02 Remedies of the CAFFM.

(a) If an Event of Default exists, the CAFFM may proceed to protect its rights by suit in equity, action at law or other appropriate proceedings, including for the specific performance of any covenant or agreement of the City herein contained.

(b) The CAFFM may proceed directly against the City as provided herein without resorting to any other remedies which it may have and without proceeding against any other person or entity or any other security.

SECTION 5.03 Remedies Subject to Applicable Law.

All rights, remedies and powers provided by this Article 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 6

THIRD-PARTY BENEFICIARY CONTRACT

This Agreement is a third-party beneficiary contract and United Bank, _____, Alabama (collectively with its successors and assigns, the "Beneficiary") as its interests appear in the Loan Documents is a third-party beneficiary of the covenants and agreements on the part of the City and the CAFFM contained herein as fully and completely as if it was a party signatory hereto.

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, among 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 parties hereto and their respective permitted successors and assigns, except as otherwise provided herein. Faxed, scanned or photocopied signatures shall be deemed equivalent to original signatures.

(b) This Agreement shall be governed exclusively by the laws of the State of Alabama without regard to conflict of law principles.

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 CAFFM:

Coastal Alabama Farmers' and
Fishermen's Market, Inc.
407 East Laurel Avenue
P.O. Box 1750
Foley, Alabama 36535
Attn: Chairman

(2) if to the City:

City of Foley, Alabama
City Hall
407 East Laurel Avenue
P.O. Box 1750
Foley, Alabama 36535
Attn: Mayor

(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 No Assignment and Transfer of this Agreement.

This Agreement is not negotiable and may not be transferred or assigned except to a successor trustee.

SECTION 7.07 Amendments.

(a) This Agreement may be amended or supplemented only by an instrument (i) in writing duly authorized, executed and delivered by each party hereto and (ii) with the prior written consent of the Beneficiary.

(b) Any attempted amendment hereof or supplement hereto without full compliance with this Section shall be null and void and of no effect.

[signature page follows]

IN WITNESS WHEREOF, the CAFFM and the City 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 have caused this Agreement to be dated the date and year first above written.

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

SEAL

By _____
Chairman

ATTEST:

Secretary

ATTEST:

CITY OF FOLEY, ALABAMA

By: _____
City Clerk

By: _____
Mayor

Registration Certificate

I hereby certify that the above and foregoing Funding Agreement and the obligations of the CAFFM thereunder have been duly registered by me as a claim against the City of Foley, Alabama, in the State of Alabama, and the Funding Agreement Fund created therein.

Finance Director of the City of
Foley, Alabama

EXHIBIT A

EXHIBIT B

PAYMENT REQUEST AND CERTIFICATE

TO: City of Foley, Alabama

RE: Funding Agreement dated as of _____, 2014 (the "Agreement") by and between the City of Foley, Alabama and the Coastal Alabama Farmers' and Fishermen's Market, Inc. (the "CAFFM")

The CAFFM under the Funding Agreement hereby:

(1) requests payment by the City of Foley, Alabama of the amount of \$_____ in immediately available funds on or before _____, ____ pursuant to Section 3.01(a) of the above-referenced Agreement, and

(2) in connection therewith represents and certifies that the amount requested hereby:

(a) shall be applied to obligations under the Loan in the amount of \$_____;

(b) when added to all amounts previously requested by the CAFFM and paid by the City pursuant to the above-referenced Agreement will not exceed the maximum amount to be paid by the City pursuant to said Agreement.

IN WITNESS WHEREOF, the CAFFM has caused this instrument to be executed and delivered by an officer thereof duly authorized thereunto on this ____ day of _____, ____.

THE COASTAL FARMERS' AND
FISHERMEN'S MARKET, INC.

By _____

Its _____

CERTIFICATE OF SECRETARY

The undersigned duly elected, qualified and acting Secretary of The City of Foley hereby certifies that: (1) the above and foregoing pages constitute a complete, verbatim and compared copy of excerpts from all those parts of the minutes of a meeting of the City Council of the City duly held on _____, 2015, pertaining to the matters therein referred to, the original of which is on file and of record in the minute book of the City Council in my custody; (2) the resolutions set forth in such excerpts are complete, verbatim and compared copies of such resolutions as introduced and adopted by the City Council on such date and have not been repealed, amended, or changed; and (3) notice was posted at the place of meeting in the City of Foley.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of the City and have affixed the official seal of the City on _____, 2015.

Secretary of The City of Foley

SEAL