

STATE OF ALABAMA        )

COUNTY OF BALDWIN       )

### **AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into between the USS ALABAMA BATTLESHIP COMMISSION (hereinafter referred to as "USS ALABAMA BATTLESHIP COMMISSION") and the BALDWIN COUNTY COMMISSION, the governing body of Baldwin County, Alabama (hereinafter referred to as "COMMISSION") and is effective the date last executed below.

WHEREAS, the USS ALABAMA BATTLESHIP COMMISSION is a state commission of the State of Alabama created in 1963 in accordance with, and exercising those powers and conferred by, Section 41-9-340 through Section 41-9-358 of the Code of Alabama 1975; and

WHEREAS, the COMMISSION remains the honorable county governing body of Baldwin County, Alabama; and

WHEREAS, the COMMISSION recognizes the public powers exercised by the USS ALABAMA BATTLESHIP COMMISSION as authorized in Section 41-9-340 through Section 41-9-358 of the Code of Alabama 1975 including the authority for the USS ALABAMA BATTLESHIP COMMISSION to accept public grants and enter into contracts with other governmental entities to accomplish its public purposes; and

WHEREAS, Section 41-9-356 of the Code of Alabama 1975 specifically authorizes the COMMISSION to make appropriations to the USS ALABAMA BATTLESHIP COMMISSION in order to aid said USS ALABAMA BATTLESHIP COMMISSION in accomplishing its public purposes; and

WHEREAS, in recognition of the aforementioned, the COMMISSION, wishes to approve a one-time total funding appropriation of Ten Thousand and 00/100 Dollars (\$10,000.00) to aid the USS ALABAMA BATTLESHIP COMMISSION; and

WHEREAS, the COMMISSION makes such one-time total funding appropriation to the USS ALABAMA BATTLESHIP COMMISSION respecting that the Supreme Court of the State of Alabama has ruled that Section 94 of the Constitution of Alabama 1901, as amended, is not violated when a public entity donates money or other thing of value in aid of a private individual or corporation if a public purpose is served. *Slawson v. Alabama Forestry Commission*. 631 So. 2d 953 (Ala. 1994).

WHEREAS, the aforesaid one-time funding appropriations remain compliant with Amendment No. 750 and Amendment No. 772 to the Constitution of Alabama 1901.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto AGREE as follows:

1. The above recitals and statements are incorporated as part of this Agreement and shall have the effect and enforceability as all other provisions herein.
2. The USS ALABAMA BATTLESHIP COMMISSION shall continue to accomplish its public purposes as enumerated in Section 41-9-340 through Section 41-9-358 of the Code of Alabama 1975, as said public purposes promote the economic well-being of the citizens of Baldwin County, Alabama through a myriad of activities which include, but are not limited to, tourism.
3. All USS ALABAMA BATTLESHIP COMMISSION facilities, services and activities shall be made available to the general public.
4. The USS ALABAMA BATTLESHIP COMMISSION shall have a nondiscriminatory policy, and its facilities, services and activities shall be available to the general public regardless of race, age, sex, disability or religion.
5. The COMMISSION shall assist the USS ALABAMA BATTLESHIP COMMISSION by providing a one-time total funding appropriation of Ten Thousand and 00/100 Dollars (\$10,000.00).
6. The USS ALABAMA BATTLESHIP COMMISSION expressly agrees not to use any of the one-time funding appropriation provided for by this Agreement outside

the purposes provided for by this Agreement and, furthermore, agrees not to use any of the one-time funding appropriation set forth by this Agreement to aid any private or individual benefit. It being expressly understood that the one-time funding appropriation set forth by this Agreement, as provided by the COMMISSION, be utilized by the USS ALABAMA BATTLESHIP COMMISSION only toward the purpose provided by this Agreement.

7. This Agreement and the relationship created hereby does not in any manner create, imply or otherwise vest any authority in the USS ALABAMA BATTLESHIP COMMISSION on behalf of the COMMISSION. Furthermore, this Agreement hereby expressly forbids the creation of an agency or any action that would create or imply that the USS ALABAMA BATTLESHIP COMMISSION is an agent of the COMMISSION.
8. To the fullest extent allowed by law, the USS ALABAMA BATTLESHIP COMMISSION shall fully indemnify and hold the COMMISSION, its County Commissioners, departments, employees, supervisors, insurer, agents, representatives and attorneys (for purposes of this Section 8 referred to collectively as "COMMISSION") completely harmless from any and all claims, demands, notices, violations, findings, actions or orders of whatsoever kind or character which may arise from, or which are in any way related to, the work done and duties or obligations performed by the USS ALABAMA BATTLESHIP COMMISSION or the COMMISSION pursuant to this Agreement, including, without limitation, attorney fees and legal expenses and costs incurred as a result of the COMMISSION enforcing, defending or complying with this Agreement, or otherwise addressing or defending any actions or claims related in any way to this Agreement. The provisions of this Section 8 and the rights, duties and obligations set forth herein shall survive the expiration or termination of this Agreement.
9. The USS ALABAMA BATTLESHIP COMMISSION shall ensure that all materials publicizing or resulting from the funding appropriation as provided for by this Agreement shall contain an acknowledgment of the COMMISSION's assistance with said acknowledgment of support made through the use of the following comparable footnote: "This activity was supported by the Baldwin County Commission."
10. Notwithstanding anything written herein to the contrary, all commitments made herein by the COMMISSION are subject to the availability of funds. If at anytime prior to the conveyance of the one-time funding appropriation the COMMISSION determines that the subject funds are not available, then the COMMISSION shall no longer be obligated or required to provide such one-time funding appropriation.
11. The USS ALABAMA BATTLESHIP COMMISSION agrees, as a condition of receiving the funding appropriation referenced in this Agreement, to:
  - a. Supply to the COMMISSION, within 30 days from a written request to do so, all applicable data that is necessary for the COMMISSION to ensure the proper expenditure of the subject funding appropriation.
  - b. File with the COMMISSION no later than June 10, 2023, a written report of its activities for the preceding period which commenced on October 1, 2022 and a copy of an annual report that includes the appropriation period, to ensure the proper expenditure of the subject funding appropriation.
12. This Agreement, provided in the form as one (1) original instrument for the records of the USS ALABAMA BATTLESHIP COMMISSION and one (1) original instrument for the records of the COMMISSION, represents the entire terms and conditions of the Agreement between the COMMISSION and the USS ALABAMA BATTLESHIP COMMISSION. It shall be necessary to account for only one (1) such instrument or counterpart in proving this Agreement.
13. This Agreement shall be in effect for a period of twelve (12) months, or in a shorter time as may be determined by the COMMISSION, commencing October 1, 2022, and expiring September 30, 2023, and may be amended, during the aforementioned period of twelve (12) months, only by written amendment executed by the COMMISSION and the USS ALABAMA BATTLESHIP COMMISSION. The COMMISSION shall have the right to terminate this Agreement, with or without cause or reason, by giving thirty (30) days written notice to the USS ALABAMA BATTLESHIP COMMISSION.

14. This Agreement shall be deemed to have been made in the State of Alabama, and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder. The proper venue for any action arising hereunder or relating to the subject matter of this Agreement shall lie solely in Baldwin County, Alabama.
15. Should the COMMISSION employ an attorney or attorneys to enforce any of the terms and conditions hereof, the COMMISSION shall be entitled to recover from the USS ALABAMA BATTLESHIP COMMISSION all reasonable costs, damages, and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.
16. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

IN WITNESS WHEREOF, the parties have affixed their hands and seals this date as follows:

**BALDWIN COUNTY COMMISSION**

\_\_\_\_\_  
JAMES E. BALL

As Its: Chairman

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
RONALD J. CINK

Budget Director/Interim County Administrator

STATE OF ALABAMA                    )  
COUNTY OF BALDWIN                )

I, the undersigned authority, a Notary Public, in and for Baldwin County, Alabama, and the State of Alabama, hereby certify that JAMES E. BALL, as Chairman of the Baldwin County Commission, and RONALD J. CINK, as Budget Director/Interim County Administrator of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me and on this day that, being informed of the contents of said instrument, they, as such Chairman and County Administrator of the Baldwin County Commission, and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said Baldwin County Commission.

GIVEN under my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

**USS ALABAMA BATTLESHIP COMMISSION**  
**PO BOX 65**  
**Mobile, Alabama 36601**

By: \_\_\_\_\_  
As Its: Executive Director  
Date: \_\_\_\_\_

STATE OF ALABAMA                    )  
COUNTY OF BALDWIN            )

I, the undersigned authority, a Notary Public, in and for Baldwin County, Alabama, and the State of Alabama, hereby certify that \_\_\_\_\_, as Executive Director of the USS Alabama Battleship Commission, whose name is signed to the foregoing instrument and who is known by me, acknowledged before me and on this day that, being informed of the contents of said instrument, he, as such Executive Director of the USS Alabama Battleship Commission, and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said USS Alabama Battleship Commission.

GIVEN under my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_