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**SPECIAL AGREEMENT**

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**Dated April 1, 2016**

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**among**

**CITY OF FOLEY, ALABAMA**

**and**

**THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**

**and**

**REGIONS BANK  
as Trustee**

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**Revenue Refunding Bonds  
Series 2016  
of  
The City of Foley Public Facilities Cooperative District**

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**This Special Agreement was prepared by Heyward C. Hosch of Maynard, Cooper & Gale, P.C.,  
1901 Sixth Avenue North, 2400 Regions/Harbert Plaza, Foley, Alabama 35203.**

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## SPECIAL AGREEMENT

This **SPECIAL AGREEMENT** is made and entered as of April 1, 2016 by and among the **CITY OF FOLEY, ALABAMA**, a political subdivision of the State of Alabama (the "City"), **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**, an Alabama public corporation (the "District"), and **REGIONS BANK**, as trustee under the Indenture referenced below (the "Trustee").

### Recitals

The City, the District and the Trustee have delivered this Agreement simultaneously with the issuance by the District of the following bonds (the "Bonds"):

\$9,165,000 Revenue Refunding Bonds, Series 2016

pursuant to Amended and Restated Trust Indenture dated April 1, 2016, as amended and supplemented (the "Indenture") for the purposes of refunding the within-referenced Refunded Bonds in order to realize interest costs savings with respect thereto.

The Bonds are limited or special obligations of the District payable solely from revenues derived by the District from the Project, including without limitation all City Bond Payments payable by the City under the Lease Agreement, subject and subordinate to the prior pledge, lien and payment by the District of the principal of and interest on the Outstanding Series 2009 Bonds in each fiscal year from such revenues and City Bond Payments.

This Agreement is delivered in order to:

- (a) ratify and confirm the obligation of the City to pay the City Bond Payments under the Lease Agreement, as long as the Lease Agreement is in effect, at times and in amounts sufficient to pay the principal of and interest on the Outstanding Series 2009 Bonds and the Bonds; and
- (b) ratify and confirm the Lease Agreement as in full force and effect.

### Agreement

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

## ARTICLE 1

### DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms used herein without definition shall have the meaning, and general principles of construction shall have the operation, set forth in the Indenture.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES

#### **SECTION 2.01 Representations and Warranties of the District.**

The District makes the following representations and warranties:

(a) The District is duly incorporated under the provisions of Chapter 99B of Title 11 of the Code of Alabama 1975 and has corporate power and authority to enter into this Agreement. The District 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 District has duly authorized the execution, delivery and performance of this Agreement.

(b) Pursuant to the Indenture, the District has issued and sold the Bonds, which shall be due and payable as to principal and interest in the fiscal years and in the amounts all as set forth in Exhibit A hereto.

(c) The Bonds were issued, sold and delivered upon condition, and purchased by the original Holders thereof in the reliance, that simultaneously therewith the City would execute and deliver this Agreement.

#### **SECTION 2.02 Representations and Warranties of the City.**

The City hereby represents and warrants as follows:

(a) The City has corporate power and authority to enter into this Agreement and to carry out its obligations hereunder and by proper corporate action the City has duly authorized the execution, delivery and performance of this Agreement.

(b) The Bonds were issued, sold and delivered upon condition, and purchased by the original Holders thereof in the reliance, that simultaneously therewith the City would execute and deliver this Agreement.

(c) The Lease Agreement is in full force and effect, and no Event of Default (as defined therein) has occurred and is continuing, and the Lease Agreement has not been amended, modified, restated, or supplemented.

(d) The issuance of the Bonds and the refunding of the Refunded Bonds will produce present value interest costs savings to the City and will inure to the direct financial benefit of the City.

### **ARTICLE 3**

#### **DURATION OF AGREEMENT**

The obligations of the City under this Agreement shall terminate and be fully discharged, and of no force or effect, simultaneously upon the termination of the Lease Agreement, without any action or notice by the City with respect thereto, and without acceleration or advancement of maturity or due date of any principal of or interest on the Outstanding Series 2009 Bonds or the Bonds or amount payable under the Lease Agreement and without recourse against the City for payment of any amount which would otherwise become due under the Lease Agreement in any year subsequent to such termination of the Lease Agreement.

### **ARTICLE 4**

#### **AGREEMENTS OF CITY**

##### **SECTION 4.01 Consents and Agreements by City.**

The City does hereby consent and agree:

(a) to the execution and delivery by the District and the Trustee of the Indenture and to the issuance of the Bonds under the Indenture for the purposes thereof;

(b) that the City Bond Payments to be made by the City under the Lease Agreement for any fiscal year in which the Lease Agreement is in effect, shall include in each such fiscal year (i) all Debt Service on the Outstanding Series 2009 Bonds becoming due and payable in such fiscal year and (ii) all Debt Service on the Bonds becoming due and payable in such fiscal year.

##### **SECTION 4.02 Covenants and Agreements by City.**

The City does hereby covenant and agree:

(a) that, anything in the Financing Documents or in this instrument to the contrary notwithstanding, the City expressly retains the right to terminate the Lease Agreement at the end of any fiscal year pursuant to and in accordance with Section 5.01 of the Lease Agreement;

(b) that the purpose of this instrument is to clarify that the amounts of the City Bond Payments to be made under the Lease Agreement for any fiscal year in which the Lease Agreement is in effect are the amounts referenced in Section 4.01(b) hereinabove and this instrument shall not operate, or be construed, to effect any amendment to the Lease Agreement or the agreements or obligations of the City thereunder;

(c) that the City shall pay, in each fiscal year in which the Lease Agreement is in effect, as City Bond Payments (i) all Debt Service with respect to the Outstanding Series 2009 Bonds becoming due and payable in such fiscal year and (ii) all Debt Service with respect to the Bonds becoming due and payable in such fiscal year;

(d) that the District, the Trustee, and the registered owners of the Bonds shall have, and may exercise, in accordance with the terms of the Indenture, all rights and remedies provided in the Indenture for the District, the Trustee, and the registered owners of Outstanding Series 2009 Bonds and the Bonds;

(e) the City will not, while the Lease Agreement is in effect, either by itself or through a subordinate entity controlled by the City, purchase, lease, or otherwise acquire any property performing functions similar to those performed by the Project; provided, however if, in the reasonable determination of the City, the needs of the City for facilities similar to the Project exceeds the capacity of the Project or if the Project, or a portion thereof, becomes unusable or untenable, the City may acquire such property to the extent of such needs or for the duration the Project is unusable or untenable.

## **ARTICLE 5**

### **OBLIGATIONS OF THE DISTRICT AND THE TRUSTEE**

#### **SECTION 5.01 Obligations of the District.**

The District hereby agrees to comply with the provisions of the Indenture with respect to the application and investment of the proceeds of the Bonds.

#### **SECTION 5.02 Obligations of the Trustee.**

The Trustee hereby agrees to cause all amounts received from the City to be applied to the payment of the Bonds and certain costs and expenses incurred under the Indenture as provided in the Indenture.

## **ARTICLE 6**

### **THIRD-PARTY BENEFICIARY CONTRACT**

This Agreement is a third-party beneficiary contract and the Holders are third-party beneficiaries of the covenants and agreements on the part of the District, the City and the Trustee contained herein as fully and completely as if the Holders were parties signatory hereto.

## ARTICLE 7

### PROVISIONS OF GENERAL APPLICATION TO THE TRUSTEE

The Trustee agrees to perform the duties herein required of it, subject, however, to the following conditions:

(a) The Trustee shall not be liable hereunder except for its noncompliance with the provisions of the Indenture, its willful misconduct or its gross negligence, or the breach of any warranty or the untruthfulness of any acknowledgment or representation made herein by it, and, in particular and without limiting the generality of the foregoing, it shall not be liable for any losses resulting from any investment of moneys, or the conversion to cash of an investment if it shall have made such investment or conversion in accordance with the provisions of the Indenture.

(b) The Trustee may consult Independent counsel (as defined in the Indenture) on any matters connected herewith and shall not be liable for any action taken or failure to take any action in good faith on the advice of Independent counsel.

(c) It is expressly understood and agreed that the Trustee's duties and obligations in connection with this Agreement are confined to those expressly defined herein and in the Indenture.

(d) The Trustee may act through its officers, employees, agents and attorneys.

(e) Any payment obligation of the Trustee hereunder shall be paid from, and is limited to funds available in the trust estate established and maintained in the Indenture; the Trustee shall not be required to expend its own funds for the performance of its duties hereunder.

(f) Notwithstanding any provision herein to the contrary, in no event shall the Trustee be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(g) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligation under the Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

(h) In addition to the foregoing rights and limitations, the Trustee shall further be entitled to all the immunities, protections, rights, and limitations of liability provided in the Indenture with respect to the performance of its duties hereunder.

## ARTICLE 8

### RATIFICATION OF LEASE AGREEMENT

The City and the District hereby ratify and confirm the Lease Agreement in all respects.

## ARTICLE 9

### PROVISIONS OF GENERAL APPLICATION

#### **SECTION 9.01 Enforceability.**

The provisions of this Agreement shall be severable. In the event any provision of the Indenture 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 of the Indenture.

#### **SECTION 9.02 Counterparts.**

This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

#### **SECTION 9.03 Binding Effect; Governing Law.**

(a) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns except as otherwise provided herein.

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

**SECTION 9.04 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:

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| (1) if to the District:  | (2) if to the City:  |
| The City of Foley Public Facilities<br>Cooperative District<br>407 East Laurel Avenue<br>P.O. Box 1750<br>Foley, Alabama 36535<br>Attn: City Administrator | City of Foley, Alabama<br>City Hall<br>407 East Laurel Avenue<br>P.O. Box 1750<br>Foley, Alabama 36535<br>Attn: City Administrator |
| <br>   |  |
| (3) if to the Trustee:   |  |
| Regions Bank<br>1900 5 <sup>th</sup> Avenue North<br>Birmingham, AL 35203  |  |

(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 9.05 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 9.06 Amendments.**

This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto and as provided in the Indenture.

IN WITNESS WHEREOF, the District, the City and the Trustee 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 CITY OF FOLEY PUBLIC FACILITIES  
COOPERATIVE DISTRICT**

SEAL

By \_\_\_\_\_  
Charles J. Ebert, III, Chairman

ATTEST:

\_\_\_\_\_  
Roderick W. Burkle, Secretary/ Treasurer

ATTEST:

**CITY OF FOLEY, ALABAMA**

By: \_\_\_\_\_  
Victoria Southern, MMC City Clerk

By: \_\_\_\_\_  
John E. Koniar, Mayor

**REGIONS BANK**  
as Trustee

SEAL

By \_\_\_\_\_

Its \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

Debt Service on Bonds