

FUNDING AGREEMENT

THIS FUNDING AGREEMENT dated July 17, 2018 (the “Funding Agreement” or “this Agreement”) is entered into by the **CITY OF BIRMINGHAM** (the “City”) and **BIRMINGHAM-JEFFERSON CIVIC CENTER AUTHORITY** (the “Authority”).

RECITALS

A. The Authority operates and manages a civic center convention complex located in and for the benefit of the City and Jefferson County, Alabama (the “County”). The Authority is planning a major expansion of its facilities through the following projects (collectively, the “Projects”): (i) renovation of Legacy Arena and the Authority’s existing convention and meeting space, and (ii) construction of an open-air stadium (the “Stadium”) that will provide an additional venue for convention, sports and entertainment events, including football games of the University of Alabama at Birmingham (“UAB”). The Projects are described in more detail in the Project Cooperation Agreement described below. Completion of the Projects will enable the Authority to compete more successfully with similar facilities in other cities as the site for trade shows, conventions, entertainment and sporting events.

B. The City believes the Projects will encourage and promote tourism and convention business and will generate substantial economic benefit for the City through the creation of jobs and the expansion of the City’s tax base. The City has agreed to support the Projects and to provide a share of the funding for the financing of the Projects, subject to the terms of this Agreement.

C. The Projects have a total estimated cost of approximately \$300 million. The Authority will finance the Projects through the issuance of its revenue bonds or notes in one or more series (collectively, the “Bonds”). The Bonds are described in *Exhibit A*. Pursuant to this Funding Agreement the City has agreed to make the City Contributions (defined herein) to the Authority to provide funds for the payment of one of such series of bonds (the “City-Supported Bonds”), which are designated as the City-Supported Bonds in *Exhibit A*. The City-Supported Bonds will provide a portion of the funding for the Projects. The City’s obligation under this Funding Agreement to make the City Contributions will be a general obligation of the City, secured by the full faith and credit of the City.

D. The Authority and the City have the power to undertake the obligations described in this Agreement under the provisions of Alabama law, including without limitation (i) Amendment 280 to the Constitution of the State of Alabama (Section 3, Local Amendments, Jefferson County, in the Official Recompilation of the Constitution of Alabama of 1901) (“Amendment 280”), (ii) Act No.547 of the 1965 Regular Session of the Alabama Legislature, as amended (codified as Section 45-37-90 et seq. of the Code of Alabama 1975) (“Act 547”), and (iii) Amendment 772 to the Constitution of the State of Alabama (Section 94.01 of the Official Recompilation of the Constitution of Alabama of 1901) (“Amendment 772”).

E. The Authority and the City will enter into a project cooperation agreement (the “Project Cooperation Agreement”), to be executed and delivered at the same time this Agreement is executed and delivered. The Project Cooperation Agreement will set forth agreements of the parties with respect to the development and construction of the Projects and related matters.

NOW, THEREFORE, in consideration of the respective representations and agreements herein contained, the parties hereto agree as follows:

Section 1. Findings and Determinations by City.

The City hereby finds and determines that:

(a) This Agreement is authorized by Alabama law, including without limitation (i) Amendment 280, (ii) Act 547, and (iii) Amendment 772.

(b) The City Contributions to be made pursuant to this Funding Agreement will benefit the people of the City to an extent that fully warrants and justifies such appropriations.

(c) The City is making public funds available to the Authority for the purpose of promoting the economic development of the City. The City has determined that the execution and delivery of this Funding Agreement and the consummation of the transactions described herein will promote economic development in the City as follows:

(i) The construction and operation of the Projects are in the economic interest of the City. The Authority provides employment to citizens of the City, and the Projects will provide an opportunity to employ additional citizens on both a temporary and permanent basis.

(ii) The Projects will provide an opportunity for the Authority to attract larger and additional cultural, sports and convention activities to the City. These activities will bring more people to the restaurants, hotels and retail establishments in the City, all of which will expand the City's tax base.

(iii) The availability of quality cultural events and sporting events in the City through the continued operation of the Projects will aid in the economic development of the City by providing an incentive for businesses to locate, expand or remain in the City.

(d) The City-Supported Bonds shall be issued by the Authority and shall be limited obligations of the Authority payable solely out of the City Contributions. Under the provisions of Amendment 280 and Amendment 772, neither the City-Supported Bonds nor the payment obligation of the City under this Agreement shall constitute a debt of the City for purposes of the debt limitation provisions of Section 225 of the Constitution of the State of Alabama.

Section 2. Effective Date; Issuance of Bonds; Authority Covenants.

(a) This Agreement may be executed and delivered prior to the date of issuance of the City-Supported Bonds; however, this Agreement will not become effective until (i) the City-Supported Bonds are issued, (ii) the Authority has issued, or has entered into binding contractual commitments for the issuance of, all other series of Bonds described in *Exhibit A*, (iii) the County has entered into a funding agreement supporting payment of the County-Supported Bonds identified in *Exhibit A*, and (iv) UAB has entered into a 20-year lease of the Stadium at fair market value.

(b) This Agreement will expire and terminate if the City-Supported Bonds have not been issued by December 31, 2018.

(c) The City-Supported Bonds will have a term of 30 years. The Authority shall not issue additional bonds payable from or secured by the City Contributions without the prior written consent of the City. The Authority will not refund the City-Supported Bonds without the prior written consent of the City. Any refunding of the Bonds shall not in any event increase the amount of the City Contributions or extend the obligation of the City past the original maturity date of the City-Supported Bonds without the prior written consent of the City.

(d) The City shall have the right to review the documents related to subsection (a) above prior to the closing on the bond obligations.

Section 3. City Contributions.

(a) During the term of this Funding Agreement the City shall make payments to the Authority in the amount of \$3,000,000 per year for a period of 30 years (the “City Contributions”), such payments to be made in 60 equal semi-annual installments of \$1,500,000 each due on April 20 and October 20 of each year, with the first installment due on the 20th day of October, 2018. The City’s obligation to make the City Contributions is a general obligation of the City, secured by the full faith and credit of the City.

(b) The City will appropriate funds each year for the City Contributions in accordance with the requirements of §6.05 of the Mayor Council Act (Section 45-37A-52.164 of the Code of Alabama 1975). To satisfy its obligation under this Funding Agreement, it is the intention of the City to appropriate and pay over to the Authority proceeds of the City’s occupational tax (the “Occupational Tax”) in the amount of \$3,000,000 per year; however, the City’s intention to appropriate funds from the Occupational Tax for the City Contributions does not constitute a special pledge of the Occupational Tax revenues.

(c) The term of this Funding Agreement shall end on July 1, 2048 (the final maturity of the City-Supported Bonds); provided, however, that this Funding Agreement shall automatically terminate prior to the stated termination date if the City-Supported Bonds have been paid in full. The term of this Funding Agreement may not be extended without the prior written consent of the City.

(d) The City acknowledges that the Authority will pledge and assign the City Contributions as security for the payment of the City-Supported Bonds and hereby consents to such pledge and assignment. When the City-Supported Bonds are issued, the Authority shall deliver written notification of the assignment, including payment instructions for the trustee for holders of the City-Supported Bonds. The City Contributions shall be paid directly to such trustee.

(e) The obligation of the City to make the City Contributions and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counter-claim the City might otherwise have against the Authority. The City shall not suspend or discontinue the payment of any City Contributions or fail to perform and observe any of its other agreements and covenants contained in this Funding Agreement or terminate this Funding Agreement for any cause whatsoever while the City-Supported Bonds are outstanding. If the Authority defaults under the Project Cooperation Agreement, the City may pursue any remedies at law or in equity to compel performance by the Authority, including without limitation an action for specific performance by the Authority or an action for actual damages resulting from the default; provided, however, that

no such default shall result in a termination of this Agreement or a reduction or delay in the City Contributions.

(f) The Authority agrees that the proceeds of the City-Supported Bonds shall be used exclusively for the Projects.

Section 4. Existing Agreements between the City and the Authority.

The City has heretofore provided financial assistance to the Authority, or made commitments for such assistance, including those evidenced by the following agreements between the City and the Authority (the “Existing Agreements”):

(a) Pledge and Appropriation Agreement dated as of January 15, 1989 (the “1989 Agreement”), pursuant to which the City pledged \$3,000,000 annually from the City’s occupational tax revenues to the Authority to be used for debt service on certain bonds issued by the Authority;

(b) Funding Agreement dated as of July 1, 2002 (the “2002 Agreement”), pursuant to which the City pledged two-thirds of the City’s lodging tax to the Authority for support of the operations of the Authority; and

(c) Funding Agreement dated as of February 1, 2011, pursuant to which the City extended its financial commitments under the 1989 Agreement and the 2002 Agreement to pay debt service on certain bonds issued by The Commercial Development Authority of the City of Birmingham to finance a hotel and entertainment district at the civic center complex.

The City and the Authority acknowledge and agree that the City’s obligation to make the City Contributions pursuant to this Funding Agreement is separate from and in addition to the City’s financial obligations under the Existing Agreements. This Funding Agreement does not supersede or replace any other prior agreement between the City and the Authority, including without limitation any of the Existing Agreements. The Existing Agreements are ratified and confirmed and shall remain in full force and effect.

Section 5. Third Party Beneficiary Agreement

This Funding Agreement shall be considered a third-party beneficiary contract, and the trustee under the indenture pursuant to which the City-Supported Bonds will be issued and the holders of the City-Supported Bonds shall be deemed to be third party beneficiaries of the covenants and agreements on the part of the City and the Authority contained herein as fully and completely as if said holders were parties hereto. The City acknowledges and agrees (i) that its said covenants and agreements are binding, (ii) that its performance of said covenants and agreements may be enforced through legal or equitable actions in a court of competent jurisdiction, (iii) that the officers of the City can be compelled by mandamus to perform the acts required by this Funding Agreement, and (iv) that the obligation of the City to appropriate and pay the City Contributions to the Authority and to perform and observe the other agreements and covenants on its part herein contained shall be an absolute and unconditional general obligation of the City for payment of which the City hereby irrevocably pledges its full faith and credit, irrespective of any rights of set-off, recoupment or counterclaim it might otherwise have against the Authority.

Section 6. Termination

If the City-Supported Bonds have not been issued by December 31, 2018, this Funding Agreement shall terminate on January 1, 2019. If the City-Supported Bonds have been issued by December 31, 2018, this Funding Agreement shall terminate upon the final payment and retirement of the City-Supported Bonds.

Section 7. Authority to Comply with Covenants of Project Cooperation Agreement

The Authority covenants and agrees to comply with the terms of the Project Cooperation Agreement dated on the date of this Funding Agreement and executed simultaneously with this Funding Agreement, including without limitation Sections 17, 19, 20, 21, 22, 23 and 24 of the Project Cooperation Agreement. If the Authority defaults under the Project Cooperation Agreement, the City may pursue any remedies at law or in equity to compel performance by the Authority, including without limitation an action for specific performance by the Authority or an action for actual damages resulting from the default; provided, however, that no such default shall result in a termination of this Agreement or a reduction or delay in the City Contributions.

Section 8. Miscellaneous.

(a) No modification, amendment or alteration of this Funding Agreement and no consent by the City pursuant to Section 2(c) or Section 3(c) shall be effective unless in writing that is approved by the City Council and signed on behalf of the City and the Authority by their duly authorized officers; *provided, however*, that no modification, amendment or alteration of this Agreement may be made that would (i) reduce or eliminate the amount of the City Contributions, (ii) change the timing or due date of the City Contributions, (iii) terminate or alter the assignment of this Agreement to the trustee for holders of the City-Supported Bonds, or (v) in any way adversely affect the interest of the holders of the City-Supported Bonds, unless (A) the City and the Authority obtain the prior written consent of the holders of the City-Supported Bonds and (B) each rating agency that maintains a rating on the City-Supported Bonds confirms in writing that such modification, amendment or alteration will not cause or result in a reduction or withdrawal of such rating.

(b) The provisions of this Funding 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.

(c) To the extent permitted by law, the Authority agrees to indemnify the City for any costs or expenses incurred by the City as a result of claims against the City arising out of the performance by the City of its obligations under this Funding Agreement, including costs of defense counsel approved by the Authority from a list provided by the City. The Authority's obligation to indemnify shall survive the termination of this Funding Agreement.

[signatures appear on following page]

IN WITNESS WHEREOF, the City and the Authority have caused this instrument to be duly executed as of the date set forth above.

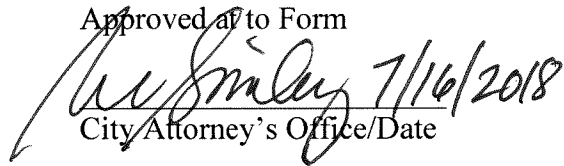
ATTEST:

By: 
Lee Frazier, City Clerk

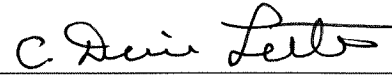
CITY OF BIRMINGHAM

By: 
Randall L. Woodin, Mayor

Approved as to Form


City Attorney's Office/Date

**BIRMINGHAM-JEFFERSON CIVIC CENTER
AUTHORITY**

By: 

Title: CHAIRMAN

EXHIBIT A

Description of Bonds for the Funding of the Projects

Series	BJCC Senior Lien Bonds (Series 2018A)	BJCC Subordinate Lien Bonds (Series 2018B)	City-Supported Bonds (Series 2018D)	County-Supported Bonds (Series 2018E)	Private Contribution Bond (Series 2018F)
Principal Amount	\$123.87 million	\$70.51 million ⁽¹⁾	\$48.805 million	\$17.81 million	\$31.0 million
Source of Payment	<ul style="list-style-type: none"> Revenues generated by the Pledged Taxes under the BJCC senior lien Indenture, including the Special Beverage Tax, Special Lodging Tax, Sales and Use Tax, Tobacco Tax, Lodging Tax, PILOTs and Car Rental Tax. 	<ul style="list-style-type: none"> Excess revenues generated by the Pledged Taxes under the BJCC senior lien Indenture remaining after the payment of the BJCC Senior Lien Bonds. 	<ul style="list-style-type: none"> City Funding Agreement providing for contributions to the BJCC in the amount of \$3 million per year for a term of 30 years. 	<ul style="list-style-type: none"> County Funding Agreement providing for contributions to the BJCC in the amount of \$1 million per year for a term of 30 years. 	<ul style="list-style-type: none"> A direct loan from Regions Bank or an affiliate of Regions Bank, payable out of (a) a UAB stadium lease for 20 years and (b) various sponsor support agreements, including naming rights agreements, pledge agreements, and suite lease agreements.

Note (1): The Authority will also issue Taxable Subordinate Lien Bonds (Series 2018C) to refund its outstanding Series 1992 Bonds.