
FUNDING AGREEMENT

Dated _____, 2014

between

CITY OF FOLEY, ALABAMA

AND

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

**This Funding Agreement was prepared by C. Britton Bonner of Adams and Reese LP,
115 S. McKenzie Street, Foley, Alabama 36535.**

FUNDING AGREEMENT

This **FUNDING AGREEMENT** is made and entered as of _____, 2014 (the "Agreement") by and between the **CITY OF FOLEY, ALABAMA**, a political subdivision of the State of Alabama (the "City"), and **THE CITY OF FOLEY PUBLIC FACILITIES COOPERATIVE DISTRICT**, an Alabama public corporation (the "District").

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 District and the Coastal Alabama Farmers' and Fishermen's Market, Inc., an Alabama nonprofit corporation of which the District is the sole member (the "CAFFM"), the City and the District have delivered this Agreement simultaneously with execution and delivery of loans in the maximum principal amount of \$8,000,000 from Pacesetter CDE X, LLC to the CAFFM (the "Loans") and the execution and delivery of the Environmental Indemnity, the Guaranty of Payment and Completion and the QALICB Indemnification Agreement of even date herewith by the District and the CAFFM (the "NMTC Guarantees") in conjunction with the Loans and the allocation of certain new market tax credits under Section 45D of the Internal Revenue Code of 1986 (the "NMTC Program").

Agreement

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

ARTICLE 1

REPRESENTATIONS AND WARRANTIES

SECTION 1.01 Representations and Warranties of the Issuer.

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) The District has executed and delivered the Guarantees in conjunction with the Loans and the Loans will be due and payable as to principal and interest in the years and in the amounts as set forth in Exhibit A hereto.

(c) The Loans were funded and delivered upon the condition, and in reliance, that simultaneously therewith the District 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 Loans were funded and delivered upon the condition, and in reliance, that simultaneously therewith the City would execute and deliver this Agreement.

(d) The issuance of the Loans and the application of the proceeds thereof for the purposes set forth in the closing documents for the Loans and in this Agreement 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 NMTC Guarantees have expired or been terminated pursuant to their terms.

ARTICLE 3

PAYMENT OF NMTC GUARANTEES

SECTION 3.01 Payments of NMTC Guarantees by the City.

(a) For the payment of the NMTC Guarantees, the City hereby authorizes, orders and directs the Finance Director of the City of Foley to pay to the District in immediately available funds, upon presentation to the City by the Trustee 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 obligations under the NMTC Guarantees.

(b) The District shall apply all amounts received from the City under Section 4.01(a) of this Agreement the same as provided in Section 3.01(a).

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

(d) The City and the District 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);

(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 Fund.

(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)(1) 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)(1) 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 District or any other person or to realize upon any property pledged as collateral for the Loans or upon any other direct or indirect security for the Loans or resort to any other remedies.

(b) The City agrees the City may pay all amounts due under this Agreement from any funds or revenues of the City which are legally available for such purpose.

ARTICLE 4

OBLIGATIONS OF THE DISTRICT

SECTION 4.01 Obligations of the District.

The District hereby agrees to comply with the provisions of the NMTC Guarantees and to cause all amounts received from the City to be applied to the payment of NMTC Guarantees as provided in the NMTC Guarantees.

SECTION 4.02 Remedies of the City.

The City hereby agrees that any failure of the District to comply with the provisions of Section 4.01 of this Agreement shall not constitute not relieve or discharge the City from any obligation hereunder. The City may, notwithstanding the foregoing, proceed to enforce the agreements of the District 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 District.

(a) If an Event of Default exists, the District 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 District 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 JPMorgan Chase Bank, N.A. and Pacesetter CDE X, LLC as their interests appear in the NMTC Guarantees are third-party beneficiaries of the covenants and agreements on the part of the City and the District contained herein as fully and completely as if they were parties 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 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 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 Issuer:

The City of Foley Public Facilities
Cooperative District
407 East Laurel Avenue
P.O. Box 1750
Foley, Alabama 36535
Attn: _____

(2) if to the City:

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

(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 in writing duly authorized, executed and delivered by each party hereto.

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

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

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 District 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

Debt Service on Loans

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 City of Foley Public Facilities Cooperative District

The District 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 the following obligations under the NMTC Guarantees, in the amount of \$_____:

(b) when added to all amounts previously requested by the District 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 District has caused this instrument to be executed and delivered by an officer thereof duly authorized thereunto on this ____ day of _____, ____.

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

By _____
Its _____