
LEASE AGREEMENT

Dated September 1, 2016

between

**THE PUBLIC ATHLETIC AND SPORTS FACILITIES
COOPERATIVE DISTRICT OF THE CITY OF FOLEY, ALABAMA**

and

CITY OF FOLEY, ALABAMA

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

STATE OF ALABAMA

BALDWIN COUNTY

LEASE AGREEMENT

THIS LEASE AGREEMENT dated September 1, 2016, between **THE PUBLIC ATHLETIC AND SPORTS FACILITIES COOPERATIVE DISTRICT OF THE CITY OF FOLEY, ALABAMA**, a public corporation under the laws of the State of Alabama and its successors and assigns (the "District"), and **CITY OF FOLEY, ALABAMA**, a public corporation under the laws of the State of Alabama and its successors and assigns (the "City").

This Lease Agreement is made and delivered on the above date by the undersigned:

District: The Athletic and Sports Facilities Cooperative District of the City of Foley, Alabama, and its successors and assigns.

City: The City of Foley, Alabama, and its successors and assigns.

Recitals

1. Pursuant to Chapter 99B of Title 11 of the Code of Alabama 1975 (the "Enabling Law");

(a) the District has delivered that certain Trust Indenture dated May 1, 2015 (the "Indenture") by the District and Regions Bank, as trustee (the "Trustee");

(b) the District has issued the following revenue bonds (the "Bonds") on May 14, 2015 pursuant to the Indenture:

\$13,000,000

**Athletic and Sports Facilities Revenue Bonds
Series 2015**

to finance the within-referenced Project for the benefit of the District and the City;

(c) the City has delivered that certain Funding Agreement dated May 1, 2015 to the District and the Trustee as a general obligation of the City for the payment of the principal of and interest on the Bonds as provided therein.

2. The District and the City have delivered this Lease Agreement to provide for:

(a) the insurance, maintenance, operation and repair of the Project by the City for and on behalf of the District;

(b) the operation of those of the provisions of the Indenture respecting the interests of the District and the City.

Agreement

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

ARTICLE 1

Definitions and Rules of Construction

SECTION 1.01 Definitions

For all purposes of this Lease Agreement:

(a) Capitalized terms used herein without definition shall have the respective meanings assigned thereto in the Recitals hereto or in the Indenture defined in the Recitals hereto.

(b) The following terms shall have the following meanings:

Permitted Encumbrances shall have the meaning assigned in Article 3.

Project shall have the meaning assigned in Article 3.

SECTION 1.02 Rules of Construction

The following general rules of construction shall apply:

(a) All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(b) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or other subdivision.

ARTICLE 2

Representations

SECTION 2.01 Representations by the District

The District makes the following representations

(a) The District is duly incorporated under the Enabling Law.

(b) The District has title to the Project, free and clear of any charge, encumbrance or lien thereupon except Permitted Encumbrances.

(c) The execution, delivery and performance of this Lease Agreement and the compliance with all of the provisions hereof by the District (i) are within the power and authority of the District, (ii) will not conflict with or result in a breach of any of the provisions of, or constitute a default under, or result in or require the creation of any lien or encumbrance (other than Permitted Encumbrances) upon any property of the District under any agreement or other instrument to which the District is a party or by which it may be bound, or any rule, judgment, decree, order, law, statute,

ordinance, or governmental regulation applicable to the District or its properties, and (iii) have been duly authorized by all necessary action on the part of the District.

(d) The Project is a "project" under Section 11-99B-1(16) of the Enabling Law, as the Project consists of capital improvements, facilities, structures, buildings, property and appurtenances for use as provided on Exhibit A hereto, which the City, as a member of the District, is authorized by law, to own, acquire, construct, finance and operate and maintain.

(e) The District has determined that the leasing of the Project to the City is in furtherance of the purposes of the Enabling Law.

SECTION 2.02 Representations by the City

The City makes the following representations:

(a) There are no actions, suits or proceedings pending (nor, to the knowledge of the City, are any actions, suits or proceedings threatened) against or affecting the City or any property of the City in any court, or before an arbitrator of any kind, or before or by any governmental body, which might materially and adversely affect the transactions contemplated by this Lease Agreement or which might adversely affect the validity or enforceability of this Lease Agreement or any other agreement or instrument to which the City is or is to be a party relating to the transactions contemplated by this Lease Agreement.

(b) No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority on the part of the City is required in connection with the execution, delivery and performance of either this Lease Agreement or the Indenture (other than any already obtained, taken or made and which continue in full force and effect).

(c) No event has occurred and no condition exists which would constitute an "Event of Default" under the Indenture, as "Event of Default" is therein defined, or which would become such an "Event of Default" with the passage of time or with the giving of notice or both. The City is not in default under any agreement or instrument to which it is a party or by which it is bound.

(d) The execution, delivery and performance of this Lease Agreement and the compliance with all of the provisions hereof by the City (i) are within the power and authority of the City, (ii) will not conflict with or result in a breach of any of the provisions of, or constitute a default under, or result in or require the creation of any lien or encumbrance (other than Permitted Encumbrances) upon any property of the City under any agreement or other instrument to which the City is a party or by which it may be bound, or any rule, judgment, decree, order, law, statute, ordinance or governmental regulation applicable to the City or its properties, and (iii) have been duly authorized by all necessary action on the part of the City.

ARTICLE 3

Demising Clauses

The District, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of the City to be paid, kept and performed, does hereby demise and lease to the City, and the City does hereby lease, take and hire from the District, the following property (herein collectively the "Project"):

I.

The interests of the District in and to all real property described or referenced on Exhibit A hereto and all other real property, or interests therein, acquired by the District with Bond Proceeds or with funds advanced or paid pursuant to this Lease Agreement or any Net Proceeds, together with all easements, permits, licenses, rights-of-way, contracts, leases, tenements, hereditaments, appurtenances, rights, privileges and immunities pertaining or applicable to said real property.

II.

The interests of the District in and to all property described or referenced on Exhibit B hereto, or used in connection with any real property described or referenced on said Exhibit A, and all other personal property, or interests therein, acquired by the District with Bond Proceeds or with funds advanced or paid pursuant to this Lease Agreement or any Net Proceeds, together with all easements, permits, licenses, rights-of-way, contracts, leases, tenements, hereditaments, appurtenances, rights, privileges and immunities pertaining or applicable to said personal property.

SUBJECT, HOWEVER to, as of any particular time, the following (herein collectively "Permitted Encumbrances"): (i) liens for taxes, assessments or other governmental charges or levies not due and payable or which are currently being contested in good faith by appropriate proceedings, (ii) utility, access and other easements and rights of way, party walls, restrictions and exceptions that may be granted or are permitted under this Lease Agreement, (iii) any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right or purchase money security interest if payment is not yet due and payable under the contract in question, (iv) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as do not, in the Opinion of Counsel, materially impair the Project for the purpose for which it was acquired or is held by the District, and (v) such encumbrances, mortgages, and other matters which appear of public record prior to the date of recording of this Lease Agreement.

ARTICLE 4

The Project

SECTION 4.01 Application of Bond Proceeds.

The District and the City shall cause the Bond Proceeds to be applied as provided in Article 7 of the Indenture for the acquisition, construction and installation of the Project.

SECTION 4.02 Maintenance and Repairs, Alterations and Improvements, Utility Charges

(a) The City shall, at its own expense, (1) keep the Project in as reasonably safe condition as its operations permit, (2) from time to time make all necessary and proper repairs, renewals and replacements thereto, including external and structural repairs, renewals and replacements, and (3) pay all gas, electric, water, sewer and other charges for the operation, maintenance, use and upkeep of the Project.

(b) The City may, at its own expense, make structural changes, additions, improvements, alterations or replacements to the Project, or any part thereof, that it may deem desirable, provided such structural changes, additions, improvements, alterations or replacements will not adversely affect the utility of the Project or substantially reduce its value. All such changes, additions, improvements, alterations and replacements whether made by the City or the District shall become a part of the Project and shall be covered by this Lease Agreement.

SECTION 4.03 District to Grant Easements

The District shall also, upon request of the City, grant such utility and other similar easements over, across or under the Project, or any portion thereof, as the City shall request.

SECTION 4.04 Insurance; Application of Proceeds

(a) The City will take out and continuously maintain in effect insurance on and with respect to the Project in the manner, to the extent, and against at least such risks (including comprehensive general liability, fiduciary liability, environmental impairment liability, property insurance, and employee dishonesty insurance) usually maintained by owners of similar properties in similar geographic areas or as the City shall maintain with respect to other properties of the City.

(b) Subject to the provisions hereof, all net proceeds of any insurance award (gross proceeds less expenses incurred in the collection of such proceeds) shall be paid to the City and applied as directed by resolution of the governing body of the City for:

(i) the acquisition of capital facilities or capital improvements which constitute a "project" under the Enabling Law; or

(ii) the redemption of the Bonds in accordance with the terms thereof.

ARTICLE 5

Lease Term and Rent Payment

SECTION 5.01 Duration of Term

The term of this Lease Agreement and of the lease herein made shall begin on the date hereof and, subject to the provisions hereof, shall continue in effect until the Indenture Indebtedness shall have been Fully Paid.

SECTION 5.02 Rent Payment

As rent for the use and occupancy of the Project, the City shall pay to the District the amount of \$100 in advance on the date of delivery of this Lease Agreement.

ARTICLE 6

Covenants of the City

The City covenants and agrees that it will:

- (a) operate the Project for the purposes authorized by the City and the District;
- (b) permit the District, the Trustee and their duly authorized agents at all reasonable times to enter upon, examine and inspect the Project;
- (c) cause this Lease Agreement, any amendments to this Lease Agreement and other instruments of further assurance to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed in such places as may be required by law fully to preserve and protect the rights of the District and the Trustee to all property comprising the Project.

ARTICLE 7

Covenants of the District

SECTION 7.01 Redemption and Refunding of Bonds

- (a) The District shall comply with Section 4.04 of the Funding Agreement with respect to the redemption of any of the Bonds .
- (b) The District shall comply with the provisions of Section 4.05 of the Funding Agreement with respect to the refunding of any of the Bonds.

SECTION 7.02 Transfer or Encumbrance Created by District; Corporate Existence of District

(a) Without the prior written consent of the Trustee and the City, the District (1) will not sell, transfer or convey the Project or any part thereof or the Trust Estate or any part thereof, except as provided in this Lease Agreement, and (2) will not create or incur or suffer or permit to be created or incurred or to exist any mortgage, lien, charge or encumbrance on the Project or any part thereof or of the Trust Estate or any part thereof.

(b) The District shall not consolidate with or merge into any other corporation or transfer its property substantially as an entirety, except as provided in the Indenture.

SECTION 7.03 Investment of Funds

The District shall cause any money held as a part of the Special Funds which may by the terms of the Indenture be invested to be so invested or reinvested by the Trustee solely at the request of, and solely as directed in writing by, the City and as provided in the Indenture.

SECTION 7.04 Amendment of Indenture

The District will not cause or permit the amendment of the Indenture or the execution of any amendment or supplement to the Indenture without the prior written consent of the City.

ARTICLE 8

Remedies

(a) The District shall have and may exercise all rights and remedies provided by law or equity for the enforcement of any agreement or covenant of the City under this Lease Agreement.

(b) The City shall have and may exercise all rights and remedies provided by law or equity for the enforcement of any agreement or covenant of the District under this Lease Agreement.

ARTICLE 9

Internal Revenue Code

The District and the City each covenants and agrees it will observe and perform all agreements and covenants thereof under the Tax Certificate and Agreement.

ARTICLE 10

Conveyance and Vesting of Title to Project

(a) In order to establish the title of the City in and to the Project if, at such time as the Indenture Indebtedness shall have been Fully Paid, the District does hereby grant, bargain, sell and convey, without recourse or warranty, to the City all the rights, title and interest of the District in and to the Project, which said right, title and interest of the District in and to the Project shall vest absolutely in the City when the Indenture Indebtedness shall have been Fully Paid. The District and the City hereby agree that all right, title and interest of the District in and to the Project shall, without further action on the part of the District or any other Person, automatically vest in the City when the Indenture Indebtedness shall have been Fully Paid. In no event, however, shall the City be entitled to claim or enforce any rights in the Project pursuant to the aforesaid conveyance by the District which would in any way impair the rights of the Trustee or the Holders. The estate of the City created by such conveyance is in the nature of a contingent remainder, and such estate shall not merge with the leasehold estate of the City created by this Lease Agreement until the Indenture Indebtedness shall have been Fully Paid. The District will, at the expense of the City, execute and deliver such instruments and do such acts as may be necessary or appropriate to perfect, secure and confirm the title of the City to the Project, if and when the City's right thereto and title therein vests absolutely pursuant to the provisions of this Section.

(b) The provisions of this Section shall survive termination of this Lease Agreement for any reason or under any circumstance.

(c) For purposes of Section 11-99B-7(19) of the Enabling Law, the consent of the members of the District to the above conveyance of the Project to the City is set forth in proceedings of the members with respect thereto.

ARTICLE 11

Provisions of General Application

SECTION 11.01 Covenant of Quiet Enjoyment

So long as the City performs and observes all the covenants and agreements on its part herein contained, it shall peaceably and quietly have, hold and enjoy the Project during the Lease Term subject to all the terms and provisions hereof.

SECTION 11.02 Execution Counterparts

This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.03 Binding Effect; Governing Law

(a) This Lease Agreement shall inure to the benefit of, and shall be binding upon, the District, the City and their respective successors and assigns.

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

SECTION 11.04 Enforceability

In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 11.05 Article and Section Captions

The Article and Section headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.

SECTION 11.06 Notices

(a) Any request, demand, authorization, direction, notice, consent, or other document provided or permitted by this Lease Agreement to be made upon, given or furnished to, or filed with, the District, the City, and the Trustee shall be sufficient for every purpose hereunder if in writing and (except as otherwise provided in this Lease Agreement) either (i) delivered personally to the party or, if such party is not an individual, to an officer, or other legal representative of the party to whom the same is directed (provided that any document delivered personally to the Trustee must be delivered to a corporate trust officer at its Principal Office during normal business hours) at the hand delivery address specified in Section 1.09 of the Indenture or (ii) mailed by first-class, registered or certified mail, postage prepaid, addressed as specified in Section 1.09 of the Indenture. Any of such parties may change the address for receiving any such notice or other document by giving notice of the change to the other parties as provided in this Section.

(b) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer, or other legal representative of the party) at the address specified pursuant to this Section, or, if sent by mail, three days after such notice or document is deposited in the United States mail, proper postage prepaid, addressed as provided above.

SECTION 11.07 Amendment of Lease Agreement

This Lease Agreement shall only be amended by written instrument duly authorized, executed and delivered by the City and the District.

ARTICLE 12

Limitations of Liability Regarding District and the City

(a) No recourse under or upon any covenant or agreement of this Lease Agreement shall be had against any past, present or future incorporator, officer or member of the Board of Directors of the District, or of any successor corporation, either directly or through the District, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Lease Agreement is solely a corporate obligation, and that no personal liability whatever shall attach to, or is or shall be incurred by, any incorporator, officer or member of the Board of Directors of the District or any successor corporation, or any of them, under or by reason of the covenants or agreements contained in this Lease Agreement.

(b) No recourse under or upon any covenant or agreement of this Lease Agreement shall be had against any past, present or future officer or member of the governing body of the City, or of any successor corporation, either directly or through the City, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Lease Agreement is solely a corporate obligation, and that no personal liability whatever shall attach to, or is or shall be incurred by, any officer or member of the governing body of the City or any successor corporation, or any of them, under or by reason of the covenants or agreements contained in this Lease Agreement.

IN WITNESS WHEREOF, the District and the City have each caused this Lease Agreement to be executed, sealed and attested in its name, under seal, by officers thereof duly authorized thereunto and to be dated the date and year first above written.

**THE PUBLIC ATHLETIC AND SPORTS
FACILITIES COOPERATIVE DISTRICT
OF THE CITY OF FOLEY, ALABAMA**

By _____
Its Chair Floyd A. Davis

S E A L

Attest: _____
Its Secretary Charles J. Ebert, III

CITY OF FOLEY, ALABAMA

By _____
Its Mayor John E. Koniar

S E A L

Attest: _____
Its: City Clerk Victoria Southern, MMC

STATE OF ALABAMA)

BALDWIN COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Floyd A. Davis, whose name as Chair of The Public Athletic and Sports Facilities Cooperative District of the City of Foley, Alabama, a public corporation, is signed to the foregoing Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

Given under my hand and seal this the 7th day of September, 2016.

Notary Public

NOTARIAL SEAL

My commission expires: _____

STATE OF ALABAMA)

BALDWIN COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John E. Koniar, whose name as Mayor of City of Foley, Alabama, a public corporation under the laws of the State of Alabama, is signed to the foregoing Lease Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Lease Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said political subdivision.

Given under my hand and seal this the 7th day of September, 2016.

Notary Public

NOTARIAL SEAL

My commission expires: _____

EXHIBIT A

Description of Project Site

Parcel A

Lot 1, Blue Collar Country, Juniper Street Exemption, as recorded on Slide 2522-F in the Office of the Judge of Probate of Baldwin County, Alabama.

Parcel B

Lot 1, Blue Collar Country, Phase One, as recorded on Slide 2501-E, in the Office of the Judge of Probate of Baldwin County, Alabama.

EXHIBIT B

(1) 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.

(2) 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.

(3) 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.