

Resolution Approving Amendment to Foremost Farms Financing

WHEREAS, the City of Appleton, Wisconsin (the "Issuer") has heretofore issued its \$30,000,000 City of Appleton, Wisconsin Variable Rate Demand Recovery Zone Facility Bonds (Foremost Farms Project), Series 2010 (the "Bonds"), pursuant to that certain Trust Indenture dated as of May 1, 2010 (the "Original Indenture"), between the Issuer and Wells Fargo Bank, National Association, a national banking association (the "Trustee");

WHEREAS, the Issuer entered into a Loan Agreement dated as of May 1, 2010 (the "Loan Agreement") between the Issuer and Foremost Farms USA, Cooperative, a Wisconsin cooperative (the "Borrower"), pursuant to which the Issuer made a loan to the Borrower of the proceeds of the Bonds, and the Borrower agreed to pay debt service on the Bonds as and when due;

WHEREAS, the Borrower has requested that the Issuer amend the Original Indenture to clarify the events causing the Bonds to be subject to mandatory tender and to provide notice to the holders of such events; and

WHEREAS, a draft First Supplemental Trust Indenture (the "First Supplement") amending the Original Indenture for such purpose has been presented to and considered by the Common Council.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF APPLETON, as follows:

1. Approval of First Supplement. The Common Council of the City hereby approves and authorizes the execution and delivery of the First Supplement in substantially the form presented to the meeting at which this resolution is adopted (which form is hereby adopted in all respects as if set out in full in this resolution), with such changes and additional terms as the Mayor shall approve.
2. Other Documents. The Mayor and City Clerk of the City are hereby authorized to execute and deliver any and all other documents necessary or convenient to effectuate the amendment with respect to the Bonds.

ADOPTED this ____ day of _____, 2017.

By: _____

Mayor
City of Appleton, Wisconsin

Attest:

City Clerk of
the City of Appleton, Wisconsin

[Draft 08.03.17]

FIRST SUPPLEMENTAL INDENTURE

dated as of September 15, 2017

supplementing the

TRUST INDENTURE

between

CITY OF APPLETON, WISCONSIN, as Issuer

AND

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

dated as of May 1, 2010

FIRST SUPPLEMENTAL INDENTURE

This FIRST SUPPLEMENTAL TRUST INDENTURE dated as of September 15, 2017 (this "First Supplement") supplementing that certain Trust Indenture dated as of May 1, 2010 is entered into by CITY OF APPLETON, WISCONSIN, a city and municipal corporation organized and existing under and pursuant to the laws of the State of Wisconsin, as amended and supplemented from time to time (the "Issuer"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (the "Trustee"), and joined by FOREMOST FARMS USA, COOPERATIVE, a Wisconsin cooperative (the "Borrower").

Recitals

A. The Issuer has heretofore issued its \$30,000,000 City of Appleton, Wisconsin Variable Rate Demand Recovery Zone Facility Bonds (Foremost Farms Project), Series 2010 (the "Bonds"), pursuant to that certain Trust Indenture dated as of May 1, 2010 (the "Original Indenture"), between the Issuer and the Trustee.

B. The Borrower has requested, and the Issuer and Trustee agree, to amend the Original Indenture to clarify the events causing the Bonds to be subject to mandatory tender and to provide notice to the holders of such events.

C. The Borrower is joining as a party to this First Supplement in order to acknowledge and accept the changes effected by this First Supplement, and _____ (the "Bondholder"), in its capacity as the holder of 100% of the Outstanding Bonds, has approved this First Supplement.

D. The consent of CoBank, ACB, as the "Bank" under the Original Indenture, to the execution and delivery of this First Supplement is attached hereto as *Exhibit A*.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows:

SECTION 1. Definitions

For all purposes of this First Supplement, capitalized terms not otherwise defined in this First Supplement have the meanings assigned in the Original Indenture.

SECTION 2. Amendment of Section 3.01 of the Original Indenture. Section 3.01 of the Original Indenture is hereby amended and restated in its entirety to read as follows:

“Section 3.01. Purchase of Bonds. The Tender Agent shall effect the purchase of Bonds eligible for tender at its designated office in the City of Portland, Oregon, or such other office designated therefor by the Trustee, from any Owner of such Bonds (other than the Borrower, the Bank or the Issuer), at the Purchase Price but solely from and to the extent of the funds described in Section 3.04 and for the account of the Persons described in Section 3.05:

- A. on the third Business Day following the day on which the Trustee receives written notice from the Bank that an Event of Default has occurred under (and as defined in) the Reimbursement Agreement which notice directs the Trustee to purchase the Bonds;
- B. on the second Business Day preceding the date on which the Bonds are no longer entitled to the benefit of a Letter of Credit because the Letter of Credit has been terminated in accordance with its terms or at the request of the Borrower pursuant to Section 2.12 of the Agreement; and
- C. while the Bonds are in an Adjustable Long Period and not entitled to the benefits of a Letter of Credit, on the second Business Day preceding the day on which the Bonds will be entitled to the benefits of a Letter of Credit.
- D. On any Adjustment Date during which the Bonds are not in a Weekly or other Short Mode.
- E. On any Conversion Date.
- F. While the Bonds are in the Weekly Mode, on the Rate Change Date which occurs at least seven days after receipt of notice to tender Bonds by Bondholders to the Tender Agent and which occurs while the Letter of Credit is in effect hereunder.
- G. On the Purchase Date selected by the Tender Agent for the release of either the Letter of Credit or any Confirming Letter of Credit, but not both (in connection with the substitution of the Letter of Credit or any Confirming Letter of Credit, as the case may be, then in effect).

The owner of Bonds required to be tendered under this Section 3.01D., E., F. or G. may not elect to retain its Bonds.

Not later than the 5th day preceding the date on which the Letter of Credit may no longer be drawn upon for the payment of principal of, interest on, and Tender Price for, the Bonds as a result of the occurrence of any of the events described in the preceding paragraph, the Trustee shall give Immediate Notice to the owners of the Bonds (i) describing the event which has caused the Bonds to be subject to mandatory tender pursuant to this Section 3.01 and (ii) that the Bonds are required to be purchased on the date described above.

The Tender Agent shall apply the proceeds of remarketing of such tendered Bonds by the Remarketing Agent and shall apply the proceeds of a draw by the Trustee under the Letter of Credit to pay the Purchase Price of the tendered Bonds at or before 5:00 p.m. Central time on the Purchase Date and shall each dispose of Bonds so tendered, or deemed to be so tendered, for sale, as provided in this Article. The Trustee and the Remarketing Agent, as the case may be, shall take all actions reasonably required in order to make such proceeds available to the Tender Agent by no later than 11:00 a.m. Central time on the Purchase Date. Neither the Trustee nor the Remarketing Agent shall be obliged to advance funds of their own to consummate tender and remarketing of the Bonds. If moneys sufficient to pay the Purchase Price of all bonds to be tendered on any Purchase Date are not available, no purchase shall take place on such Purchase Date and all tendered bonds shall be returned to the Owner thereof, and all remarketing proceeds shall be returned to the Remarketing Agent for return to that individual or organization which supplied the proceeds to the Remarketing Agent for use on the Purchase Date.”

SECTION 3. Amendment of Section 3.03B. of the Original Indenture. Section 3.03B. of the Original Indenture is hereby amended and restated in its entirety to read as follows:

“B. The Paying Agent shall give notice of a mandatory tender to the Trustee, the Borrower, the Bank, each Confirming Bank, if any, the Tender Agent, the Remarketing Agent, and each Owner of Bonds and, if the Bonds are then rated by any of Moody’s, Fitch or S&P, to such applicable rating agency, by Mail, no later than the fourteenth (14th) day preceding the dates set forth in Section 3.01A.-E. and G. (and with each Bond bearing interest at a Weekly Rate which is authenticated and delivered after such fourteenth (14th) day, upon such delivery), and each of such dates shall be a ‘Mandatory Tender Date’.

“Any notice provided by the Paying Agent pursuant to subsection 3.03B with respect to a Mandatory Tender Date as defined in Section 3.01A.-C. may be revoked not less than three Business Days prior to the mandatory tender date set forth in such notice.”

SECTION 4. Bond Form

An allonge, in the form attached hereto as Exhibit B, reflecting the amendments to the Original Indenture, shall be executed by the Issuer and appended to the form of Bond.

SECTION 5. Ratification of Original Indenture and Loan Agreement

The Original Indenture and the Loan Agreement, in all other respects, are hereby ratified and confirmed.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have caused this instrument to be duly executed and attested.

CITY OF APPLETON, WISCONSIN

By: _____
Title: Mayor

Attest: _____
By: _____
Title: City Clerk

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: _____
Title: _____

Approved by:

FOREMOST FARMS USA, COOPERATIVE, as Borrower

By: _____
Title: _____

Exhibit A

Consent of Bank

The undersigned CoBank, ACB, as the "Bank" under that certain Trust Indenture dated as of May 1, 2010 (the "Original Indenture") by CITY OF APPLETON, WISCONSIN, a city and municipal corporation organized and existing under and pursuant to the laws of the State of Wisconsin, as amended and supplemented from time to time (the "Issuer"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (the "Trustee"), pursuant to the requirements of Section 12.03 of the Original Indenture, does hereby consent to the execution and delivery of that certain First Supplemental Indenture dated as of September 15, 2017 between the City and the Trustee and agreed to by Foremost Farms USA, Cooperative.

Date: September 15, 2017.

CoBank, ACB

By: _____
Title: _____

Exhibit B

**United States of America
City of Appleton, Wisconsin**

**Variable Rate Demand
Recovery Zone Facility Revenue Bonds
(Foremost Farms Project), Series 2010**

Allonge to Bond

The following paragraph shall be added to Part III of the form of Bond:

“Purchase Upon Release of Letter of Credit or Confirming Letter of Credit in Connection with Substitution. The Bonds shall also be purchased on the Purchase Date selected by the Tender Agent for the release of either the Letter of Credit or any Confirming Letter of Credit, but not both (in connection with the substitution of the Letter of Credit or any Confirming Letter of Credit, as the case may be, then in effect). The owner of Bonds required to be tendered as described in this paragraph may not elect to retain its Bonds.”

This allonge shall be appended to and shall be a part of the form of Bond.

IN WITNESS WHEREOF, the City of Appleton, Wisconsin has caused this allonge to Bond to be executed and attested by its duly authorized officers.

CITY OF APPLETON, WISCONSIN

By: _____
Title: Mayor

Attest: _____
By: _____
Title: City Clerk